

2016 EUROPEAN BUSINESS POSITION PAPER

Trade/Investment Issues & Recommendations in
support of a Competitive Economy in Thailand

*“Strengthening Thai-European Economic Relations
towards a More Competitive Thai Economy”*



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Message from the President

Bangkok, March 2016

The European Association for Business and Commerce (EABC), representing the interests of the European business community in Thailand, proudly presents our annual European Business Position Paper. Since its successful launch in 2012, the EABC Position Paper has become our communication document on trade and investment policies in support of a competitive economy in Thailand.

Despite a pause in EU-Thailand FTA which is projected to bring mutual economic gains for the two economies, Thailand has made extensive reforms in its economic and social development in 2015. This included an integration with ASEAN, an economic reform as well as public transparency.

This 2016 Business Position Paper is a compilation of recommendations, derived from the European business community in Thailand, intending to help Thailand overcome economic challenges, promote the country as a more attractive trading partner and investment destination and to support Thailand's establishment beyond ASEAN.

The EABC Position Paper is the unified work of ten working groups covering Automotive, Cross Sectoral Issues (CSI), Energy and Energy Efficiency, Food and Beverages, Healthcare and Pharmaceuticals, Information and Communication Technology (ICT), Intellectual Property Rights (IPR), Insurance, Rail and Road Infrastructure and Transport and Logistics.

On behalf of the European Association for Business and Commerce, I would like to express my appreciation to all company members of the EABC Working Groups, the Royal Thai Government and everyone who was involved in useful policy dialogues that enabled the continued development and publishing of this EABC Position Paper. I would also like to pass my deepest gratitude to the European Delegation to Thailand who has always been very supportive of our operations and activities. My sincere thanks also for the dedication and effort shown by everyone related to the EABC in support of our important publication.

I believe that this publication will be beneficial to European businesses and investors as well as for Thai policymakers in providing business strategies and a road map for Thailand to strengthen its competitiveness and attractiveness in the regional and global economy.

Yours sincerely,



Rolf-Dieter Daniel
President, EABC

About European Association for Business and Commerce (EABC)

The European Association for Business and Commerce (EABC) was established in 2011 as a platform representing interests of the European business community in Thailand.

The overall objective of the EABC is to contribute to improvement of business and investment climate in strengthening Thailand toward a competitive and attractive investment destination as well as a potential gateway to ASEAN. The EABC aims to facilitate investment and further diversify market opportunities and access for European companies in Thailand, in parallel to promote Thailand as a high potential trade and investment markets for European business.

Our main activities include carrying out policy and advocacy dialogues, providing support to European businesses with trade related information, and organising key events to foster opportunities for European businesses in Thailand. The EABC is a part of a strategy of the European Union (EU) to support the internationalisation of European SMEs and other European enterprises by enhancing market access, in particular, in emerging and fast growing markets such as Thailand and the ASEAN.

The EABC consortium contains business organisations and chambers of commerce, both in Thailand and Europe. A combined membership base of EABC and Consortium partners represents more than 2,000 companies in Thailand. The EABC interacts as the unified voice of European

businesses in Thailand. Ten Advocacy Working Groups have been established to facilitate constructive policy and regulatory dialogues among European businesses toward improvement on market access and robust business cooperation between Europe and Thailand. These transversal as well as sectoral Working Groups - chaired by representatives of prominent European enterprises from respective sectors are:

- Automotive
- Food & Beverages
- Healthcare & Pharmaceuticals
- Cross Sectoral Issues
 - Customs
 - Legal and Employment
- Information & Communication Technology (ICT)
- Insurance
- Intellectual Property Rights (IPR)
- Transport & Logistics
- Energy & Energy Efficiency
- Rail & Road Infrastructure

With strong support from the European Union as well as our partners and extensive networks in Thailand and Europe, the EABC serves as a communication platform for business to interact with authorities and counterparts in Thailand. The EABC is committed to working closely with European businesses, the Royal Thai Government, the EU Institutions, and the Chambers of Commerce as well as counterparts in Thailand, in ASEAN, and in Europe.

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* Appointed by EABC President, as laid down in the EABC Bylaws. The directorship shall be confirmed by the AGM and registered at the Ministry of Commerce respectively.



Executive Summary

The global economy has not fully recovered, while emerging countries in ASEAN and beyond have entered into a race for FTAs and to become foreign investment destinations. The 'new normal' phenomena of lower economic growth hampers Thailand's efforts to move out of the middle income trap, and serious economic challenges await Thai policymakers when it comes to developing Thailand's competitiveness for a more prosperous Thai economy.

The EU is Thailand's third largest trading partner. Despite Thailand's internal challenges, in 2014, total trade exceeded 30 billion Euro. EU imported goods from Thailand were valued at 18.5 billion Euro, while EU exports to Thailand were valued at 12.4 billion Euro, resulting in a positive trade balance for Thailand of more than 6 billion Euro. The EU is also the second largest source of foreign direct investment (FDI) to Thailand.

While Thailand's robust economy draws significant players to FTA negotiations, strengthening EU-Thai economic relations will further Thailand prosperity and strengthen European long-term investors in Thailand. The resumption of EU-Thailand FTA negotiations on a technical level is important to strengthen Thailand's competitiveness in the regional economy and beyond. The FTA will bring mutual economic gains for both economies and economic power to Thailand. The natural agreement will come when the time is right. Thailand and the EABC must engage in closer dialogue and commit joint effort and collaboration at both a political and economic level to help improve Thailand-EU economic relations. We must demonstrate our friendship and determination by continuing to forge ahead with EU-Thailand FTA negotiations.

Being considered a 'middle income trap' country, the nation remains an efficiency-driven economy, while moving beyond this means opening up the economy to partnerships

and innovation, and significantly advancing policies that promote economic openness and competition, which will drive efficiency and allow new technology to the country. Recognizing mutual economic gains and political will in regional leadership will further enhance Thailand's prosperity, through organizing and maintaining an authorization body supporting centralization for trade and logistics in ASEAN. The vibrancy of Thailand and its intellectual and friendly Thai workforce draws partners from around the world. Being open to investments requires more than temporary trade promotion; safeguarding and ensuring the success of existing industries will expand the Thai economy further.

Technology is the source of an innovation-driven economy. Falling behind on protection of intellectual property will not promote the flourishing environment of Thai scientists, and makes the country susceptible to the deferment of new and innovative products, which often result in greater value and more affordability for Thai consumers.

Expertise and business partners also equip Thai businesses with necessary resources to compete in the global economy. Thailand will benefit from foreign business partners in the areas of technology, engineering and life sciences, which many industries require. Foreign partners for Thai SMEs need supportive policies and friendly regulatory frameworks.

Adaptation and acceptance of widely recognized standards such as UNECE and EU standards in infrastructure development significantly promote Thailand's ease of doing business and regional interoperability. This allows Thailand to take advantage of time-tested industry standards and to ensure Thailand's shipment of products in the region with product-cost efficiency. Reinventing the wheel for standards and redundancy to the testing will not enhance business efficiencies, or safety levels.

A looming energy crisis attracts international attention to Thailand's ability to provide sufficient energy for businesses. Thailand must ensure the country shall not face energy security issues by continuing to explore for new energy and renewable energy. This should also include developing a stronger interconnection in the ASEAN power grid to ensure readiness for transmitting power coming from alternative sources of energy. Large cities consume a huge amount of energy through city lights, and they can be modified to reduce energy consumption, as well as to improve cities' safety and attractiveness as a tourist destination. FTA's enhance wealth and efficiency. It is essential to support free trade and compliance to WTO agreements. This will benefit Thailand as a respected nation and will help conclude multi-lateral FTAs, as FTA obligations generally derive with respect to WTO agreements.

Improvement to cross-border procedures will foster business growth in Thailand and will support logistics and border trade in this nation. Streamlined customs procedures are known to increase speed and efficiency for operators and enhance ease of doing business. Regulations and laws must also support this development to increase effectiveness of the process. Ease of doing business can also help Thai entrepreneurs to quickly and effortlessly establish new opportunities in Thailand, while also helping to reduce costs for businesses. Simplifying procedures together with improving ease of doing business in other dimensions will strengthen Thailand's competitiveness and attractiveness for investments.

The EABC, as a voice of the European business community in Thailand, has adopted Policy Advocacy Working Groups in its structure. The main goal is to create a policy and regulatory platform where industries can participate and propose their business issues of interest as well as recommendations to the Thai authorities. The Working Groups consist of Cross Sectoral Issues, Intellectual Property Rights (IPR), Automotive, Food and Beverages,

Healthcare and Pharmaceuticals, Information and Communication Technology (ICT), Insurance, Transport and Logistics, Energy and Energy Efficiency, and Rail and Road Infrastructure. Fundamentally, the EABC Policy Advocacy Working Groups work to generate positive contributions for Thailand's further competitiveness within the spirit of EU-Thailand: partnership for growth.

Continuing on from our previous Papers, European businesses still emphasize enhanced transparency, improved efficiency, an enabling economic and regulatory environment, and liberalization of the services sector as key priorities for tangible improvement in Thailand's position. The 2016 Position Paper is also intended to be a source of information for EU and European Member States to assist in their engagements with Thai policymakers and authorities. We are hopeful that Thai businesses, media, and academics will find this Position Paper useful for their trade-and-economic related future use.

The table below is a summary of key trade and investment recommendations contributed by our EABC working groups. We are fully committed to providing constructive contributions in terms of policy and regulations that will foster a long-term economic partnership between Thailand and Europe. We appreciate all valuable exchanges with the Royal Thai Government and wish to continue our regular dialogue and mutually beneficial collaboration at both policy and business levels.



ISSUES AND RECOMMENDATIONS

Overall Trade and Investment Policy

- The resumption of EU - Thailand FTA negotiations on a technical level is highly recommended to improve economic relations for the two economies.
- Liberalization of services sector is a key enabler of competitiveness, skill development, enhancement of productivity, and a boost of economic growth and resilience.
- Thailand is highly encouraged to strengthen its competitiveness and attractiveness through further liberalization, creation of a level of playing field, and development of hardware and software infrastructure.

Cross Sectoral Issues (CSI)

1. Enhance Transparency	<ul style="list-style-type: none"> • Reform the Customs toward transparency and efficiency in customs procedures, including reward and penalty scheme <ul style="list-style-type: none"> - Penalty scheme should recognize the notion of intent as reflected in international best practices under the Revised Kyoto Convention (RKC). - Reward scheme should remove bribes and rewards in case of unintentional violations and technical mistakes. - EABC urges close collaboration between the Customs Department and industry representatives for better information dissemination and clearer understanding. EABC also provides comments on the draft Customs Bill, B.E. ... for consideration (Annex I). • Free zone requirements are recommended to be more practical as follows; <ul style="list-style-type: none"> - Rewards should be paid only in cases of proven intentional violation and allowed where revenue collection exceeds current budgeted targets set by the Ministry of Finance. - Penalty scheme should be based on proportionality, taking into account the intention of and the severity of the offense. - The concept of “reasonable care” by the trading community should be recognized, as a mitigating factor in penalty assessment, to encourage compliance with laws and regulations. - A Customs Appeal Tribunal with independent judges should be established to provide fair trials for the private sector. • EABC supports anti-corruption efforts through serious laws enforcement and extension of criminal offence to the offeror of a bribe in addition to the receiver of a bribe.
2. Ease of Doing Business	<ul style="list-style-type: none"> • Simplify competitive tax regime and compliance methods to improve economic efficiency as well as enhance transparency in tax collection • Improve investment climate in Thailand through taxation measures • Establish mutual interpretation and recognition of BOI investment privileges across inter - government agencies to promote transparency, consistency, and sustainability

Cross Sectoral Issues (CSI)	
	<ul style="list-style-type: none"> • Emphasize roles of court system, resolution of disputes, litigation and arbitration in ensuring foreign business confidence and attracting more FDI to Thailand • Promote implementation of competition law to ensure competition policy and address unfair trade practices • Review cumbersome and unnecessary laws and regulations through regular consultations between the Royal Thai Government and the EABC Cross Sectoral Issues Working Group
3. Enabling Economic and Regulatory Environment	<ul style="list-style-type: none"> • Relaxation of foreign ownership restriction and progressive liberalization of services sector <ul style="list-style-type: none"> - Avoid any attempts to tighten the law that could lead to the violation of WTO commitments - Provide more flexibility for residential and commercial leasing of lands and buildings - Limit foreign business ownership only on activities and services that are incidental to main businesses of a majority owned manufacturing company - Provide longer lease term to further liberalize land ownership, especially for commercial use • Ease of employment procedures and laws to facilitate free flow of skilled and unskilled labour <ul style="list-style-type: none"> - Facilitate issuance procedure for visa and work permit - Simplify regulations/ requirements regarding employment of foreigners - Improve education for younger generation, especially in English language skills - Simplify operational procedures for reporting, classification, registration, and licensing of hazardous substances
Automotive	
1. EU-Thailand FTA Negotiations	<ul style="list-style-type: none"> • Resume FTA negotiations as soon as possible • Place emphasis on reducing NTBs in the EU-Thailand FTA
2. Technical Regulations	<ul style="list-style-type: none"> • Align with internationally-accepted UNECE standards and recognize international certification • Adopt UNECE standards when contemplating new industrial standards for automotive and auto-parts in Thailand • Actively engage in developing and implementing ASEAN MRA for automotive products • Support clarity regarding a clear timeline towards the improvement of automotive emissions standards and fuel quality • Improve fuel quality to be aligned with emissions standards



Automotive	
3. Taxation	<ul style="list-style-type: none"> • Simplify the CO2 approval process and recognize and fully accept the relevant UN certificates • Safeguard existing investment in CFZ and promote foreign investment • Reiterate the preservation of privileges offered by the CFZ scheme after the new Excise Tax Act • Keep the Excise Tax rate of the tax base lower to ensure neutral revenue in both the Free Zone and CBU imports to improve investor confidence in Thailand • Offer business operators a sufficient transition (grace) period at least 2 years for abrupt and critical changes to policies and regulations to ensure business viability • Tighten control on grey market vehicle imports through close monitoring of declared customs value, ECO-Stickers submission process, and technical testing requirements • Close cooperation between the Customs Department and the brands in setting up a system to detect illegal practices and stricter vehicle registration
4. Labour	<ul style="list-style-type: none"> • Take holistic approach in developing mid-and long-term strategies to raise availability of labour
5. Investment	<ul style="list-style-type: none"> • Ensure transparency and the enforcement of the Licensing Facilitation Act (LFA) by monitoring effectiveness of the licensing granting process • Require long - term support and commitment from BOI where clarity to investment promotion is needed to avoid unnecessary delays for investment decisions
Energy and Energy Efficiency	
1. Energy Security	<ul style="list-style-type: none"> • Renew the licenses of current concessionaires by negotiating with various partners to agree a mutually beneficial outcome by mid - 2016 • Great opportunity lies in development of the Overlapping Claims Area with Cambodia as gas reserves there could play a significant role in meeting Thailand's energy need. • Diversify energy mix and develop renewable energy sources in combination with gas which is a low - carbon fuel • Enhance the power transmission and distribution sectors and speed up relevant investments • Evaluate the impact of a possible opening of the T&D power sector for private companies to achieve a faster execution of the PDP2015 compared to now
2. Energy Efficiency and Energy Saving	<ul style="list-style-type: none"> • Consider creating and implementing a lighting master plan to help promote Thailand as a centre for tourism

Energy and Energy Efficiency	
	<ul style="list-style-type: none"> • Consider creating and implementing energy efficiency policies for buildings and industries to incentivize progress in this domain • Promote the efficiency of using fuel in power generation; encourage cogeneration to reduce losses in the power system • Enlist the help of experts in building and lighting to create environments that are assets to the nation, attract tourists and drive economic growth
3. Alternative/Renewable Energy	<ul style="list-style-type: none"> • Diversify energy sources in renewable energy • Increase transparency, adhere to global standards and ensure accountable management of natural resources
4. Automotive Energy Development	<ul style="list-style-type: none"> • Recommend close consultation between the government and private sector on an automotive fuel development plan; provide advance notice and clear timeline of transport fuel portfolio
Food and Beverages	
1. Excise Tax	<ul style="list-style-type: none"> • New Excise tax shall not increase tax burden. • Tax system shall be simplified and transparent. • Liquor tax changes should be consistent with international best practices and shift towards greater use of specific tax based solely on alcohol content. • Adequate and consistent enforcement
2. Labelling Notification, Trademarks and GIs on Alcohol Products	<ul style="list-style-type: none"> • Comply with WTO Article 22 TRIPs with respect to indirect indication to the GI • Notify WTO TBT to ensure that technical regulations, standards and conformity assessment procedures are non-discriminatory and do not create unnecessary obstacles to trade • Explore pragmatic solutions to labelling through dialogue with Alcohol Policy Board
3. Excessive Graphic Health Warnings	<ul style="list-style-type: none"> • Explore alternative methods and effective strategies to reduce harmful use of alcohol
4. Lack of Industry Participation and Consultation in Policy Development	<ul style="list-style-type: none"> • Consult with industry in early policy development • Respect for and comply with WTO regulations



Healthcare and Pharmaceuticals

1. Fostering investment Attractiveness for Innovation and Research Collaboration	<ul style="list-style-type: none"> • Establish tax and non - tax incentive schemes for innovation to attract research investment and enhance research collaboration • Ensure viable and accessible local market with available skilled workers • Provide suitable environment for local companies to develop products and services to serve domestic demand of global consumers
2. Enhancing Regulatory Ecosystem and Removal of Technical Barriers to Support Ease of Doing Business	<ul style="list-style-type: none"> • Consult with all stakeholders prior to the submission of the Bill to the Cabinet to enhance transparency and practical resolution • Removal of price inquiry/control from draft Drug Act to be aligned with international regulatory practices • Support prevention of patent infringement by generic drug companies by specifying patent status in Ministerial Regulations
3. Appropriate Intellectual Property Ecosystem as a Key to Enabling Pharmaceutical Innovation	<ul style="list-style-type: none"> • Increase competent patent examiners in high technology research especially in chemicals and pharmaceuticals • Recommend the DIP to commit to training to improve the quality of qualified officers • Encourage the DIP to consider outsourcing options to improve efficiency • Establish patent term restoration to compensate for long patent approval process and delay of regulatory marketing authorization to encourage effectiveness and productivity for government procedures
4. Enabling Market Environment and Sustainable Healthcare Financing Approaches to Support Innovation	<ul style="list-style-type: none"> • Encourage more industry consultation or regular dialogue to ensure transparent procedures and access to medicine • Support transparent procedures for the pharmaceutical listing, pricing and tendering process; consider the value of innovation to therapeutic outcomes and clinical needs rather than cost savings • Exercise open competition to best serve consumers and patients • Review legislation in procurement and regulatory frameworks and Trade Competition Law to allow equal competition through further liberalization

Information and Communication Technology (ICT)

1. Digital Economy	<ul style="list-style-type: none"> • A reformed and renamed MICT is welcomed. However the fundamentals of telecoms reform and a well-structured industry, underpinned with broadband should not be glossed over or considered unimportant. • A trusted internet (with cybersecurity and civil society governance) will produce better results for business, individuals and the economy than one where the perception of the internet is a vehicle to monitor and collect data. Governance requires implementing
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Information and Communication Technology (ICT)

	<p>the multi-stakeholder model.</p> <ul style="list-style-type: none"> • A proposed law continues to have some issues regarding how data is collected, managed and used. • National security issues should be managed by a government agency subject to strong rule of law bases, not by state-owned enterprises which are also operating networks. • Thai companies are encouraged to increase their use of ICT and develop new business models as a key strategy of digital economy. • Skills are in short supply and for the whole ICT sector (and the entire economy) there is long overdue need for work permit and visa reform including a practical business visa.
2. Telecommunications	<ul style="list-style-type: none"> • A structure conducive to fairness and innovation is long overdue. Reform and evolution of state-owned enterprises is needed. Competition regulation is missing. Commercial spectrum should continue to be issued by auction only. The Foreign Dominance Notification continues to be an impediment to investment. A strong, effective and truly independent regulator is needed; measures to weaken it are not recommended.
3. Digital Broadcasting	<ul style="list-style-type: none"> • Allocation of spectrum in late 2013 gave a great shot in the arm to the sector. The industry is seeing innovation and opportunities for participation. Clear rules on spectrum use including about digital dividend spectrum will be welcome.
4. Information Technology (IT)	<ul style="list-style-type: none"> • The software development industry and other start-ups need access to funds. Government procurement can be enhanced greatly.

Insurance

1. Liberalization of Insurance Industry	<ul style="list-style-type: none"> • Ensure financial stability of all players in the markets, thus, capital requirements and adequate solvency remain vitally important • Ensure that provided products and services represent fair value for customers and meet standards set by the industry's governing bodies • Ensure that all legitimate insurance claims are paid speedily and customers are treated fairly • Ensure that all employees in insurance sector are properly qualified to perform the duties and roles through professional qualifications (e.g., Chartered Insurance Institute (CII London) qualifications) • Ensure a consistently applied standard of ethics throughout the insurance industry
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Insurance	
2. Enhancing the Development and Competitiveness of the Insurance Industry	<ul style="list-style-type: none"> • Increase capital requirement • Improve regulations and product approval process to encourage innovation • Remove investment restrictions and encourage foreign investment in the sector to promote skills and bring expertise • Remove the restriction on pricing by removing the use of tariffs
3. Other Recommendations	<ul style="list-style-type: none"> • Promote insurance knowledge to create well-informed and empowered consumers and qualified insurance professionals • Promote higher standard of ethics within insurance industry
Intellectual Property Right (IPR)	
1. Amendments of IP-Related legislations	<ul style="list-style-type: none"> • Amendment of Trademark Act on accession to the Madrid Protocol and illegal refilling practices and amendments to Trademark Act on protection of scent and sound marks <ul style="list-style-type: none"> - Ensure full utilization of existing enforcement measures. The interpretation of provision for enforcement agencies and/or implementation plan should allow possibility to broaden the definition of illegal refilling practices. - Regular feedback on progress made to proposed legislative amendments would be appreciated by relevant stakeholders. • Challenges of Thailand accessing the Madrid Protocol (International Trademark Registration System) <ul style="list-style-type: none"> - Hold regular consultations with the EABC • Amendment of the Geographical Indicators Act B.E. 2546 (2003) <ul style="list-style-type: none"> - Comply with all the requirements of Article 22 and 23 of the TRIPS Agreement (protection of GIs and prohibition on the use of GIs in any means that indicates/ suggests/ translates the GIs). • Amendment of the Patent Act to facilitate accelerated registration process <ul style="list-style-type: none"> - Request for clearer instructions and flexibility from the Thai Government in the submission process
2. IP Policies	<ul style="list-style-type: none"> • Trademark elimination via Plain Packaging policy and excessive measures restricting normal use of trademarks <ul style="list-style-type: none"> - Comply with WTO's TRIPS to improve IP protection for foreign investment and innovation - Consider alternative social policy to address consumption of alcohol beverages and tobacco - Encourage regular consultation with the EABC prior to the formation of policies related to IPs.

Intellectual Property Right (IPR)	
	<ul style="list-style-type: none"> • Patent and Trademark registration procedures via Licensing Facilitation Act (LFA) - Request for clearer instructions and flexibility from the Thai Government in the submission process
3. Intellectual Property Rights for ICT	<ul style="list-style-type: none"> • Software Piracy can be eliminated through non - tolerance of the use of pirated software, more affordable software versions, education, greater penalties. • Amended Copyright Act enforced in 2015 is being monitored for possible suggested adjustments.
Rail and Road Infrastructure	
1. Introduction of European Standard	<ul style="list-style-type: none"> • Use the European standards for infrastructural investments as they bring world-leading state-of-the-art technology • Consider European expertise to supervise tenders to avoid high following costs for operation and maintenance
Transport and Logistics	
1. Long Term Goals for Customs Facilitation	<ul style="list-style-type: none"> • Introduce incentives when revenue collection exceeds the annual targeted budget or cases where there is clear fraudulent intent • Increase transparency, certainty and objectivity of customs processes and determination of imports, exports and regulations • Indicate ways in which companies can comply with regulations and accept the concept of “reasonable care”; submit voluntary disclosures, publish guidelines for compliance when enforcing customs requirements • Indicate channels for appeals by the trading community which is fair, objective and non-bureaucratic where there are disputes with Customs • State service commitments of Customs vis-a-vis the trading community, and likewise the expected commitments from the trading community to Customs • Align regulations and processes with international and regional best practices • Ensure Thai Customs officials are remunerated fairly • Increase trade facilitation in application of customs controls • Remove dual language requirements, which are a source of uncertainty and additional cost and time required for customs clearance • Ratify the ASEAN Framework Agreements on the Facilitation of Goods in Transit and on Inter-State Transport and transpose into Thai Law



Transport and Logistics

2. Short Term Measures in Customs and Trade Facilitation

- Support formal customs entry in English
- Raise the *de minimis* level and the threshold for low-value, dutiable (Cat. 3)
- Allow consolidated shipments to be break bulked which operational details can be worked out with the logistics service providers
- Streamline clearance procedures
- Revise Customs Notification 79/B.E. 2554 and allow submission of data for outbound shipments 30 minutes before flight departure in line with international best practices to promote higher exports
- Separate tariff codes for controlled and non-controlled items to facilitate the import of non-controlled items, in particular, for life sciences products
- Reduce delays in the application process for free zone licenses by providing more clarity to the guidelines especially in terms of process and requirements
- Improve e-Paperless procedures by streamlining manual handover of original ID or passport to customs brokers
- Implement an e-transit system to increase efficiency

3. Rules on Foreign Direct Investment

- Open the postal market for competition
- Review regime for foreign investment in particular in the service sector

Acronyms and Abbreviations

ACCA	Asia Cloud Computing Association
ACFS	National Bureau of Agricultural Commodity and Food Standards
ADB	Asian Development Bank
AEC	ASEAN Economic Community
AEDP	Alternative Energy Development Plan
AFAS	ASEAN Framework Agreement on Services
AFTA	ASEAN Free Trade Area
AHN	ASEAN Highway Network
APG	ASEAN Power Grid
ASEAN	Association of Southeast Asian Nations
BSA	Business Software Alliance
CAP	Certificate of Approval for Protection
CBI	Confidential Business Information
CEA	Comité Européen des Assurances
CEPEA	Comprehensive Economic Partnership for East Asia
CEN	European Committee for Standardization/ Comité Européen de Normalisation
CJEU	Court of Justice of the European Union
CMO	Collective Management Organisation
DBD	Department of Business Development
DEDE	Department of Alternative Energy Development and Efficiency
DIP	Department of Intellectual Property, in MOC
DIW	Department of Industrial Works
DoE	Department of Employment, in Ministry of Labour
EAFTA	East Asian Free Trade Area
EEDP	Energy Efficiency Development Plan



EFTA	European Free Trade Association
EGA	Electronic Government Agency
EPO	European Patent Office
EPPO	Energy Policy and Plan Office
ETDA	Electronic Transactions Development Agency
ETSI	European Telecoms Standards Body
EU	European Union
FBA	Foreign Business Act B.E. 2542 (1999)
FDA	Food and Drug Administration
FDI	Foreign Direct Investment
FEL	Foreign Equity Limits
FIDF	Financial Institutions Development Fund
FTA	Free Trade Agreement
FTI	Federation of Thai Industries
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GCI	Global Competitiveness Index
GDP	Gross Domestic Product
GDP (PPP)	Gross Domestic Product at purchasing power parity
GIs	Geographical Indications
GIPC	Global Intellectual Property Centre
GMS	Great Mekong Sub-region
GSMA	The GSM based industry association for mobile operators
GSP	Generalised system of preference
IEA	International Energy Agency
IEAT	Industrial Estate Authority of Thailand
IEEE	US based standards body, publishing standards for WiFi for example (802.11)

IHQ	International Headquarters
IMD	International Institute for Management Development
IMF	International Monetary Fund
IPR	Intellectual Property Rights
ISO	International Standardisation Organisation
ITC	International Trading Centre
ITIL	IT Infrastructure Library
itSMF	IT Service Management Forum
ITU	International Telecommunications Union (UN agency)
JFCCT	Joint Foreign Chambers of Commerce in Thailand
JSCCIB	Joint Standing Committee on Commerce, Industry and Banking
JTEPA	Japan-Thailand Economic Partnership Agreement
LTE	Long Term Evolution - the 4G standard in the GSM world
LWP	Last Wholesale Price
MB, GB	MegaBytes, GigaBytes (a size)
Mbps	Megabits per second (a speed)
MEPS	Minimum Energy Performance Standards
MFN	Most Favoured Nation
MHz, GHz	Typically used to refer to wavelengths or parts of the spectrum
MICT	Ministry for Information and Communications Technology
MOC	Ministry of Commerce
MOF	Ministry of Finance
MOPH	Ministry of Public Health
Mbps per MHz	A measure of spectral efficiency – speed per amount of bandwidth available
MRA	Mutual Recognition Arrangement
MSC	Manufacturer Self-Certification
NBTC	National Broadcasting and Telecommunications Commission



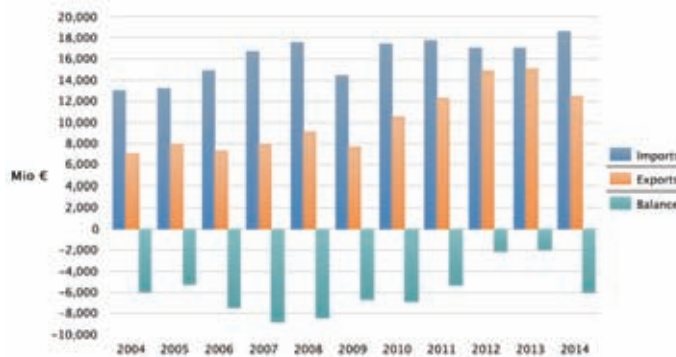
NECTEC	National Electronics and Computer Technology Centre
NEPC	National Energy Policy Commission
NESDB	National Economic and Social Development Board
NLEM	National List of Essential Medicine
NSTDA	National Science & Technology Development Agency
NSW	National Single Window
NTBs	Non-Tariff Barriers
NTC	National Telecommunications Commission, the predecessor to the NBTC
OECD	Organisation for Economic Co-operation and Development
OIC	Office of Insurance Commission
OPDC	Office of Public Sector Development Commission
PDP	Power Development Plan
RBC	Risk-Based Capital
ROO	Rules of Origin
SFIs	Special Financial Institutions
SIPA	Software Industry Promotion Agency, under MICT
SOE	State Owned Enterprise
SPS	Sanitary and Phytosanitary Measures
SRP	Suggested Retail Price
TAGP	Trans-ASEAN Gas Pipeline
TBA	Telecom Business Act
TBT	Technical Barriers to Trade
TCC	Thai Chamber of Commerce (one of constituent bodies of Trade)
TDRI	Thailand Development Research Institute
TFP	Total Factor Productivity
Thai IOD	Thai Institute of Directors
TISI	Thai Industrial Standards Institute

TRIDI	Telecommunications Research and Industrial Development Institute (part of NBTC)
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UNECE	United Nations Economic Commission for Europe
VAT	Value-Added Tax
WEF	World Economic Forum
WHO	World Health Organisation
WTO	World Trade Organisation

Introduction

The EU is Thailand's third largest trading partner. Despite Thailand's internal challenges, in 2014, total trade exceeded 30 billion Euro. EU imported goods from Thailand were valued at 18.5 billion Euro, while EU exports to Thailand were valued at 12.4 billion Euro, resulting in a positive trade balance for Thailand of more than 6 billion Euro. From 2004 to 2014, the total value of imported Thai products to the EU increased by 30 percent.

Figure 1: Total goods: EU Trade flows and balance, annual date 2005-2014



Source: Eurostat Comext - Statistical regime 4

While the world economy started to slow down after 2013, Asian countries reliant on exports and private investment suffered greatly. Thailand's net investment reduced drastically as a result of political turmoil in 2013 and 2014. Net exports are projected to increase less and become less impact to raise Thailand's GDP. The country is expected to grow around 2.4 percent from 2015-2017, while the neighbouring countries such as Vietnam and Malaysia are growing at 5 percent. Thailand is losing its attractiveness for new investments, and higher labour costs make Thailand less competitive - exacerbated by Thailand's reliance in exports, which account for 70 percent of Thai GDP. Thailand must refresh its attractiveness for new investments from abroad and increase technology and efficiency. Currently,

Thais could be considered in the upper middle income bracket. To break free from the middle income trap, Thailand needs to welcome research and development (R&D) through collaboration between universities and the private sector. The R&D can also come from the private sector bringing in expertise and knowhow to the country. This requires Thailand to create an environment that is suitable for a creative and innovative economy.

Figure 2: East Asia and Pacific GDP growth projections



Figure 3: GDP Forecast for East Asia 2015-2017

Percent change from a year earlier, unless otherwise noted

	2013	2014	Forecast 2015	Forecast 2016	Forecast 2017	Changes from Apr 15* (in percentage points)	2015	2016	2017
East Asia and Pacific**	6.3	6.1	5.7	5.8	5.8	-0.3	-0.2	-0.2	-0.2
Developing East Asia and Pacific	7.1	6.8	6.5	6.4	6.3	-0.2	-0.3	-0.3	-0.3
China	7.7	7.3	6.9	6.7	6.5	-0.2	-0.3	-0.4	-0.4
Indonesia	5.6	5.0	4.7	5.3	5.5	-0.5	-0.2	0.0	0.0
Malaysia	4.7	6.0	4.7	4.7	5.0	0.0	-0.3	-0.1	-0.1
Philippines	7.1	6.1	5.8	6.4	6.2	-0.7	-0.1	-0.1	-0.1
Thailand	2.8	0.9	2.5	2.0	2.4	-1.0	-2.0	-1.6	-1.6
Vietnam	5.4	6.0	6.2	6.3	6.3	0.2	0.1	-0.2	-0.2
Cambodia	7.4	7.1	6.9	6.9	6.9	0.0	0.0	0.0	0.0
Lao PDR	8.5	7.5	6.4	7.0	6.9	0.0	0.0	-0.1	-0.1
Myanmar	11.6	8.5	6.5	7.8	8.5	-2.0	-0.4	0.5	0.5
Mongolia	11.6	7.8	3.3	4.1	4.0	-1.1	-0.1	0.1	0.1
Fiji	4.6	4.0	3.4	3.1	3.0	-1.9	-0.7	0.4	0.4
Papua New Guinea	5.5	8.5	8.7	3.3	4.0	-7.3	-1.7	1.6	1.6
Solomon Islands	3.0	1.5	3.3	3.0	3.5	-0.2	-0.5	0.0	0.0

* World Bank, "East Asia and Pacific Economic Update: Adjusting to a Changing World," April 2015.

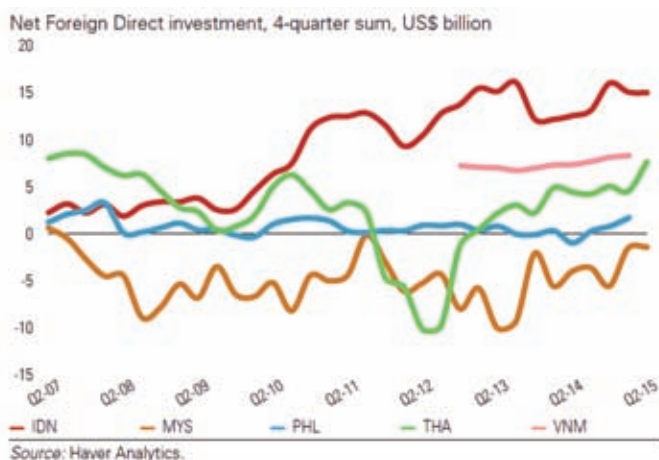
** Developing East Asia + NIEs + Korea.

Source: World Bank East Asia and Pacific Update October 2015

Positive Foreign Direct Investment (FDI) has been strongly recorded in Thailand. Frequent changes in Thai leadership, resulting from political unrest, shattered investor confidence. This was especially the case in 2012, when net FDI declined by over US\$10 billion. Positive net investment had returned

by 2013. To increase new investments, in 2015, the BOI launched investment promotions to support new cluster development. Businesses were promised highly competitive promotions for the 10 new industries that are necessary for Thailand's future economic growth. However, serious measures to safeguard existing industries have not taken place, in order to prevent businesses moving out. Keeping existing businesses in Thailand has become challenging. Cooperation between Thai government agencies must occur, and policies must be strengthened. Doing so will not only open doors to new investments but also reinvestments in existing industries, as the BOI: Thailand Moving Forward scheme is based on existing industries reinvesting in future development.

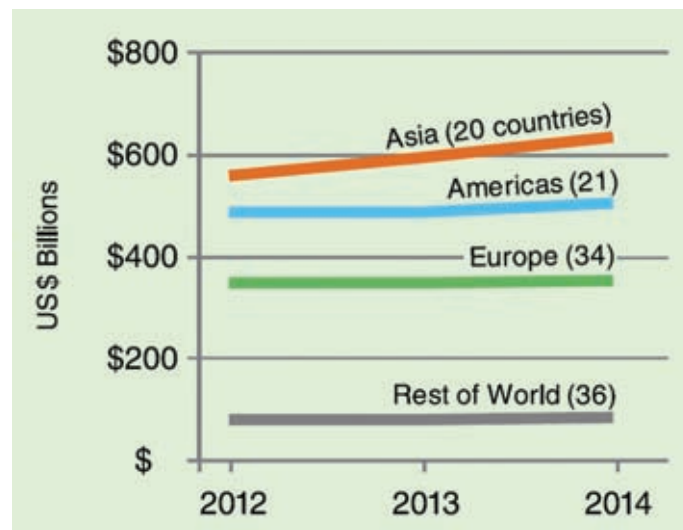
Figure 4: Foreign Direct Investment 2007-2015



Steering Thailand towards more prosperity requires taking initiative in research and development. The R&D is a source of innovation and the right step to move toward an innovation-driven economy. Taking advantage of Asia's economic growth, big developments and improved education, many countries already consider Asia to be a suitable environment for R&D. Asia is projected to spend 2 percent of GDP in R&D, while Japan maintains consistent R&D spending at 3.4 percent. R&D in Thailand remains at

less than 0.5 percent. To improve Thailand's competitiveness, the country needs to catch up with the rest of Asia in R&D. To improve R&D as a percentage of GDP, the Royal Thai Government cannot fund public research institutions alone—the country needs to work with the private sector to bring in more investments and expertise. Generally, R&D is in the field of life sciences, engineering and ICT, where expertise is limited in Thailand. Collaboration with foreign institutions and the private sector will help bring knowhow and expertise to improve the country's R&D as a percentage of GDP. Investment in human capital is the key driving force to improve the country's competency. The additional effect is knowledge spill-over in to key clusters and tier 2 and tier 3, where major suppliers are dominated by Thai ownership. This requires Thailand to improve regulations and incentive schemes.

Figure 5: R&D Investment in the World, 2012-2014* (Forecast Figure)



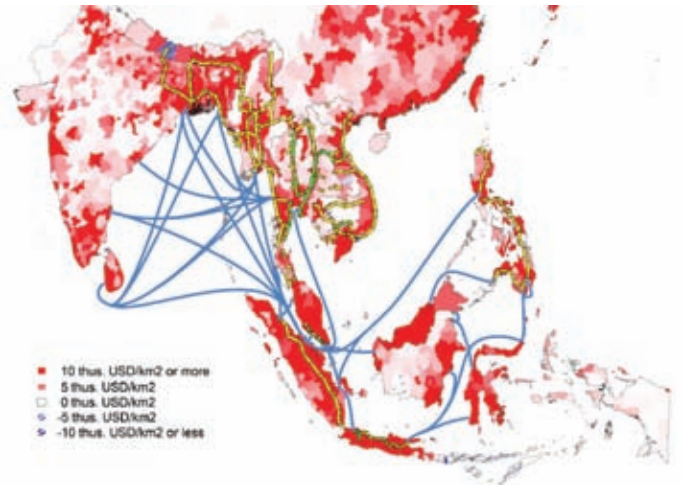
	2012		2013		2014	
	GERD PPP Bn USD	R&D as % GDP	GERD PPP Bn USD	R&D as % GDP	GERD PPP Bn USD	R&D as % GDP
Americas (21)	485	2.5%	489	2.4%	504	2.5%
U.S.	447	2.8%	450	2.8%	465	2.8%
Asia (20)	561	1.8%	596	1.9%	633	1.9%
China	232	1.8%	258	1.9%	284	2.0%
Japan	160	3.4%	163	3.4%	165	3.4%
India	41	0.9%	42	0.9%	44	0.9%
Europe (34)	350	1.9%	349	1.9%	351	1.8%
Germany	92	2.8%	92	2.8%	92	2.9%
Rest of World (36)	81	0.9%	83	0.9%	87	0.9%
Global Total	1,517	1.8%	1,559	1.8%	1,618	1.8%

GERD=Gross Expenditures on R&D; PPP=Purchasing Power Parity

Source: 2014 R&D Funding Forecast, December 2013)

Thailand recently became one with ASEAN. This even more emphasizes Thailand’s strategic location bridging countries for international trades. Significant infrastructure developments are already underway in South Asia around improving connectivity through rail and road infrastructure, maritime and air transport. Many ports are to be built in neighbouring countries using Thailand as a gateway to trade within ASEAN and to other continents. Explosions in greater connectivity are strongly tied to energy consumption as they tend to increase energy and power requirements. Cross-border trade is expected to improve local incomes to more than US\$10 per square kilometre. The key challenge lies in the establishment and maintenance of Thailand as a logistics hub and trading nation. Taking a leadership role in ASEAN is a necessary step to improve soft infrastructure (regulations and central authorization). Without effective soft infrastructure, efficiency cannot be managed and the goal of reducing logistics and transport costs shall never be realized for ASEAN. The Royal Thai Government has the power and influence to develop an ASEAN logistics hub. Without Thailand, connectivity and efficiency will not meet; ASEAN will not have an economic frontier and will lose attractiveness.

Figure 6: Projected Economic Impact of Infrastructure, NTB, and SEZ in 2030



Source: The Comprehensive Asia Development Plan 2.0 (CADP 2.0): Infrastructure for Connectivity and Innovation

Figure 7: Thailand Logistics Performance 2014

Economy	Rank / 160	Overall	Customs		Infrastructure		International Shipment		Logistics quality and competence		Tracking and tracing		Timeliness	
			Rank	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score
Thailand	35	3.43	36	3.21	30	3.40	39	3.30	38	3.29	33	3.45	29	3.96

Source: Logistics Performance Index 2014

• Enhancing Thailand's Competitiveness: Strategy for Prosperity

The world economy is entering a “new normal” phase of lower economic growth. This requires countries to make a great effort to improve their competitiveness. Thailand's ambition to improve its ranking for Global Competitiveness showed significant progress over the past four years, from 38th to 32nd in GCI 2015-2016. Very slow progress has made in relation to the governing body, emphasizing legal and administrative procedures that are not fostering business competitiveness in the world economy. It is important for the Thai government to ensure investor and consumer confidence and support transparency for business operators.

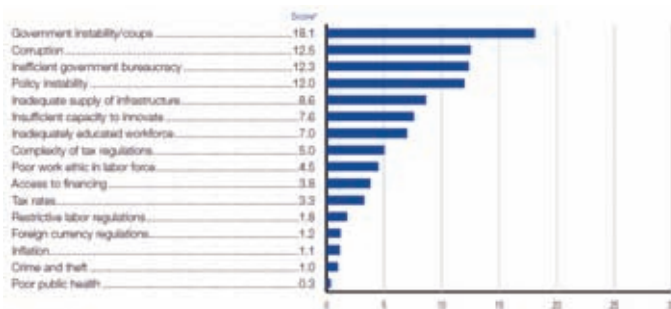
Figure 8: Thailand Global Competitiveness Index 2015-2016

	Rank (out of 140)	Score (1-7)
GCI 2015-2016	32	4.6
GCI 2014-2015 (out of 144)	31	4.7
GCI 2013-2014 (out of 148)	37	4.5
GCI 2012-2013 (out of 144)	38	4.5
Basic requirements (40.0%)	42	4.9
1st pillar: Institutions	82	3.7
2nd pillar: Infrastructure	44	4.6
3rd pillar: Macroeconomic environment	27	5.7
4th pillar: Health and primary education	67	5.8
Efficiency enhancers (50.0%)	38	4.6
5th pillar: Higher education and training	56	4.6
6th pillar: Goods market efficiency	30	4.7
7th pillar: Labor market efficiency	67	4.2
8th pillar: Financial market development	39	4.4
9th pillar: Technological readiness	58	4.2
10th pillar: Market size	18	5.2
Innovation and sophistication factors (10.0%)	48	3.9
11th pillar: Business sophistication	35	4.4
12th pillar: Innovation	57	3.4

Source: World Economic Forum (2015)

Challenges for Thailand's competitiveness remain, notably in the areas of political and policy instability, excessive red tape, inefficient government bureaucracy, pervasive corruption, and uncertainty around property rights protection, which have seriously undermined the quality of the institutional framework on which business rely heavily. Solving the most problematic factors will enhance Thailand's ability to compete in world economy.

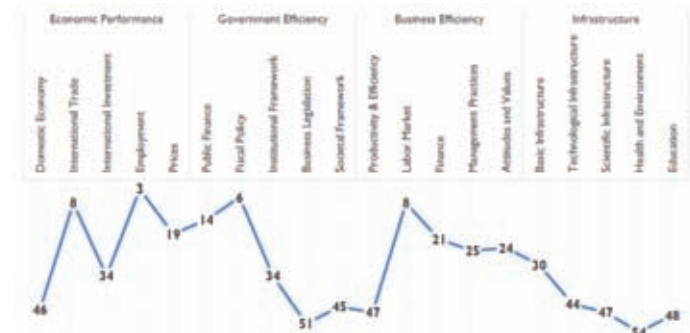
Figure 9: Thailand's most problematic factors for doing business



Source: World Economic Forum (2015)

As witnessed by continual deterioration in Thailand's overall competitiveness, down one rank in both WEF 2015 and IMD 2015, Thailand seems to have been struck in the 'middle income trap'. The developmental challenges mostly stem from government efficiency and science, health and education.

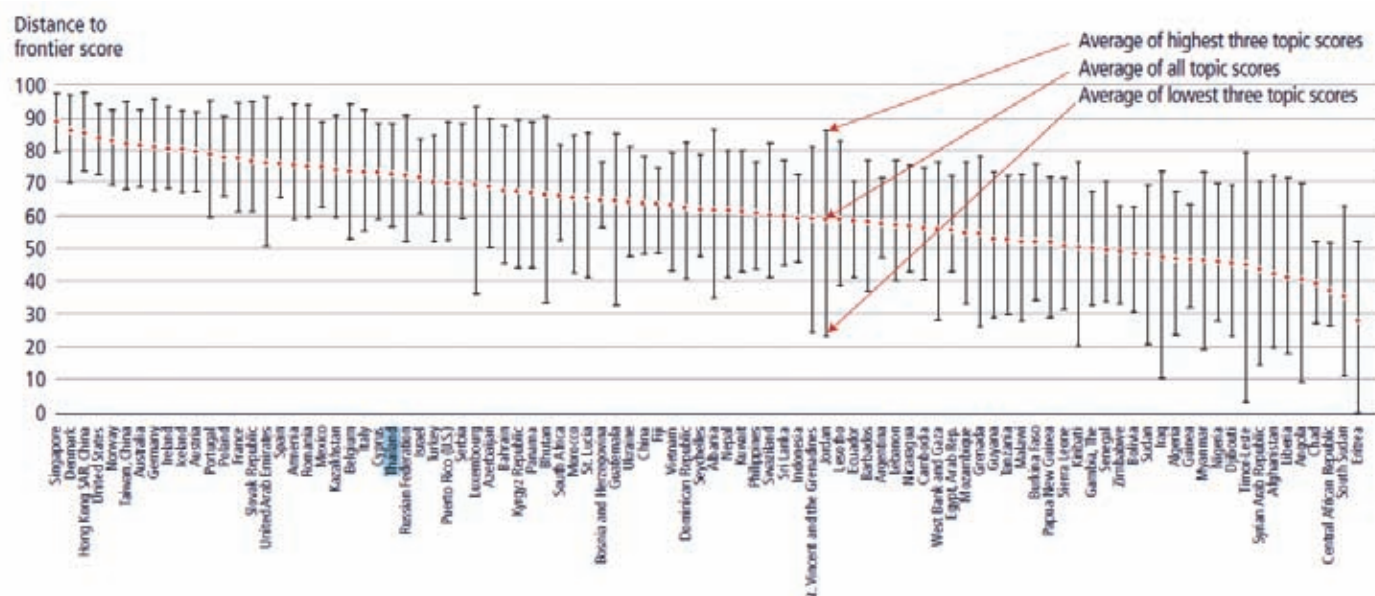
Figure 10: IMD Thailand Competitiveness 2015



Source: IMD, 2015

The ability for Thailand to create attractiveness for businesses to open and run their operations in compliance with regulatory frameworks is as important as the country's ability to compete in the world economy. Thailand's regulatory environment for ease of doing business dropped drastically from 46th to 49th in 2015. The result came from barriers of entry to do business in Thailand, such as high requirements for registered capital, complicated paperwork and lack of financial support for SMEs. To attract investments, technology, and entrepreneurship to the country, Thailand must create an environment that is easy and cheap to start a business and to ensure finance credit available not only for large corporations but for SMEs as well. SMEs are the source of job creation and wealth to the country. Getting out of the 'middle income trap' requires Thailand to increase its competency, creativity and ability to innovate in business. Improvement to ease of doing business will benefit Thailand from expertise as well as business partners abroad, which are the foundation for an innovation-driven economy.

Figure 11: Economy's regulatory environment for ease of doing business



Source: World Bank, *Doing Business*, 2016

Figure 12: Thailand's ease of doing business compared to the world

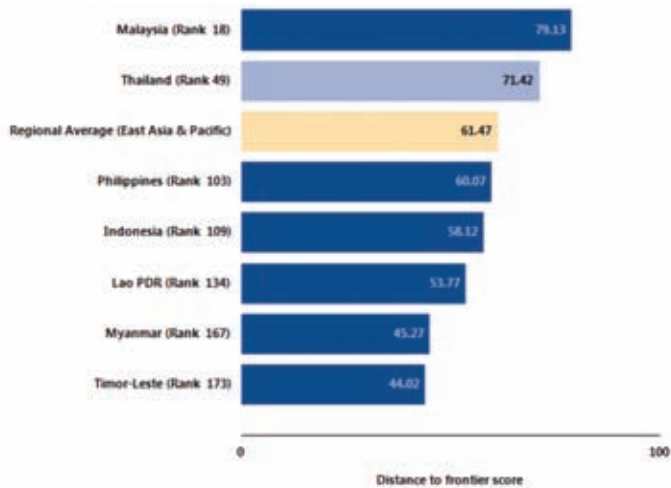
THAILAND		East Asia & Pacific		GNI per capita (US\$)	
Ease of doing business rank (1–189)		Overall distance to frontier (DTF) score (0–100)		Population (m)	
49		71.42		5,410	
Starting a business (rank)		Getting credit (rank)		Trading across borders (rank)	
DTF score for starting a business (0–100)		DTF score for getting credit (0–100)		DTF score for trading across borders (0–100)	
Procedures (number)		Strength of legal rights index (0–12)		Time to export	
Time (days)		Depth of credit information index (0–8)		Documentary compliance (hours)	
Cost (% of income per capita)		Credit bureau coverage (% of adults)		Border compliance (hours)	
Minimum capital (% of income per capita)		Credit registry coverage (% of adults)		Domestic transport (hours)	
0.0		0.0		Cost to export	
Dealing with construction permits (rank)		Protecting minority investors (rank)		Documentary compliance (US\$)	
DTF score for dealing with construction permits (0–100)		DTF score for protecting minority investors (0–100)		Border compliance (US\$)	
Procedures (number)		Extent of conflict of interest regulation index (0–10)		Domestic transport (US\$)	
Time (days)		Extent of shareholder governance index (0–10)		Time to import	
Cost (% of warehouse value)		Strength of minority investor protection index (0–10)		Documentary compliance (hours)	
Building quality control index (0–15)		6.3		Border compliance (hours)	
11		Paying taxes (rank)		Domestic transport (hours)	
Getting electricity (rank)		DTF score for paying taxes (0–100)		Cost to import	
DTF score for getting electricity (0–100)		Payments (number per year)		Documentary compliance (US\$)	
Procedures (number)		Time (hours per year)		Border compliance (US\$)	
Time (days)		Total tax rate (% of profit)		Domestic transport (US\$)	
Cost (% of income per capita)		27.5		Resolving insolvency (rank)	
Reliability of supply and transparency of tariffs index (0–8)		Enforcing contracts (rank)		DTF score for resolving insolvency (0–100)	
7		DTF score for enforcing contracts (0–100)		Time (years)	
Registering property (rank)		Time (days)		Cost (% of estate)	
DTF score for registering property (0–100)		Cost (% of claim)		Recovery rate (cents on the dollar)	
Procedures (number)		Quality of judicial processes index (0–18)		Strength of insolvency framework index (0–16)	
Time (days)		6.5		11.5	
Cost (% of property value)					
Quality of land administration index (0–30)					
13.5					

Source: World Bank, *Doing Business (Thailand)*, 2016



Ease of doing business is very important for International attractiveness. The business landscape consists of similar alternatives. Continuous improvement in ease of doing business leads to better economic performance for Thailand. Therefore, improvement to ease of doing business will also enhance the country's attractiveness for new investment. While Thailand is already ranked 3rd in ASEAN, the country is still very far behind Malaysia, which is second. Thailand needs to improve regulations, and reduce redundancies and paperwork for businesses.

Figure 13: How Thailand and comparative economies rank on ease of doing business 2016



Source: World Bank, Doing Business 2016

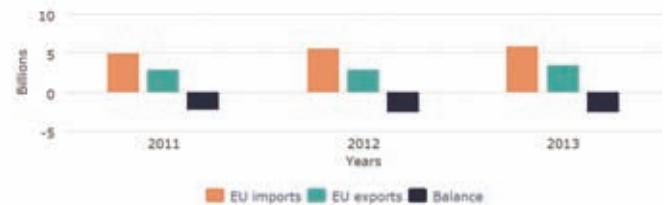
• Trade Liberalization under the EU-Thailand FTA: Mutual Economic Gains

Negotiations for an EU-Thailand Free Trade Agreement were formally launched on 6 June 2013. This is a significant step to improve EU-Thai economic relations. However, recent political changes in Thailand in 2014 have interrupted the negotiations, which will resume when the time is right.

The FTA is projected to bring mutual economic gains for the two economies, such as gains in trade, zero percent tariff rates, enhanced investments, increased trade in service, removal of non-tariff barriers, improvements in intellectual property protection for inventors, levelling of the playing field, better market access and more transparency. The EU has recently concluded an FTA with Vietnam, and many ASEAN member states are already in negotiations. Thailand will become less competitive for European Investments if the FTA negotiations do not resume soon.

Despite political circumstances, the EABC supports the continuation of EU-Thailand FTA negotiations on a technical level.

Figure 14: EU-Thailand Trade in Service



Source: EU Commission, 2015

Figure 15: Virtuous Cycle of Growth under EU-Thailand FTA Resumption



Source: EABC, 2016

• EU-Thailand: Partnership towards Mutual Prosperity

The EABC Position Paper is the unified work of EABC's ten working groups contributing to the improvement of European-Thai economic relations, trade and investment and covering a broad range of industries. This Paper provides important recommendations that will strengthen Thailand's competitiveness towards more prosperity. Policymakers today acknowledge the benefits of useful information presented in this Paper, as identifying optimal solutions to complicated problems require input from business leaders. The European Business Position Paper is unique that it is derived from the extensive efforts and serious commitment from more than 80 European business leaders in Thailand - with over 70 working group sessions held over the past year. This Paper is a resource for the Royal Thai Government's regulators and policymakers to learn about the issues and to find the best approach. The EABC Position Paper is our sincere contribution to improve Thailand's competitiveness for the mutual benefit of the two economies, and for long-term European investment in Thailand.

To gain more prosperity, certain things must occur. The country should not simply accelerate the nation without harmony among different interests, and improving international economic relations can serve as a lever towards higher growth and prosperity for Thailand. In the 2016 European Business Position Paper, we cover recommendations to reduce trade barriers, improve the investment climate and ease of doing business, increase Thailand's competitiveness, amplify strategies to improve Thailand's position in ASEAN and on the world stage, and engage Thailand on the resumption of EU-Thailand FTA negotiations.



Cross Sectoral Issues

SUMMARY OF RECOMMENDATIONS

1. Enhancing Transparency

- 1.1 Customs Reforms toward transparency and efficiency in customs procedures, including reward and penalty schemes
- 1.2 Free Zone requirements
- 1.3 Tackling Corruption

2. Ease of Doing Business

- 2.1 Competitive tax regime
- 2.2 Improve investment climate in Thailand
- 2.3 Clarification of interpretation of BOI investment privileges
- 2.4 Role of court system, resolution of disputes, litigation and arbitration
- 2.5 Enforcement of competition law
- 2.6 Removal of cumbersome and unnecessary laws and regulations
- 2.7 eGovernment take up and accelerated on-line penetration, more details in ICT Chapter

3. Creating an Enabling Economic and Regulatory Environment

- 3.1 Relaxation of foreign ownership restrictions and progressive liberalization of services sector
- 3.2 Ease of employment procedures and laws to facilitate free flow of skilled and unskilled labour

Industry Overview

Thailand has been making a considerable effort to overcome the so-called middle income trap phenomenon, where an economy loses its competitiveness to the increasing price of resources. Thailand's competitiveness slipped 1 rank to 30th in 2015 (IMD World Competitiveness Center, 2015). In order to achieve more competitiveness in the globalized world, the MegaDive event in association with Ministry of Commerce on 20 January 2016 suggested Thailand to focus more on solving the following issues: (1) Education and skills, (2) Lifting investment restriction, (3) Uneven and unfair application of rules, (4) Regulatory complexity, and (5) Corruption.

In the last year, some progress has been made to improve competitiveness, in particular, the Licensing Facilitation Act, which sets the framework for more transparency in government agency functions. However, the impact of this

act is yet to be evidenced as it is at its infancy, and does not appear to include any eGovernment or on-line targets.

The EABC enhances its policy inputs by making recommendations with a focus on the above key areas, which would make significant and meaningful contributions towards strengthening Thailand's competitiveness and attractiveness as a global investment destination for the benefit of both Thailand and its trading partners.

1. Enhancing Transparency

As highlighted in the 2015 EABC Position Paper, transparency and predictability in policymaking and implementation of rules and regulations are highly crucial to ensure foreign businesses' confidence in the Thai economy. In order to achieve this, it is important that rules and regulations are

aligned between departments and ministries as well as that timely public consultation takes place prior to rules, regulations and laws being enacted. Equally important, the policy framework and legal environment must be improved to serve fair market-based competition and wider social interests. When changes to the law are being considered, it is important that stakeholders and other relevant parties should be involved in a fair and open consultation process on such changes and that new legislation is not rushed through without a fair and open consultation process. In regards to licensing agencies and enforcement, it is important to separate the functions of a licencing authority and the agency that enforces such obligations in order to avoid any conflict of interest. Recognized as a wide-spread issue, enhancing transparency in policymaking and the application of rules and regulations will allow due protection of legitimate business interests and fair competition. This will then make it possible to ensure that the drivers of productivity, efficiency and innovation can be strengthened.

Despite ongoing efforts by different agencies/stakeholders to enhance transparency and curb corruption, lack of clarity and transparency in policymaking and its implementation, plus application, of rules and regulations still exist as main concerns.

a) Customs Reforms

Thailand's accession to the Revised Kyoto Convention (RKC) in June 2015 is a milestone for Thai Customs and will provide a basis for streamlining its procedures and formalities so as to best facilitate international trade in line with both the RKC itself as well as the WTO Trade Facilitation Agreement (the Bali Package).

The EABC also appreciates Thai Customs' efforts to improve transparency by amending the Customs Act, in particular the provisions on penalty and reward schemes. The current reward and penalty scheme within the Customs Department encourages individual customs officials to take an aggressive

and rigid stance in customs clearance, including, customs valuation, document inspection, controls and audits, in order to get rewarded even for minor, administrative errors. There is insufficient checks and balances on both the abilities and authorities of the Customs, as well as recognition of compliant practices of the trading community. This, together with insufficient clarity in the legal framework and regulations, makes compliance difficult for traders. Desirable reward and penalty schemes should encourage customs officials to help promote compliance by the traders, not to make individual gains from non-compliance.

Proposed Customs law amendment on the penalty scheme

Currently, the Customs does not have the burden of proof and so they are allowed by law to qualify various non-compliances as smuggling, regardless of circumstances and intention of the alleged offenders. Technical mistakes are also disproportionately penalized by the Customs. While it is important to have in place effective customs investigations to prevent any offence or attempted breach of customs provisions, clear distinction must be identified between intentional serious offences and unintentional violations or technical mistakes. This is well recognized under the Revised Kyoto Convention (RKC) which clearly states that 'Customs shall not impose substantial penalties for errors where they are satisfied such errors are inadvertent and that there has been no fraudulent intent or gross negligence. Where they consider it necessary to discourage a repetition of such errors, a penalty may be imposed but shall be no greater than is necessary for this purpose'.

Recommendation:

We support the position taken by the Thai private sector represented by the Joint Standing Committee on Commerce, Industry and Banking (JSCCIB) on the penalty scheme, which recognizes the notion of intent as reflected in international best practice under the revised RKC and in the customs law in many developed countries.



Proposed Customs law amendment on reward scheme

Thai Customs has an incentive programme rewarding officials and informants for identifying importers suspected of false declaration of origin, false product classification, or false valuation. The EABC appreciates that Thai Customs' efforts to amend the provisions on rewards in the Customs Act in order to reduce the percentage of reward paid to Customs officers from 25 to 15 percent, with the ceiling capped at THB 10 million.

It remains to be seen as to how the proposed amendment would impact business and compliance, especially if the reward will remain based on a percentage of the recovered revenues or penalties, even with a cap. In practice, it is arguable that the customs officials will have a very strong incentive to use all means available to investigate importers for possible commitment of offences. Unless there is a transparent mechanism or a reasonable cap on the reward in place, the system provides an incentive for potential misuse of the mechanisms as well as excessive investigations and maximization of penalties.

Recommendation:

We support the proposed caps on the customs bribes and rewards, but would like to go a step further to call for the differentiation of reward and bribe scheme for various kinds of offences. We endorse the position taken by the JSCCIB that calls for the removal of the bribes and rewards schemes in cases of unintentional violations and technical mistakes.

Comprehensive Customs Reforms

There are scopes to undertake comprehensive legal and administrative reforms of the Thai Customs administration. The reforms will enhance transparency as well as efficiency in customs procedures, leading to cost and time effectiveness that will strengthen Thailand's competitiveness. The recommendations include consistency of law/regulation interpretation, effective appeal/complaint mechanisms,

adoption of "reasonable care" concept, regulatory and procedure alignment with international standards, simple procedures for goods in transit, and regulatory consistency among customs-related agencies.

Recommendation:

To achieve comprehensive customs reforms, the EABC urges close collaboration between the Customs Department and representatives of industry as well as key stakeholders, for better information dissemination and clearer understanding. For example, the Republic of Korea has developed an efficient and effective system for interaction between Customs and representatives of the private sector, and may be considered as a model for Thailand. To accommodate the comprehensive Customs reforms, the EABC sub-working group on Customs and Legal provided comments on the draft Customs Bill, B.E. ... for consideration of the Customs Department (Annex I).

b) Free Zone

Free Zone was initiated as a mechanism to attract investments and promote trading activities in Thailand. Given the Free Zone's privilege of import duty exemption granted to all importations into the Free Zone, Customs has imposed stringent requirements to control the businesses located therein and also severe penalty on Free Zone-related violations.

One of the difficulties faced by the Free Zone business operators is to ensure that their Free Zone inventory remains consistent with their original customs declaration at all times; otherwise, they could be penalized at the same scale as smuggling. Such a requirement, although understandable from the Customs control perspective, is unrealistic. In reality, inventory discrepancies are normal for business, and adjustments are acceptable from an accounting perspective. Therefore, it should not be subject to the same penalty as smuggling, which is a serious criminal offence, particularly in cases where the discrepancies are unintentional.

Recommendations:

1. For reward schemes, it is recommended to put limits and specific conditions before any reward can be accorded to Customs, and that rewards may be paid only in cases of proven intentional violation (intentional smuggling and intentional duty evasion), which is in line with the position taken by the JSCCIB. A phasing approach for elimination of reward scheme is still recommended for Thailand's regulatory improvement to a World Class standard and enhancement of transparency.

Free Zones should not be subject to the same penalty as smuggling, particularly in cases where discrepancies are unintentional.

2. Rewards should only be allowed where revenue collection exceeds current budgeted targets set by the Ministry of Finance, or for cases which have clear fraudulent intent. This is to prevent abuse of the reward and penalty scheme.

3. We also recommend that the penalty scheme should be based on proportionality, taking into account the intention and the severity of the offense, instead of the current practices which sets the penalty in court at four times the value of the goods. A clear distinction between civil and criminal offences must be made. A penalty regime should take into consideration the business reality whereby unintentional non-compliance may happen and should not be penalized at the same rate disproportionately.

4. The concept of **"reasonable care"** by the trading community should be recognized, as a mitigating factor in penalty assessment, to encourage compliance with laws and regulations. This addresses the notion of intent in non-compliance or violations: distinguishing between unintentional non-compliance versus intentional/fraudulent violations.

5. In the context of enhancing transparency in policy making and implementation, the EABC strongly encourages the government to undertake private sector consultation before any law amendment. This will provide the opportunity for both local and foreign businesses to give their comments in order to increase economic efficiency as well as strengthen Thailand's competitiveness, and most importantly results in industry understanding and support for the laws and regulations which eventuate.

6. To provide fair trials for the private sector, we propose the creation of a Customs Appeal Tribunal with independent judges that would have jurisdiction in case of disputed customs duties.

c) Tackling corruption

Transparency International, in their Corruption Perceptions Index 2014, ranked Thailand 85th out of 175 nations on the issue of public sector corruption. The significance of taking measures to reduce and discourage corruption, both where a government agency is involved, and where both parties are private sector companies, is recognized as a high priority by the government. Several agencies have the power to investigate such allegations, and to take criminal or civil action against those involved.

Corruption is used as a dishonest means to avoid the law and to gain a commercial advantage by illegal means. It becomes an additional cost for business.

Whilst there are many laws and agencies that apply to corruption, there often seems little real interest in taking action in such cases and punishing those who break the law. It is only by taking action against offenders and punishing those involved, that others will be discouraged from engaging in similar acts.



The recently passed Licencing Facilitation Act is a welcome move that imposes duties on public authorities to be transparent and open about their own procedures, and to implement improvements to their internal procedures on a continuing basis.

But until there is a more enthusiastic approach to suppression of such activities, and where justified, to administer penalties that will deter the offending company and others from engaging in such behaviour, it is likely that it will continue.

Recommendations:

1. The EABC supports Thailand in its anti-corruption efforts. Current law means only that the receiver of a bribe commits a criminal offence. This should be extended so that the offeror of a bribe/inducement also commits an offence. There needs to be much greater education and real, committed standards in order to reduce corruption.
2. We welcome Thailand's continuation of enforcement regarding anti-corruption. If the enforcement of law exists, it should be serious enforcement.

2. Ease of Doing Business to Improve Investment Climate in Thailand

The World Bank Doing Business Report (2016) ranked Thailand 49th, a drop of three ranks from 2015. Major drops are in the area of starting a business, getting credit and paying tax. The EABC would like to encourage the Thai authorities to consider four strategies; (i) competitive tax regime, (ii) robust investment promotion policy, (iii) implementation of competition law; and (iv) review of unnecessary and cumbersome laws and regulations.

a) Competitive tax regime

To improve the investment and business climate in Thailand, the Thai government has put a reduction of corporate tax as one of the key incentives to attract foreign investors. Since the tax systems significantly impact companies' ease of doing business, the EABC urges the Thai government to develop tax systems that foster business investment and economic growth. Keeping tax rates at a reasonable level, together with prompt information sharing with the public, will help the private sector in going about their business as well as formalizing robust business. This in turn would expand the tax base and increase tax revenue. Both business and government can benefit from tax systems which are simple to administer and have reasonable compliance costs.

Recommendation:

The EABC appreciates Thailand's efforts on tax reforms to strengthen the country's competitiveness. Further concrete actions should be moved toward simplifying tax compliance methods to improve economic efficiency, as well as enhancing transparency in tax collection. The EABC expresses its readiness to closely work with the Government towards addressing hindrances and improving the competitiveness of the country's tax regime and compliance.

b) Improve Investment Climate in Thailand

To promote Thailand as an attractive jurisdiction for foreign direct investment, it is important that Thailand remains competitive in relation to surrounding countries in spheres which are central and key to investors.

One such sphere is taxation. Tax is a cost of doing business in any country, however, providing stability and certainty in the tax and regulatory environment will go a long way in improving investor confidence and setting Thailand apart from other Asian countries.

Some tax initiatives which could assist in achieving these objectives include:

Recommendations:

1. Decrease domestic withholding tax on services from 3 percent to 1.5 percent

With the permanent reduction in the corporate income tax (CIT) rate for companies from 30 percent to 20 percent, without a corresponding reduction in the domestic withholding tax rate on services of 3 percent, companies are required to achieve a profit margin of at least 15 percent before tax, or else they will be in an overpaid tax position.

In the current economic times, achieving a profit margin before tax of 15 percent is challenging. If the domestic withholding tax rate on services is reduced to 2 percent, a company would need to achieve a 10 percent profit margin. Although this would be more acceptable, a further reduction in the withholding tax rate to 1.5 percent would make Thailand even more competitive. In that instance, a company would need to achieve a profit margin of 7.5 percent to ensure it is not in an overpaid tax position. This is certainly more realistic in the current economic climate.

2. Refunds of CIT overpayments

Refunds typically arise due to overpayments of CIT, resulting from the domestic withholding tax rate on services of 3 percent or due to an overpayment of CIT in the mid-year tax returns. Currently the overpayment of CIT can only be dealt with on a refund basis.

It would be mutually beneficial for both taxpayers and the Revenue Department where the taxpayer could elect to have the overpayment refunded or treated as a credit (similar to VAT), which could be applied to the CIT liability of the following year. Where the credit basis is elected, this would assist taxpayers who are 'out of pocket' as

they are required to make payment of the current year's CIT liability whilst still awaiting a refund from the TRD for the prior year. Similarly, the TRD can continue to hold onto the overpayment of CIT without the requirement of a cash refund to the taxpayer.

3. Timelines for tax audits

There are currently no timelines for the Revenue Department which must be adhered to in concluding a tax audit. This creates uncertainty for taxpayers and often, the duration of the audit is extended unjustifiably, sometimes spanning over a year. An administrative process with clear deadlines for the Revenue Department should be introduced to ensure audits are finalised in a timely manner. The legislation can provide for an extension of the timelines if agreed to by both the taxpayer and the Revenue Department.

4. Decrease in the monthly surcharge of 1.5 percent and availability of deduction for surcharge

During the course of an audit, any additional assessable income will attract a surcharge of 1.5 percent per month which is payable to the Revenue Department. This amounts to 18 percent on an annual basis. Considering the return one would normally make on money deposited in a bank account, an 18 percent return is disproportionate to market conditions and further imposes an unnecessary financial burden on taxpayers. In addition, it adds to the perception that the The Revenue Department (TRD) may extend a tax audit for as long as possible in order to benefit from this surcharge. A reduction in the monthly surcharge rate of 1.5 percent would be welcomed by all taxpayers.

Since the surcharge payable to the Revenue Department where tax is imposed is akin to interest, the EABC recommends that it be considered to allow taxpayers a deduction of this surcharge in computing their CIT liability.



5. VAT and withholding tax reporting obligations for SMEs

Currently all companies are required to submit monthly VAT, payroll and withholding tax returns (if a payment is due) to the Revenue Department. In the context of SMEs, which typically have limited resources and small tax payments, this is an administrative burden and should instead, be limited to quarterly reporting obligations.

6. Binding advanced tax rulings

Before entering into a transaction taxpayers generally consider the tax consequences which may arise. Where the numbers involved are substantial and the transaction is complicated, obtaining tax certainty may be an important consideration and may have an impact on the investment. In these and others instances it would be beneficial for taxpayers to obtain an 'advanced tax ruling' from the Revenue Department which is binding and issued in a timely manner. Currently, the rulings are not binding precedents and are generally only issued for transactions which have already occurred.

7. Consistent and accurate interpretation of legislation by Revenue Officers

There have been instances where the Revenue Officers of the Revenue Department have issued assessments which, arguably, have no basis in law. When assessments are issued by the Revenue Department they should be supported with well-reasoned arguments and reference the respective sections of the law. In addition, an assessment should be reviewed by a technical panel to ensure it is technically correct.

8. Legislative incentives vs execution of incentives

There is a host of beneficial incentives from which taxpayers can take advantage, however, in certain instances, the execution and implementation of the incentives have impacted on their success. For example, in order to take advantage of the accelerated 300 percent deduction for

R&D expenses, the project must be examined and approved by the National Science and Technology Development Agency (NSTDA). In practice, however, it is very difficult to obtain timely approval from the NSTDA and there are no clear guidelines on which projects the NSTDA will likely approve. On average, the NSTDA can take six months or longer before granting their decision. This is an example to illustrate that legislating an incentive is not enough to drive investment. Clear and reliable implementation and execution of such incentives are imperative, without which, the incentive will be futile.

9. Extension of loss carried forward utilisation

Corporate income tax is one of the major factors for a company when it makes a capital investment decision. Without tax benefits, many investments simply will not be competitive when compared to investments in other countries. In Thailand, one of the tax benefits is a carry forward of tax losses for five years. It is generally accepted that in the context of new investments, tax losses in the early years are not uncommon. Where such losses expire, however, the tax benefits become obsolete. Extending the period in which tax losses can be carried forward would provide an economic incentive for new investment in Thailand and would further encourage companies with existing tax losses to continue investing in Thailand. Strategic partners may also be more inclined to inject and increase the capital of companies with tax losses since they know such tax losses will not be lost in the short term.

Extending the period for which tax losses can be carried forward and utilised will enhance Thailand's tax competitiveness with other countries. Malaysia, Singapore and Hong Kong (to name a few) allow for an indefinite period to utilize and carry forward tax losses, while many other countries in Asia allow for a carry forward of such losses in excess of five years.

An extension of the tax loss carry forward utilisation period from five years to, at least, ten years will be welcomed by taxpayers and investors.

10. International Headquarter (IHQ) requirements

In respect of the new IHQ tax scheme the following changes are suggested:

10.1) The IHQ tax scheme requires expatriate employees to be based in Thailand for at least 180 days in every calendar year before qualifying for the reduced personal income tax rates. We propose to eliminate (or reduce) this requirement as the expatriate employees may not meet the 180 day threshold in the first year and/or the last year of the assignment since this may not be commercially required for the company. It is also unclear whether existing expatriate employees under the prior Regional Operating Headquarter (ROH) tax scheme can continue to accumulate and count their number of days spent in Thailand whilst the company is under the ROH but has applied for the IHQ tax scheme.

10.2) Clarification should be provided on the tax transitioning process for the IHQ once the 15 year IHQ tax incentive has lapsed. This will provide more certainty for investors on the long term implications of an IHQ scheme.

11. E-Tax invoices

The current VAT legislation is not supportive of transactions concluded in a digital format. For example, electronic receipts and electronic tax invoices are only acceptable under very strict conditions that are difficult for many taxpayers, including SMEs, to comply with. Companies which are transitioning towards digital documentation are burdened since they are still required by the TRD to receive the original paper tax invoices or receipts. Electronic invoices should be acceptable for tax credit or

deduction purposes provided they can be reconciled back to the company expenses. Such electronic invoices can then be automatically recorded and retained for tax audit purposes.

12. International Trading Company (ITC) requirements

An ITC refers to a company incorporated under Thai law which performs the following activities for its foreign incorporated customers:

12.1) Purchasing and selling finished goods, raw materials and parts; or

12.2) Providing services relevant to the international trade business, including organizing packaging, transporting, insuring and storing of finished products etc.

In order to qualify for the tax incentives under an ITC, the goods can never enter Thailand. Although this is acceptable under the first activity, it is giving rise to various practical issues in respect of the second activity, specifically where the repackaging of goods is provided as a service offering.

We therefore propose that the requirement that goods may not enter Thailand only applies to the so-called trading activities conducted by an ITC (i.e., listed in bullet 1 above). In respect of the provision of services (i.e., listed in bullet 2 above), it is proposed that the requirements are relaxed to allow for the entry of goods into Thailand, provided the ownership of such goods does not pass to the ITC (i.e., they continue to be owned by the foreign vendors or customers).

Where goods are imported this may give rise to a VAT charge for the foreign vendors or customers. This VAT charge should subsequently be refundable upon exportation. To reduce the cash flow burden for the foreigner, a VAT exemption should be provided.

c) Clarification of interpretation of BOI investment privileges

According to the current scheme and regulations, Section 31 of the Investment Promotion Act (Investment Promotion Act, B.E. 2520), tax exemption on profit derived from promoted activity should be granted. Additionally, in cases where a loss has been incurred during the period of receiving exemption, the permission has been granted to deduct such an annual loss from the net profits accrued after the expiration of the period of exemption.

Meanwhile, this is explicit interpretation and implementation under the BOI investment privilege, the Revenue Department has a different interpretation and request the deduction of loss within the period of exemption. This creates uncertainty in privilege implementation for EABC members with risk to sustainable business investment from re-assessment by the Revenue Department. If Thailand would like to drive forward its economy and enhance its investment attractiveness through an incentivized system, this may trigger concerns in the implementation phase.

d) Court system, resolution of disputes, litigation and

Recommendation:

The EABC would like to seek advice on this concern and seeks BOI support to establish mutual interpretation and recognition of BOI investment privileges across inter-government agencies to encourage transparency, consistency and sustainability.

arbitration

Continuing from the 2013 European Business Position Paper, the EABC would like to again emphasize the important role of the court system in ensuring foreign business confidence in the country and attracting more FDI to Thailand. This includes its speed and efficiency in processing disputes, issuing and enforcing judgments and arbitration awards.

Recommendations:

Litigation

1. General: In general, the civil and criminal litigation system needs to be made more efficient, sped up and made more user-friendly.

2. Pre-trial injunctions: There are occasions when it may be necessary to apply to the court for an injunction (in Thai this is referred to as a 'provisional remedy') prior to the issue of the substantive action. For example, to prevent the removal of assets out of Thailand, or to seize evidence, or to examine assets. In practice, it is often very difficult to obtain such an order. Rules should be adopted to make it clear in what circumstances the court would consider issuing such an order, and the conditions that might be imposed on a person who applies for such an order, for example requiring an indemnity where the person against whom the injunction is issued suffers loss.

3. Injunctions in general: As to injunctions in general, we make similar comments for pre-trial injunctions above. In practice, it is often very difficult to obtain an injunction, and the circumstances in which it might be successfully applied for should be considered and made clear.

4. Affidavits: At present, affidavits do not technically exist in Thai law. Affidavit evidence, meaning written evidence that has been sworn as true, is often useful where, for example, the evidence is admitted by all parties, and can then be read out at the trial, thus avoiding the need for the witness to have to attend court.

5. Summary judgment where there is no real defense to a claim: Currently, there is no procedure for a party to apply for a summary judgment on the grounds that the defendant has no real defense to a claim, and is merely prevaricating or using delaying tactics. Such a procedure, if adopted, would help to speed up litigation.

6. Entering judgment in default: At present, there is no procedure to obtain a fast judgment where, for example, the defendant has failed to file a defense within the period allowed under the CPC. It is necessary for a court hearing to be convened to dispose of the case. We would suggest, where the claim is for a fixed sum of money and interest, that it would be possible to enter a final judgment, by proving the proceedings have been served on the defendant, and that no defense has been entered, without the need for a court hearing. If the defendant can prove that he was not served with the proceedings, and that he has a prima facie defense to the claim, then he would still have a right to apply for the default judgment to be set aside, and to defend the action.

7. Trial on consecutive days: Current civil procedure in most courts is that a trial takes place on one day, and is then adjourned for a second day of evidence that may be 4-6 weeks ahead, and so on. This is slow and inefficient. We would suggest that in general, a trial should take place on consecutive days in both civil and criminal cases. This would speed up the process of litigation.

8. Pre-trial disclosure of documents: At present, there is no procedure to compel parties to disclose documentary evidence in their possession prior to trial. The closest procedure is to apply for the issue of a witness summons against a person to produce the documents at trial. This may cause delays, and a party may be taken by surprise and may have to ask for an adjournment to consider the new evidence. We would suggest that there should be a procedure whereby within one month of close of pleadings, each party must disclose to all other parties in the case a list of documents in its possession that are relevant to the case, and supply copies of such documents to a party upon request. Such a procedure enables all parties to make an assessment of the strength/weakness of their case, and will often lead to settlement negotiations, and

a compromise settlement.

A similar procedure could be adopted to obtain pre-action disclosure or disclosure from third parties who are not parties to the case.

9. One appeal only: Whilst the CPC contains provisions that allow for one appeal from the Court of First Instance to the Court of Appeals, and limits a second appeal to the Supreme Court except in specified circumstances, in practice, it is relatively easy to mount a second appeal. This drags out the process of litigation. Our recommendation would be to allow one appeal only to the Court of Appeals. A second appeal to the Supreme Court would only be possible on a point of law of public importance, and with permission for a second appeal being granted by either the Court of Appeals or the Supreme Court. In a criminal case, there would always be a right to a second appeal if, as a result of new evidence being discovered, the conviction can be shown to be unsafe or unsatisfactory.

10. Improved system for enforcement of judgments: The enforcement of civil judgments is slow and inefficient. It is relatively easy for a judgment debtor to delay paying a judgment or to conceal his assets. We would suggest a speeding up of the processes for judgment enforcement.

We would also suggest that a judgment debtor could be subject to an oral examination, to be summoned to court to give sworn evidence about his assets and income, and to produce documentary evidence of assets and income, and to explain why the judgment has not been paid.

11. There should be a root and branch revision of the Civil Procedure Code to deal with the points that are highlighted in the Working Paper. If necessary, foreign legal academics can participate in this. The United Kingdom

went through this procedure some 10 years ago (the so-called Woolf Reforms).

Recommendations:

Arbitration

1. No arbitration clause in contracts with a government authority: At present, there is a Cabinet resolution in force that declares that arbitration clauses are not permitted in contracts where a government authority is a party, and in addition, that such contracts should be in Thai language only. We would suggest that this is unfair and partisan. It puts the other contracting party at a disadvantage, if such contracts cannot be referred to arbitration, which can be faster than the dispute being processed in the civil litigation system.
2. Position of foreign lawyers representing parties in arbitration: There is a regulation issued under the Foreign Employment Act regulation that inhibits the ability of foreign lawyers to speak in arbitrations in Thailand. A foreign lawyer may only speak in arbitration where Thai law is not the jurisdictional law, or where the party he represents is defending not prosecuting the case, and the arbitral award does not have to be enforced in Thailand. We would suggest revision of this regulation so that a foreign lawyer may represent a party in arbitration in Thailand, without these limitations.

e) Enforcement of competition law

Thailand's main legislation regulating anticompetitive practices is the Trade Competition Act B.E. 2542 (1999) (hereinafter "the Act"). In addition to several other

legislations which may affect competition by seeking to protect the consumer and by affecting how businesses behave and interact¹, the Act is implemented by the Office of the Trade Competition Commission in the Department of Internal Trade (DIT) in the Ministry of Commerce (MoC). The Commission is chaired by the MoC and includes representatives of the Ministries of Commerce and Finance along with other members appointed by the Council of Ministers.

Competition on fair terms fosters efficiency and innovation. It supports open markets allowing businesses to provide better value for consumers. It supports the evolution away from rent-seeking, concession-type approaches. Thailand's overall competitiveness ranking in 2015 dropped to 30th (of 61 economies). This suggests that the objectives of the Trade Competition Act are not part of the system. The purposes of GATT and GATS and enactment of the Trade Competition Act (the antitrust law) was to protect consumers and to ensure entrepreneurs and other businesses have an opportunity to compete fairly. Well-regulated competition is not well understood in many sectors. The Office of the Trade Competition Commission under the Department of Internal Trade (DIT) has not been as active as it might have been in industry education. There are, however, sectors where the relevant regulator is more active (e.g. Securities and Exchange Commission) and such activity could be an example of more appropriate regulatory enhancement.

In general, the Act covers all types of business operations. It is; however, important to note that the Act does not apply to central, provincial or local administration, state

¹Such as:

- the *Unfair Contract Terms Act B.E. 2540 (1997)*, which provides a legal basis on which the courts determine whether the terms of a contract are unfair and gives them the power to intervene by limiting or voiding such unfair terms;
- the *Prices of Goods and Services Act B.E. 2542 (1999)*, which gives legal basis for price controls and prescribes certain business practices as infringements on the operation of a free market (section (iv));
- The *Direct Sales and Direct Marketing Act B.E. 2545 (2002)*, which entered into force in 2007, regulates direct sales through the internet; and
- The *Liability for Damages Arising from Unsafe Products Act B.E. 2551 (2008)*, which established consumer courts and made producers and importers liable for selling unsafe products and put the burden of proof on them rather than on consumers.

trading enterprises, farmers' groups, co-operatives or co-operative societies, or businesses prescribed by Ministerial Regulations to have an exemption from the Act. Several types of anticompetitive behaviour are prohibited under the Act, including: abuse of a dominant position such as fixing buying or selling prices, applying conditions or restrictions to sales or purchases, or restricting supply of goods or services; mergers that may result in monopoly or unfair competition; agreements between businesses that amount to a monopoly, or a reduction or restriction of competition; agreements that restrict purchase of goods or services from overseas; and unfair business practices.

The Act has barely been enforced in certain sectors and is generally regarded as an ineffectual tool. Various literatures have suggested that the performance of Thailand's competition law has not been very satisfactory to ensure the existence of market contestability and to prohibit anticompetitive behaviour. It could be argued that certain industries are prone to existence of anticompetitive behaviour, particularly those where Thai conglomerates possess prominent positions or where producer concentration is high. Despite the increasing importance of public utilities to keep pace with economic dynamism, privatization and reforms to further enhance efficiency in the sectors are yet to take place. Despite its existence for more than a decade, enforcement still remains a problem, such as capacity constraints and deficiencies in the legal infrastructure and provisions, for example, structure of the Trade Competition Commission, penalty system, etc. Sector-specific competition regulation in the telecoms industry, for example, suffers from a lack of enforcement. Furthermore, no progress has been evident since the SME Act passed in 1999, and a list of action taken to promote the fair competition in the country has not been published.

Recommendation:

Trade competition is regarded as a core policy measure to promote economic efficiency and prohibit anti-competitive behaviour for the end benefit of consumers. However, the impact of the Act is yet to be seen. The EABC is strongly supportive of any promotion activities to ensure effective functioning of Thailand's competition policy to address unfair trade practices. Further, the enforcement of competition regulation where it applies to specific sectors, needs better industry support and recognition that it is a tool for the benefit of the sector overall.

f) Review of Unnecessary and cumbersome laws and regulations

The example of South Korea is used to illustrate how laws and regulations are reviewed to pass the tests of meaningfulness, (i.e. they must serve a purpose), ease of compliance and ease of understanding. In that case, an outside expert was engaged to manage this process, rather than leave it to Sub-Ministries. This occurred after the Asian Financial Crisis, with the aim of lifting Korea's standing in ease of doing business rankings. The measures got rid of many laws and regulations and streamlined many others. The strategy worked; overall ease of doing business greatly improved. Given the large number of vague laws which are open to many interpretations and are hard to comply with, a culling of unnecessary laws and regulations will greatly help.

Recommendation:

We urge the Royal Thai Government to hold regular consultations with the EABC. Our Cross Sectoral Issues working group welcomes the opportunity to support Thailand and to provide best practices in these areas. Engaging outside experts should be examined.

²Namely communications, transportation, fiduciary functions, banking involving depository functions, exploitation of land and natural resources, owning land, and domestic trade in agricultural products

3. Creating an Enabling Economic and Regulatory Environment

a) Relaxation of Foreign Ownership Restrictions/ Liberalization of Services Sector

Thailand must ensure new regulations promote market entry and foreign equity participation in several sectors. The restrictions of foreign ownership have been a major obstacle in investing in Thailand for a long time.

According to the **Foreign Business Act B.E. 2542 (1999) (FBA)**, foreign participation in all services businesses is regulated. The nature of the regulation is that a company may be 49 percent foreign owned without a licence. It may be majority foreign owned if a licence for that is granted by the Ministry of Commerce. Certain types of services (e.g. retailing, wholesaling, agency and construction) may be majority foreign owned, provided a minimum level of share capital is paid into the company, and in the case of construction, limited to specified construction activities. The application process takes a minimum of six months. A large number of documents have to be compiled and collated. The process does not encourage foreign investment; in fact it may deter bona fide investors.

We applaud the recent reports that Thailand will soon allow freer foreign investment in four businesses: commercial banks, representative offices of foreign banks, life insurance and non-life insurance in that these four segments will no longer have to ask for a foreign business licence from the Ministry of Commerce as these businesses were regulated by their own industry specific regulator. In order for this to be truly effective, Thailand will need to ensure that all matters relating to these businesses would be regulated through the relevant sector-specific regulator and that there are no residual governing regulations at the Ministry of Commerce. We would urge that a similar approach be adopted for all other businesses that have industry specific regulator.

At present, European investors are at a disadvantage vis-à-vis U.S. nationals and companies which still benefit from national treatment provisions in the US-Thailand Treaty of Amity and Economic Relations (1966) with respect to establishing, as well as acquiring interests, in enterprises of all types for engaging in commercial, industrial, financial and other business activities, with the exception of seven specific sectors². Given the expiration of the WTO derogation from Article II GATS (MFN-clause) at the end of 2004, Thailand is urged to consider these legitimate concerns in its policy formulations and ensure a level playing field in investment applicable to all investor countries, duly aligned with its WTO obligations and expectations in ASEAN instruments.

The EABC has and will continue to support implementation of the existing review mechanism on List 3 in the FBA to duly remove restrictions and meaningfully encourage foreign investment in a broad range of services sectors and also to address real liberalization. The continual recommendations from the 2013 EABC Position Paper still remain (Annex II).

Recommendations:

1. Progressive liberalization of Thailand's services sector is strongly encouraged and the EABC will continue pushing for this policy agenda as part of on-going EU-Thailand FTA negotiations.

In AEC's services liberalization, Thailand is yet to put in place the necessary changes toward the AFAS target of 51 percent foreign equity allowance in all services sectors since December 2010. We again emphasize five key elements for the meaningful liberalization of services which apply generally and not just to the AEC context:

- 1.1) Relaxation of foreign equity limits
- 1.2) Facilitation of free movement by changes to work permit and visa rules
- 1.3) Sector-specific changes and mandates by way of relaxation of restrictions on permits, licenses

and other barriers to entry, and to mandate access to facilities

- 1.4) Other sector-specific reforms or mandates e.g., structural changes in a sector to make it competitive, including reform of the role of State-Owned Enterprises
- 1.5) Improvement and greater efficiency in the licensing procedures to obtain majority foreign ownership.

2. Any attempt to tighten the law, such as the use of additional criteria (e.g. an extension of the existing definition of 'foreigner/ alien' to include management control and/ or voting rights in addition to foreign shareholding could lead to the violation of WTO commitments and is therefore strongly discouraged. In addition to avoiding further restrictions on foreign ownership under current legislation, the EABC aims to obtain a level playing field with other non-European competitors in the services sector.

3. The EABC would like to repeat our recommendation from the 2013 Position Paper on the establishment of a mechanism that allows ownership of commercial land by foreign companies. Although the BOI and the Industrial Estate Authority of Thailand (IEAT) can grant permission for land ownership to the majority of foreign owned Thai companies, not all are eligible for such investment privileges.

4. More flexibility needs to be provided for residential and commercial leasing of land and buildings. The fixed maximum lease periods of 30 and 50 years limited the ability of commercial negotiations between landlords and tenants. A longer term of leasing is suggested by the EABC as well as a clarification of technical rules regarding the enforceability of options and assignment of leases.

5. The current foreign ownership cap of 49 percent of usable space in a condominium building should be reviewed, together with technical rules requiring the purchase monies to be brought into Thailand rather than earned locally.

6. We saw foreign ownership limits in life and non-life insurance companies in 2015 were liberalized, so that 25 percent foreign ownership is permitted with a license, and up to 49 percent foreign ownership is allowed with a license from the Insurance Commission as regulator. More liberalized and streamlined through an industry regulator (where it exists) is always welcomed.

7. We support Thailand to reduce minimum capital requirements for service businesses as services are delivered by people. This is to attract foreign expertise to the country and to promote International Headquarter (IHQ).

Foreign business ownership

(i) All service activities are limited to minority foreign participation (See FBA (1999)). There really needs to be an evaluation of the services sector to determine whether there should be any foreign ownership limitations. The approach is to liberalise ownership limitation unless there are reasons of national security that foreign participation should be limited.

Additionally, it is particularly frustrating that minor activities to the main business are still deemed to come within the scope of the FBA and need to have the FBA license, for example, repair and maintenance.



Recommendation:

On this basis, we suggest that only activities and services that are incidental to main businesses of a majority owned manufacturing company need not be subject to foreign ownership limitations. Furthermore services deemed to be of national interest such as banking, telecommunications, mass media, military and defence activities, and a few other areas, may need to have some foreign ownership limitations.

All other services should be open to 100 percent foreign ownership.

Foreign land ownership

It is not necessary to consider liberalisation of the foreign land ownership rules under the Land Act (1954) and the Condominium Acts (1979 as amended) if a longer lease is permitted. The issue can be solved by permitting a longer lease, for example of 90 years, for all types of property whether residential, commercial, industrial or agricultural. This will allow lessors and lessees to determine the commercial terms of a lease without being inhibited by legal constraints. The Civil and Commercial Code would need to be changed to reflect this.

Recommendation:

A longer lease term is necessary to further liberalize foreign land ownership, especially for commercial use. We support Thailand to consult with our Cross Sectoral Issues working group to enable suitable legislative schemes to facilitate greater flexibility between lessors and lessees.

b) Ease of employment procedure and law to facilitate free movement of foreign skilled and unskilled workers

Certain existing laws and regulations in Thailand are impediments to the development of more robust critical sectors. For example, high registered capital and a specific

ratio of Thai to foreign employees are required for each work permit issued to a company. A large number of documents must be prepared and assembled to support a work permit/visa extension application or extension. Documents to show the employer's compliance with other laws, including corporate tax returns, VAT returns, social security returns and workers' compensation returns, and the employee's personal income tax return and receipt for tax paid must also be submitted. These approaches are not appropriate for SMEs, especially in the services sector and when critical skills are needed. SMEs, many of which provide important services to much larger organizations, often begin as sole proprietorships, or with just two or three partners and no additional employees.

Even long-established service companies often need only a small staff to generate significant revenue. Their primary assets are the skills and intellectual capital of their employees, not plant and equipment, and they therefore have no need for high initial capital investment. There is regional competition for skills and Thailand should encourage the intake of skills and entrepreneurs from around the world to invest and start-up in Thailand, regardless of ratio or initial capital commitment. SMEs (Thai- or foreign-owned) should not be restricted from hiring foreigners to provide needed know-how. Such skilled workers will not take away local jobs but, rather, will enhance competencies and competitiveness overall, and help in overall business recovery.

The Alien Working Act, B.E. 2551, which came into force on 23 February 2008, repealed and replaced the Alien Working Act, B.E. 2521, as the principal Act dealing with the employment of foreigners in Thailand. In general, any foreigner who wishes to undertake any form of work in Thailand, whether paid or unpaid, must hold a valid work permit authorizing that employment, with exceptions for foreign diplomatic staff and employees of the UN and certain other international agencies.

The legislation broadly defines ‘work’ to include any work involving physical strength or knowledge, whether or not done for money or other remuneration. Work by foreigners (referred to as ‘aliens’) in Thailand may only be done in accordance with regulations issued by the Ministry of Labor and may only be done with a work permit, except when the work permit is not required for an alien in Thailand temporarily under the immigration laws to do necessary and urgent work for a period of up to 15 days. Whether a work permit (or WP-10) is required depends on whether ‘work’ is being done. Trying to support business engagement based on nebulous principles and definitions which produce grey areas and artificial distinctions is time consuming and costly. Interpretation principles currently used are:

1. If physical effort or knowledge is required in order to complete such activity/task
2. If it has little or no effect on the labour market in Thailand.

The EABC recommends a change to the law - a legislative change to redefine ‘work’ so that it only includes the kinds of activities associated with being engaged in employment, but does not include a vast area of activities normally associated with ‘doing business’. Thailand needs to make ‘doing business’ easy.

There should, in our recommendation, be an easy-to-obtain, new business visa, valid for 30 days and renewable for a range of business activities (for example, holding meetings of any kind, be they board meetings, regional management meetings and no matter how people participate, all kinds of activities at trade fairs, exhibitions, seminars, conferences etc).

Work permits are normally issued for one year, but up to two years. In the case of work permits issued to companies with investment promotion under the Investment Promotion Act (1972) and in certain other cases where granted initially for two years may be renewed for

additional two year periods, work permits have no effect on the duration of stay permitted under the immigration laws. A category B visa for an employment or business visa may be issued with a maximum of one year. An alien with a work permit is required to carry or keep the work permit at their place of employment during working hours, and may only carry out the work specified in the work permit and at the location specified.

Thirty-nine occupations and professions are closed to foreigners in accordance with the Royal Decree Prescribing Works Relating to Occupation and Professions in which an Alien is Prohibited to Engage B.E. 2522 (1979). In applying for a work permit for an occupation that is not prohibited, conditions related to the paid-up capital of the sponsoring company and the ratio of Thai staff to foreign employees must be observed.

In the current context of business interconnectedness, it is arguable that business operations have become global. Particularly in many strategic parts of the services sector which are regarded as international, supply of jobs is outstripping the supply of local workers to fill these vacancies to ensure smooth business operations. This inevitably means foreign talent and business people are required to overcome the skills shortage. To strengthen Thailand’s position as a competitive regional business hub, restrictions on visas and work permits should be eased and immigration rules should not hamper - on the contrary, they should facilitate - the sustainable growth of the Thai economy.

It is also important to note that the consistently low unemployment rate in Thailand - whilst usually seen as a positive economic indicator - is restricting the potential for growth in several key sectors. As Thailand progressively develops, many industries are facing serious challenges in recruiting the local workforce to fill many unskilled or moderately skilled vacancies. This has already led certain manufacturers to move their investment away to other



countries where labour availability is less of an issue. This prominent shortage of workers however continues to pose a significant challenge as the industries strive to offer quality services to customers. These include the hospitality, healthcare, and retail sectors, which are recognized as Thailand's strategic economic sectors. Most hotels and hospitals throughout Thailand are struggling to fill basic but essential positions such as maids, cooks, technicians or security guards. According to the EABC HR and Labour Planning Survey 2013, a shortage of skilled labour was identified as the biggest challenge, accounted for 67 percent of respondents.

As a result, it is necessary for Thailand to address the difficulty in obtaining work permits and visas due to lengthy procedures, recognition of employees' qualifications, and lack of transparency in regulations at various administrative levels in order to ease restrictions with the aim to facilitate the free movement and recruitment of expatriate skilled and unskilled workers which duly correspond to Thailand's economic development and business needs.

This will be essential to the success of IHQ / ITC policies and many of the so called 'digital economy' policies. A new business visa, available on arrival for 30 days to cover all activities generally understood to be about doing business, short of local employment. This would involve redefinition of 'work' and scrapping of the WP-10. It would also require collaboration between Immigration Bureau and Ministry of Labour in order to administer it.

It would also help the development of Thai companies, if foreigners who are willing to work free of charge, or who are over a certain age, could be exempted from the obligation to obtain a work permit, possibly limited to certain activities, for example, teaching foreign languages or IT skills. Such a liberalisation would make use of the skills and experience of the increasing number of foreigners who are living in Thailand and are retired or semi-retired.

Recommendations:

The EABC has and will continue to recommend the following combination of administrative and legislative remedies:

1. Eliminate the need for a work permit for foreigners who have already obtained a permanent residence visa. Additionally, redefine 'work' so that it only covers those situations where local paid employment is needed.
2. Redefine 'work' to be about employment type activities, not about 'doing business' type activities. This is a change to the law. Have a business visa for all 'doing business' activities which needs no work permit (see below). Abolish WP - 10.
3. Issuance of visas and work permits for longer than one year, particularly for BOI and regional operating headquarters, is highly recommended.
4. Eliminate the 90 day notification of stay and replace it with a notification of change of work or residential address only; and put the process fully online. A secure password-protected website to be established to facilitate online reporting.
5. Cancellation of the requirement for foreigners to work only in a permitted province or area
6. Elimination of registered capital and staff ratio as a metric for work permit issuance
7. Eliminate Thailand's list of prohibited jobs for work permits, starting by reducing the list
8. Ease rules governing the employment of foreign labour, particularly in respect of lower skilled labour

9. Create a new and easy way to obtain business visa for the full range of activities which are normally associated with doing business. Move processes online, starting with streamlined versions of high volume licenses. The EABC can support Thailand to improve processes and increase ease of doing business.

10. Where a foreigner is willing to work without payment, or is over a certain age, and perhaps limited to specified industries such as teaching foreign languages or IT skills, a work permit would not be required.

11. Regarding employment regulations, the EABC is ready to engage in the consultation process to achieve a mutually beneficial outcome on these issues.

Visa, Working Permits and Reporting

We welcome the introduction of online reporting, whereas in the past all foreigners had to confirm in writing to the Immigration Bureau every 90 days. However our recommendation is to change the reporting requirements so that reporting only change of residential address or principal place of business requires less reporting such as name, address, date of birth, passport photo. Several key points in this regard are made below:

- There has been a small beneficial change. There is now a designated website whereby a foreigner may make his/her 90 day reporting of confirmation of address. But the website is not secure. It is therefore difficult to recommend that it be used.
- There needs to be a reduction in the vast quantity of documentation required, and a move away from the current policy of double policing.
- A 'B' visa or work permit should be granted for one year initially, then should be renewable every five years.

- A work permit should be valid throughout Thailand, not limited territorially.

- A work permit should be valid for any occupation that is not prohibited by law to foreigners.

- The process for obtaining Permanent Residence or nationality needs to be simplified and made easier. The criteria should be good character, record of employment, record of tax payment, and basic Thai language ability. Subject to those points, nationality should be granted after five years residence, and three years where the applicant is married to a Thai spouse.

Recommendations:

1. It may be preferable to use personal or postal reporting which continues unchanged.
2. We welcome the Thai government consulting with the foreign business community. The EABC serves as a platform for policymakers to engage in a dialogue with foreign investors.

Importance of English language skills for the Thai workforce

During the past 25 years, countries that surround Thailand have gone through, and continue to go through, major economic development, and liberalisation of their laws that affect foreign investment, but Thailand has not. Thailand faces significant competition. Countries such as Malaysia, Vietnam, Cambodia, Indonesia and now, Myanmar, have all progressed and developed. They are competing with Thailand in areas in which Thailand has substantial economic activity and investment: manufacturing, tourism and agriculture. The ability of the Thai workforce to communicate in English is poor when compared to its competitors, as many surveys have indicated.

**Recommendation:**

The EABC urges Thailand to improve education for younger generations, especially in English language skills, which are a very important tool for communication.

Simplification of Regulations on Hazardous Substances Control with International Best Practice

Thailand's legislation and regulations on hazardous substance control remain very burdensome to business operators. Of particular concern is the requirement to disclose 100 percent composition details of a given substance if a classification ruling or registration is sought. Given the complexity of supply chain and confidentiality concerns, meeting such a requirement is extremely difficult for business operators. We appreciate the Department of Industrial Works (DIW) understanding and accommodation of such limitations, specifically by offering an option to provide the Confidential Business Information (CBI) directly to the DIW and accepting the Manufacturer Self-Certification (MSC) for use in seeking a classification ruling or registration.

Recommendations:

In addition to the accommodation rendered by the DIW in this regard, we would like to further call for the following:

1. Simplification of operational procedures for reporting, classification, registration and licensing of hazardous substances both in normal cases and in the cases of samples (including samples for R&D), as the scope of control expands, so as not to unnecessarily create even more burden on business
2. Formalization of the simplified operational procedures into official regulations, for predictability and sustainability.

Automotive

SUMMARY OF RECOMMENDATIONS

1. EU-Thailand FTA Negotiations

- 1.1 Resume FTA negotiations as soon as possible
- 1.2 EABC recommends that the EU-Thailand FTA places emphasis on reducing NTBs.

2. Technical Regulations

- 2.1 Align with internationally-accepted UNECE standards and recognize international certification
- 2.2 When contemplating new industrial standards for automotive and auto-parts, Thailand should adopt UNECE standards to ensure greater facilitation of trade.
- 2.3 Actively engage in developing and implementing ASEAN MRA for automotive products
- 2.4 The EABC supports clarity regarding – and a clear timeline towards – the improvement of automotive emissions standards and fuel quality to promote environmental and public health enhancement.
- 2.5 We urge the government to improve fuel quality to be aligned with emissions standards.

3. Taxation

- 3.1 We recommend the Thai authorities simplify the CO2 approval process and recognize and fully accept the relevant UN certificates.
- 3.2 Thailand shall safeguard existing investment in CFZ as well as promote foreign investment.
- 3.3 We reiterate our recommendation from last year that privileges offered by the CFZ scheme are preserved after the new Excise Tax Act.
- 3.4 Excise tax rate of the tax base shall be lower. We expect to see the Royal Thai Government keeping its promise of neutral revenue in both Free Zone and CBU imports as this will improve investor confidence in Thailand.
- 3.5 Business operators shall be offered a sufficient transition (grace) period for abrupt and critical changes to policies and regulations. Business planning for the automotive sector is prepared at least 2 years in advance; hence, operators shall have an adjustment period of at least 2 years in order to ensure the viability of their business in Thailand.
- 3.6 The EABC supports the Royal Thai Government's actions to tighten control on grey market vehicle imports through close monitoring of declared customs value, ECO-Stickers submission process, and technical testing requirements.
- 3.7 We welcome the Customs Department working closely with brands in setting up a system to detect illegal practices and stricter vehicle registration.

4. Labour

- 4.1 Develop mid- and long - term strategies to raise availability of labour in order to solve scarcity of vocational workers, including both quantitative and qualitative shortages of labour

5. Investment

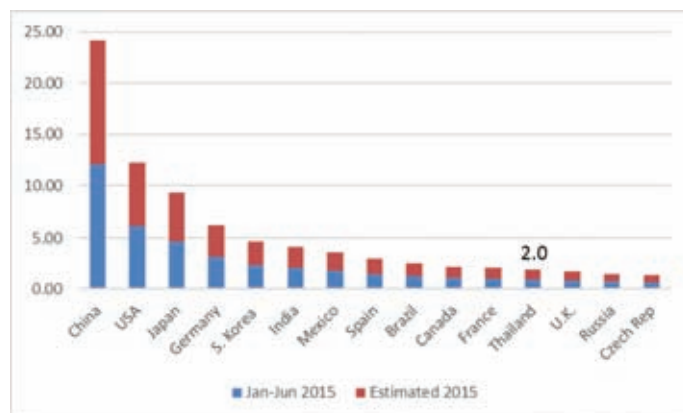
- 5.1 The EABC recommends that the Royal Thai government must ensure transparency and monitor effectiveness of the licensing granting process. Enforcement on LFA is needed.

5.2 Thailand should not only focus on attracting new investments, but also safeguarding existing investments is necessary to foster the growth of Thailand's automotive hub. This requires long-term support and commitment from BOI, where clarity to investment promotion is needed to avoid unnecessary delays for investment decisions.

Industry Overview

The Thai automotive industry has made a significant contribution to driving Thailand's economic growth for over the past 50 years (BOI 2015). With strong support from both the private and public sectors, the Thai automotive industry has become the largest production-base in Southeast Asia, and the thirteenth largest globally, as of June 2015 (OICA, 2015). Being ranked in the top-fifteen among world producers confirms the importance of the automotive sector in the Thai economy. Besides contributing considerable economic growth to the Thai manufacturing sector, the automotive industry generates employment, is a value-added market, and supports technology and innovation as well as the creation of relevant supply chains with other industries.

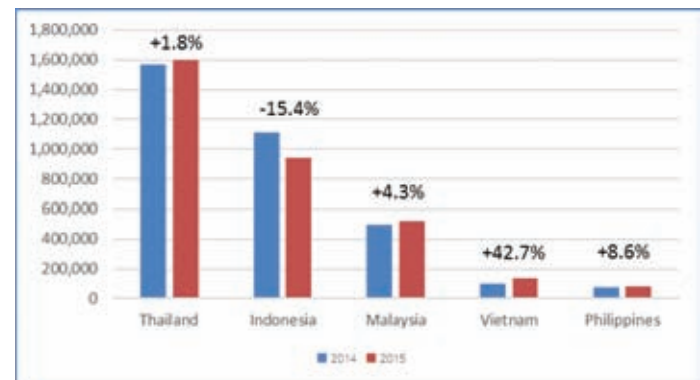
Figure 1: World Ranking of Car and Commercial Vehicles Production January to June 2015 (Million Units)



Source: International Organization of Motor Vehicle Manufacturers (OICA) 2015

Despite economic slowdown in 2014, the Thai automotive industry continued to remain the largest car production hub in ASEAN. In 2015, automotive production reached 1.9 million units, up 1.8 percent from last year. Production was 1.9 percent lower than the 2015 target of 1.95 million units, consisting of 799,592 units for domestic use and exports of 1,204,895 units (The Federation of Thai Industries, February 2016).

Figure 2: ASEAN Automotive Production (Jan - Oct 2015)

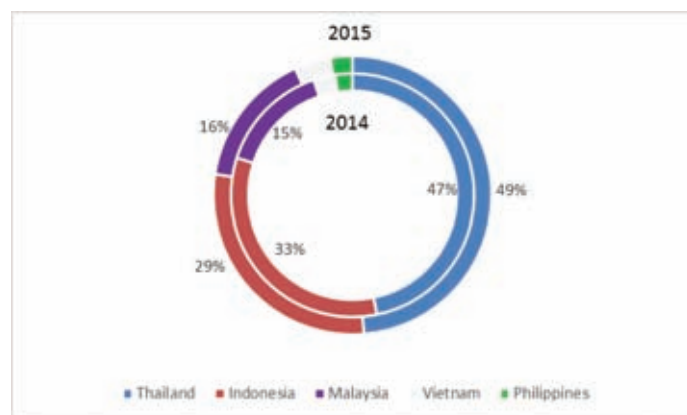


Source: ASEAN Automotive Federation 2015

The Thai automotive industry's share of ASEAN production grew by 2 percent year-over-year, per data taken from January to October 2015 (OICA, 2015). Indonesia's ASEAN production share decreased by 4 percent, while Malaysia's share increased by 1 percent. According to the Thai Ministry of Commerce, Thailand is in a superb location for automotive production - it features a strategic location at the centre of Southeast Asia, strongest supporting industry in the region, excellent infrastructure, and strong

government support. Furthermore, in 2014 Thailand's automotive industry was the largest export sector with a value of US\$30 billion. At its height in 2013, the automotive industry accounted for 12 percent of the country's GDP (BOI, 2014). To maintain its position as a production leader in ASEAN, it is important for Thailand to safeguard existing investments, welcome new technology and continue strong support at both a policy and business level.

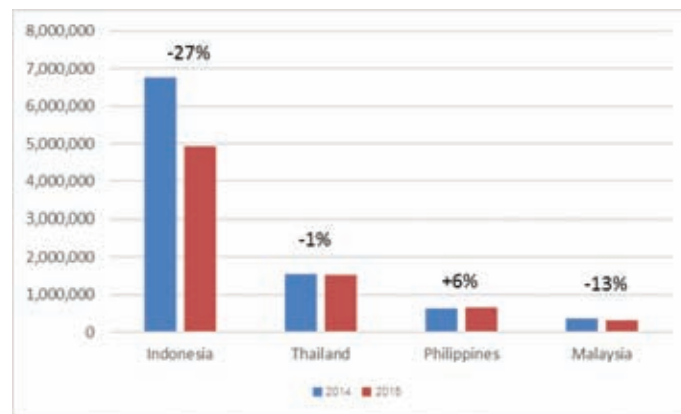
Figure 3: Share of ASEAN Car Production (Jan - Oct 2014 and Jan - Oct 2015)



Source: ASEAN Automotive Federation, 2015

Thailand is the second largest producer of motorcycles in ASEAN. From January to October 2015, motorcycle production was 1.5 million units, down by 1 percent, while the ASEAN leader, Indonesia, lost 27 percent to 4.9 million units. Philippines gained in production to 660,000 units, up 6 percent.

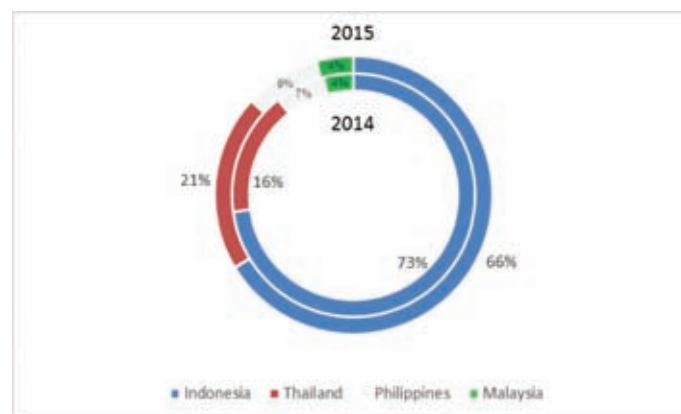
Figure 4: ASEAN Motorcycles & Scooters Production (Jan - Oct 2015)



Source: ASEAN Automotive Federation, 2015

The production share of Thai motorcycles in ASEAN increased by 5 percent from January to October 2015 compared to the same period last year, while the production leader, Indonesia lost 7 percent share. This was because there was less motorcycle production in Indonesia in 2015, whereas Thailand maintained its production volume.

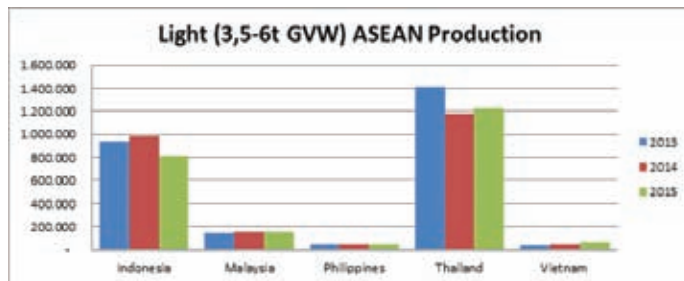
Figure 5: Share of ASEAN Motorcycle & Scooter Production (Jan - Oct 2014 and Jan - Oct 2015)



Source: ASEAN Automotive Federation, 2015

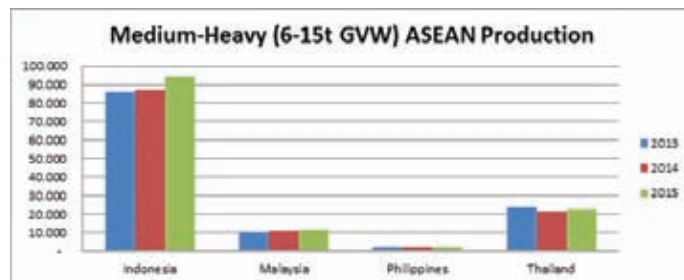
Apart from being consistently ranked at the top in passenger cars and second in motorcycle production in ASEAN, Thailand is also an important production base for commercial vehicles. From 2013-2015, Thailand was the largest manufacturing hub for Light (3.5-6 ton) commercial vehicles and the second largest manufacturing base for Medium-Heavy (6-15 ton). Given the strong ambitious plan from the Royal Thai Government, Thailand's GDP is expected to grow strongly based on tourism, goods and services (The Ministry of Transport, Strategy for Transport Infrastructure Development (2015-2022)). All these are very much linked with the nature of commercial vehicles, which are used to transport goods and people, as well as for construction.

Figure 6: ASEAN Light (3.5 ton) Commercial Vehicle Production



Source: Global Insight, 2015

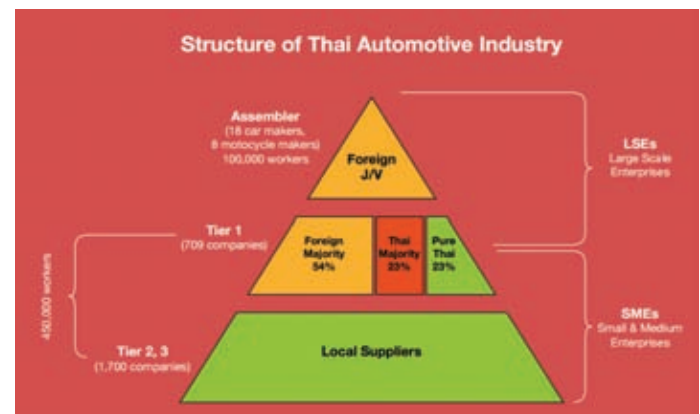
Figure 7: ASEAN Medium - Heavy (6 - 15 ton) Commercial Vehicle Production



Source: Global Insight, 2015

The automotive industry is considered a major contributor to the Thai economy. Its success comes from the fact that large auto-parts manufacturers are situated in the same automotive cluster. Thailand has approximately 700 Tier 1 auto-parts suppliers, and 1,700 companies in Tier 2 and Tier 3 combined. The auto-parts suppliers employ over 450,000 workers, accounting for 80 percent of the labour supply in the automotive industry. The combined total automotive workforce is 550,000 workers (BOI, 2015). However, continued efforts to improve workers' skills, especially in higher-skilled and technology-intensive manufacturing, will ensure Thailand remains a promising investment destination for foreign investors.

Figure 8: Structure of the Thai Automotive Industry

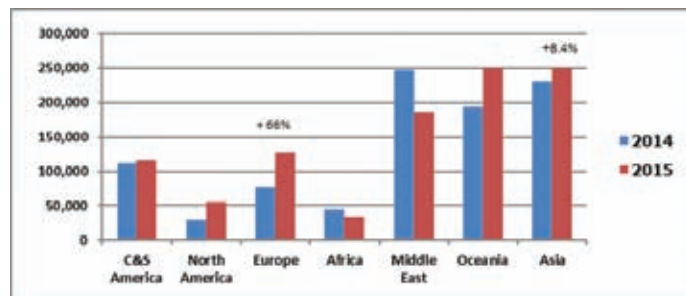


Source: Thai Autoparts Manufacturers Association, 2014

From January to October 2015, the main export destinations by continent for Thai CBU cars were Oceania and Asia, where Thailand exported 250,001 and 249,535 vehicles respectively, representing an increase of 30 percent and 8.4 percent compared to last year. Car exports to European markets rose by 66 percent to 126,154 vehicles, as compared to 76,112 units in same period in 2014. Large export gains to the EU could advance further in the form of tariff reductions. An EU-Thailand FTA negotiation would

foster and promote opportunities for the automotive and parts industry, and meaningfully reduce barriers.

Figure 9: Thailand's Car Export Destinations (Jan - Oct 2015)



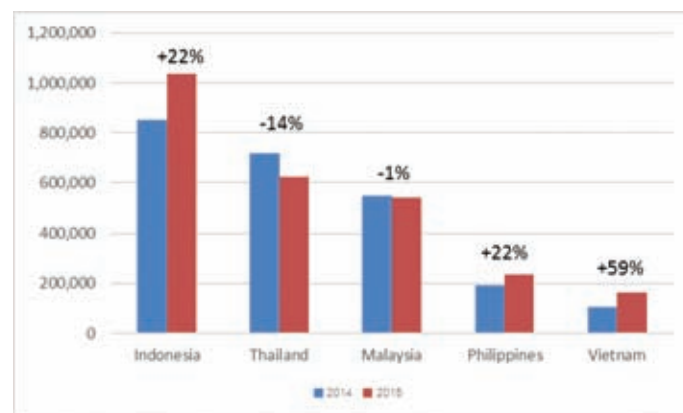
Source: *The Federation of Thai Industries, 2015*

Automotive sales in ASEAN demonstrated significant growth over the first 10 months of 2015. Car sales in the domestic market exceeded 2.6 million, while Indonesia became the largest domestic market for cars, growing by 22 percent to over a million sales. Thailand was the second largest domestic market, recording sales of over 600,000 units, representing a drop of 14 percent from last year due to the economic downturn and high household debt (The Office of Industrial Economics, 2015). Vietnam, although still a small volume, showed the largest gains of 59 percent.

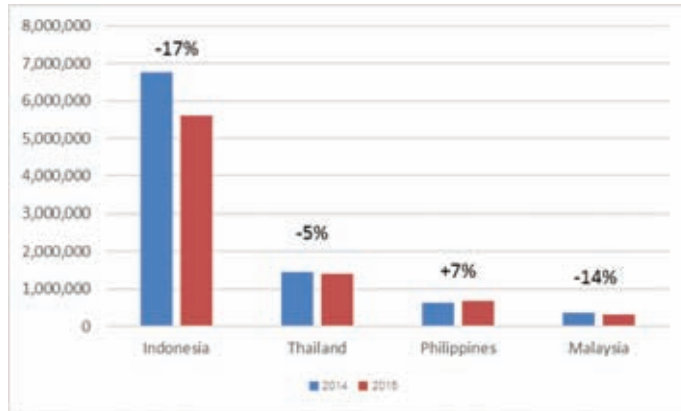
Indonesia remained the largest market for motorcycles, at 5.6 million units sold during the period of January to October 2015, which was 17 percent less than the previous year. This was followed by the Thai market, at 1.4 million units, representing a drop of 5 percent. Philippines stayed relatively stable at 700,000 units.

To see further improvements, harmonization of automotive product standards is essential. A Mutual Recognition Arrangement (MRA) needs to be established for automotive products. Standardization increases efficiency, reduces cost, and serves as protection for consumers from lower quality imports. Additionally, regulators could assist the industry by recognizing test reports and certifications based on UNECE standards, which is globally accepted. Redundancy in retesting has a substantial impact on cost and time spent, due to unnecessary duplication of processes which hinders trade and harms businesses. In 2015, Asia accounted for 25 percent of sales. This market could be significantly larger since Thailand is the top automotive manufacturing centre in Asia and consistently ranks in the Top 15 globally. It is necessary for Thailand to leverage its leading automotive position in ASEAN; being a significant player in ASEAN MRA and accepting UNECE will gradually improve sales in Asia.

Figure 10: Sales of Cars in ASEAN (Jan – Oct 2015)

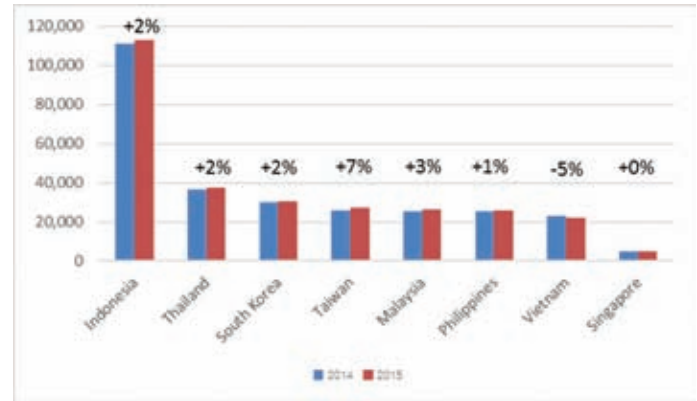


Source: *ASEAN Automotive Federation, 2015*

Figure 11: Sales of Motorcycle in ASEAN (Jan – Oct 2015)

Source: ASEAN Automotive Federation, 2015

Sales of medium and heavy commercial vehicles were the most resilient to economic downturn in ASEAN. All markets except Vietnam demonstrated positive growth of on average 2 percent. It was the only automotive segment that was unaffected by the state of the Thai economy, despite moderate growth in tourists arrival of 5 percent in 2015 (Department of Tourism, 2015). ASEAN member states were also affected by world economic slowdown in 2015. However, demand for commercial vehicles remained unchanged. For Thailand, this is a good opportunity to leverage from the success of the eco-car and light truck manufacturing hub. With enough support from government, Thailand could become a central world commercial vehicle production hub, due to its large supplier base, strategic location in the centre of ASEAN, and significant market size. Therefore, the EABC is keen to see further development in this commercial vehicle segment.

Figure 12: Sales of 3.5+ ton trucks in ASEAN (2014 - 2015)

Source: Global Insight, 2015

The Ministry of Industry recognizes the importance of further developing the automotive industry as a global green automotive production base (National Industrial Development Master Plan 2012-2031). It is an initiative of the Royal Thai Government to meet UNDP Sustainable Development Goals (SDGs) by 2030. While the initiative would mean bringing new technology, changes and regulations to the automotive industry, it is, nevertheless very welcomed. Under this plan, the government has approved eco-car phase 2 with an incentive scheme for new investments (Thailand Automotive Institute, 2015). In order to promote greater adoption of green vehicles, Thailand's Ministry of Finance has restructured automotive excise taxes to better align with vehicle emissions. The new rate was effective as of 1 January 2016. This is an opportunity to implement UNECE for emission testing certificates to help facilitate the Thai government's ambitions. Manufacturers under the promoted scheme should, therefore, need better fuel (Euro 4 or superior); hence higher quality not only promotes new technology in Thailand, it is also better for the environment. Thus, related government agencies need to align their plan for better cooperation in order to achieve this objective.

Policy and regulatory changes always come to new industrial landscapes, including sustainable growth and global demand for products that are sustainable, both in terms of the environment and safety. To cope with those challenges, the government's supportive policies will play a vital role in improving industry competitiveness, as well as ensuring sustainable development in the long run.

The automotive industry in Thailand must not only serve domestic demand, it must also take into account consumer preferences in regional and world markets. The EABC recommends:

1. Cost efficiency must be considered for manufacturers to reduce production and transaction costs, which is beneficial for investment expansion in developing markets.
2. Thailand's strategic location for potential markets and an efficient production base in the region must be included in the Thai industry development strategy.
3. Supply chain creation must be considered in building a production network in response to the realization of ASEAN Economic Community (AEC).

The EABC appreciates the Royal Thai Government's various policies and measures which have enabled the country's automotive industry to achieve its current position and we are very keen to strengthen and support the competitiveness of Thailand's automotive position in the regional and global market by underlining our long-term commitment to the country. Therefore, we suggest that Thailand creates an environment conducive to market access for locally-made products. Five areas of policy recommendations are identified for the Thai Government's consideration, namely **EU-Thailand FTA Negotiations, Technical Standards, Taxation, Labour and BOI Automotive Cluster and Investment**.

1. EU - Thailand FTA Negotiations

Thailand and the EU have committed to a bilateral FTA since

its first launch in March 2013, marking an important step in EU - Thailand trade and investment relations. In 2015, progress in the EU - Thailand FTA negotiations was somewhat limited due to Thailand's domestic political situation. Given duty reductions under Thailand's existing FTAs such as JTEPA, AIFTA and ACFTA, where duty rates imposed on Japanese, Indian and Chinese CBUs have been lowered, this could lead to higher trade distortion that undermines the efficiency of the Thai Economy.

The EU-Thailand FTA would bring benefits in terms of harmonization standards, preferential rules of origin, tariff reductions, MRA, NTBs to the FTA, which will create fair competition.

Recommendations:

1. Reaffirming our position in the 2015 European Business Position Paper, the EABC continues to support any possible development towards an EU - Thailand FTA. We encourage Thailand to strongly reaffirm its interest in the FTA and explore ways to re-engage in the negotiations. At least, Thailand shall continue to do the groundwork, i.e. technical review, impact study, public outreach, etc., so negotiations can resume without delays in the process.
2. Taxation should not be the only benefits of the EU - Thailand FTA. Thailand should also focus on reducing, eliminating, and preventing non-tariff barriers.

2. Technical Regulations

Despite good intentions to improve the licensing process, significant progress in Thailand's implementation of the WP29 - 1958 Agreement could not be clearly observed in 2015 for automotive and automotive parts manufacturers. For instance, the industry has agreed to use UNECE for approvals/certifications, but it is still a requirement from TISI to conduct re-testing at its accredited laboratories. This

requirement is inefficient, time consuming, costly, and most importantly it is redundant to obtain another test report when UNECE standards have already been widely and internationally accepted.

In October 2015, the EABC welcomed the announcement of the TISI Notifications, which allows industry to obtain industrial licenses through a Supplier's Declaration of Conformity (SDoC) channel by submitting the existing test reports and/or certificates from manufacturers. This implementation helps reduce re-testing and inspections, resulting in quicker licensing processes and product launches.

We strongly request TISI to accelerate the issuance of any subsequent guidelines, conditions and specific requirements for certifications of automotive products as soon as possible as this will help facilitate automotive product approvals, thus, improving ease of doing business in Thailand.

Recommendations:

1. We reiterate our recommendation since the 2013 EABC Position Paper, strongly urging Thailand to implement the WP29 - 1958 Agreement by accepting type approvals, certificates and test reports issued in accordance with UNECE standards, as they have already been recognized as the Thailand Industrial Standard. The type approvals, certificates, test reports, as well as plant audit result, shall be accepted unconditionally. Complication in this matter will not foster Thailand's competitiveness.
2. Moreover, when contemplating new industrial standards for automotive and automotive parts, EABC urges Thailand to adopt the UNECE standards. For Thailand to be the top player in the world automotive industry, having a harmonized and internationally-accepted standards will greatly facilitate investments and ensure that Thailand's remain competitive in the global market.

a) ASEAN Mutual Recognition Arrangement (MRA) for Automotive Products

Harmonization of the standards under the MRA is vital for the ASEAN Economic Community (AEC) automotive market. This will provide greater market access for Thailand's automotive products in ASEAN. This should extend to harmonization of safety standards, emissions and fuel property standards under a common regulatory framework based on UNECE regulations. Achieving the MRA, the Thai automotive industry will benefit from significant time savings for obtaining test certifications. It will also enhance investor confidence on conformity assessment results among other ASEAN member states.

Removal of regulatory barriers to the movement of goods will improve Thailand's regional competitiveness and reduce compliance costs for businesses. We admire Thailand's active engagement in developing the first phase of ASEAN MRA for automotive products covering 19 standards based on the UNECE standards, and we strongly wish to see implementation in 2016. We also urge Thailand to continuously engage in further development of the MRA, including its second phase encompassing 32 standards. Thailand should avoid complexity and inefficiency in the implementation of the ASEAN MRA. EABC supports Thailand to adopt the internationally-accepted UNECE Standard certification.

Recommendation:

We urge Thailand to continue its active engagement in further development of the ASEAN MRA, which should provide recognition of UNECE standard certification. A clear ASEAN MRA timeline is highly encouraged.

b) Clarity on fuel plan, EURO standards and Implementation schemes

The energy industry significantly influences the vibrancy and sustainability of the automotive industry. It is important that the industry has clarity and certainty about the

sustainable and alternative emission and energy development plan. This will provide automotive manufacturers and automotive parts manufacturers with investment clarity and time for adaptation to meet the emissions and energy regulatory demands.

Extending the vehicle emissions and fuel-quality standards already in force among ASEAN and throughout the rest of the world, will promote public health benefits for Thailand. In addition, it provides the added benefit of reducing carbon emissions and lessening the impact of climate change in the long-term.

Clarity for emissions standards and fuel quality developments is welcomed. The EABC Automotive Working Group stands ready to support Thailand's environmental and automotive fuel development plan and implementation scheme.

Recommendations:

1. The EABC supports clarity regarding - and a clear timeline for - the improvement for automotive emissions standards and fuel quality to promote environmental and public health enhancement.
2. Fuel quality improvements should be aligned with emissions standards.

3. Taxation

a) CO2 Approval Process

We congratulate the Royal Thai Government on putting forward the programs to control emissions from vehicles. This will contribute to a better environment and public health for Thai people. Additionally, the programs will attract new technology transfer and investments that promote environmental protection and provide added value to consumers.

Car manufacturers and exporters have to put standardized labels known as 'ECO Stickers' on new cars at points of sale or display, enforcing automobile standards and collecting Excise tax under the new CO2 base structure. This became effective on 1 January 2016. The ECO Stickers not only provide essential data and fact such CO2 emission, fuel efficiency, and other related information, but also enable customers to compare each specification of each model vehicle to assist in their decision-making process. The ECO Sticker consists of the CO2 value, which is later used for the calculation of the Excise tax.

In Thailand, CO2 value from the emissions certification is applied as the base for excise tax valuation, without fully accepting the UN R101 Certificate. Complicated approval processes with many documentation requirements by the Thai authorities can be burdensome and undermine the Thai automotive industry's competitiveness. For the automotive sector, the approval process and the documentation required for implementation of the CO2 excise tax approval is somewhat stringent as it requires certain information that is not mandatory by the European Authorities for the issuance of UN Certificates i.e. R83, R101, R13H, R94, and R95. This is viewed as a barrier that could potentially affect the cost of operations, or even disrupt business activity.

Recommendation:

The EABC recommends that the Thai authorities simplify the CO2 approval process and review the documentation requirements to recognize and fully accept the relevant UN Certificates, and the information contained therein without further amendment or additional requirements. Such a process shall not create additional expenses that could lead to higher cost of production and shall not cause any delay in marketing and sales operations. This will reflect Thailand's alignment with internationally - accepted UN Standards and will significantly improve Thailand's ease of doing business.



b) Customs Free Zone's Rules

The Ministry of Finance Notification no. 13 regarding Customs Free Zone (CFZ), announced in late December 2015, contains changes that may negatively affect current business operations and investor confidence. EABC pointed out, in the 2015 Position Paper, that any revision to the CFZ rules shall be mindful of the objective of the CFZ scheme of promoting foreign investment, and shall lead to clear and consistent regulations.

On the contrary, the aforementioned MoF Notification not only discourages foreign investment, but also increases business uncertainty as Customs will now have the right to overrule decisions of other authorities.

Recommendation:

The EABC urges relevant authorities, i.e. Customs Department, Office of Industrial Economics, Thailand Automotive Institute to accelerate the process of contemplating CFZ eligibility criteria, to give priority to attracting new investment as well as to promoting foreign investments and protecting existing investments in the CFZ.

c) New Excise Tax Calculation

The New Excise Tax Code was approved in principle by the cabinet on 19 May 2015. The drafting of the Excise Tax Code is one of the most important topics being followed by automotive companies. We welcome any changes in the law that lead to transparency, simplicity, and business certainty. However, we would like to express our concern about changes that could undermine investor confidence.

The proposal to assess excise tax on suggested retail price (MSRP), instead of ex-factory price, or CIF value, in the case of imports, lessens the attractiveness of the Customs Free Zone (CFZ) scheme and could discourage investment in Thailand.

We understand that the Royal Thai Government has no intention to increase the tax burden on business operators, therefore, we expect to see a reduction in the excise tax rates in compensation for an increased tax burden due to the changing tax base calculation. This is to ensure tax revenue neutrality and at the same time minimize business impact on the automotive industry.

In any case, it is important that any changes to the tax base should improve taxation calculation to be more efficient and transparent, and not discriminate against the CFZ automakers who have invested significantly in Thailand through the utilization of CFZ. This will bring high value-added investments into the country. In fact, it is imperative to have total tax collection remain the same for CFZ automakers and customs CBU.

As such, Thailand should provide neutrality for tax collections in both Free Zones and CBU imports as promised.

Recommendations:

1. We reiterate our recommendation from last year that privileges offered by the CFZ scheme are preserved after the new Excise Tax Act.
2. We recommend the excise tax rate of the tax base be lower. We expect to see the Royal Thai Government keeping its promise of neutral revenue in both Free Zone and CBU imports as this will enhance investor confidence in Thailand.
3. Business operators shall be offered a sufficient transition (grace) period for abrupt and critical changes to policies and regulations. Business planning for the automotive sector is prepared at least 2 years in advance; hence, operators should have an adjustment period of at least 2 years in order to ensure the viability of their business in Thailand.

d) Grey Market Control

Parallel importation, also known as the ‘grey market’, has long been an issue of concern among automakers in Thailand. By under-invoicing, grey market importers take the chance to reduce the duty and tax burden on vehicles significantly. Additional cost savings from not having to undergo TISI testing provides price-competitive advantages for illegally imported vehicles. Such negligent control has created unfairness and non-transparency in law enforcement. The government is encouraged to apply stricter law enforcement on import procedures and standard testing requirements, in particular, the new requirement about CO2 and Eco sticker approval, with the aim of eradicating the illegal ‘grey market’ and unfair parallel imports. To ensure effective enforcement going forward, efforts should be geared towards ensuring seamless coordination among relevant government agencies, including TISI, Office of Industrial Economics, Excise, Customs, and the Department of Land Transport.

TISI’s recent requirement for all shipments of grey market imports to pass TISI testing requirements is commendable, as it not only creates a level playing field, but also helps ensure that local consumers get safe and compliant products. It is important to maintain efficient coordination among all the relevant authorities (i.e., TISI, the Customs and the DLT) to effectively address this issue.

The EABC appreciated Ministry of Industry’s support in the development of the automotive industry and its conformity to the way global technology is developing, along with the new Excise tax structure, together with the information technology system related to the eco sticker, which is applied to help operators fill and submit all required documents for the system. While we understand that Thai authorities would like to reduce the burden on all business operators, vehicle inspection, registration, and information to submit for eco stickers should be processed as a set of guidelines so that everyone follows the same direction. EABC, therefore, urges the Thai authorities to establish

equal treatment for eco sticker submission and data requirements between grey market operators and authorized manufacturers. This will provide Thailand’s investment climate with fair competition for trade and, significantly, will ensure a level playing field for all importers.

Recommendations:

1. Reiterating our recommendation in recent years, we encourage Thailand to continue the country’s efforts to tighten its control on grey market imports, particularly through strict customs valuation examination, TISI testing, and new eco sticker submission process, in order to ensure legal compliance and a level playing field.
2. The Customs Department is encouraged to work more closely with brand owners in setting up a system to detect illegal practices of undervalued reporting and invoicing. Clear regulations should be put in place to impose an obligation on importers to obtain the relevant import licenses and to provide warranty and maintenance services. Stricter vehicle registration processes should also help alleviate the problem.

4. Labour

Despite an increase in the number of graduates and qualified vocational workers, Thailand continues to experience labour shortages due to continual increases in requirements for higher-skilled and technology-intensive manufacturing.

We support the Royal Thai Government’s policy on promoting vocational training. Efforts to encourage public-private partnerships in engineering and technical training, in addition to government incentives for education, are commendable. In addition, we call for the Thai Government to consider developing plans for the mid- and long-term to provide sufficient a workforce of qualified graduates to match industry requirements. Such a holistic approach would help raise Thailand’s overall labour productivity in correspondence with wages/labour costs, and enhance Thailand’s



competitiveness, particularly in light of further AEC integration.

Recommendation:

Thailand should take a holistic approach in developing mid- and long-term strategies to promote effective vocational training and incorporate practical industry training in the higher education curriculum. This would raise the number of qualified graduates across the board to meet industry requirements.

5. Investment

a) Licencing Facilitation Act (LFA)

Thailand's ease of doing business stands at 49th in 2016, down from 46th last year. The government is taking an active response to reducing business and investment barriers, with the aim of increasing foreign investment in Thailand. The first step towards improving ease of doing business was the Ministry of Commerce and Ministry of Labour's commitments to shorten the business registration process via the introduction of a one-stop service at the ministries. The Ministry of Industry has already shortened the time required to obtain a Ror Ngor 4 permit for manufacturing operations from a maximum of 90 days to no more than 30 days.

Thailand passed the Licensing Facilitation Act (LFA) in 2015. The EABC welcomed the implementation of the LFA, which helps industry to obtain government licenses more easily. Since the Licensing Facilitation Act has become effective, relevant authority are required to produce a licensing manual for the public and disclose the processes. This is a positive contribution to the foreign business community, where extensive paperwork is normally required. As such, this would defeat the purpose of having LFA. EABC highly recommends Thailand to consult with the EABC Automotive working group to review the processes.

b) BOI Investment Scheme

Foreign investment is important for the automotive sector. We welcome that Thailand's Board of Investment continues to see the automotive sector as an important industry for the Thai economy. The cluster development policy aims to increase special economic development zones as well as to increase industrial competitiveness in areas with high potential as targeted manufacturing bases using advanced technology.

For the automotive industry, clusters are crucial in connecting manufacturers, suppliers, supporting industries, research and academic institutions, and public and private organization within the cluster areas. Strategic development is supported by government agencies including logistics systems and tax incentives and amendment of rules and regulations to facilitate investment (BOI, 2015). These measures not only support the development of the cluster and Thailand's competitiveness in the world market as an investment destination, but give strategic advantages to investment projects in the cluster areas.

An automotive and automotive parts cluster is considered to be a future industry. Automotive manufacturers deploy advanced technology and are deemed to provide significant benefits for Thailand. Seven provinces (Ayutthaya, Pathumthani, Chonburi, Rayong, Chachoengsao, Prachinburi and Nakhon Rachasima) offer Super Cluster benefits for automotive and parts manufacturers. The benefits include a BOI scheme offering 8-year corporate income tax exemption and an additional 5-year 50 percent reduction and import duty exemption on machinery. In addition, the Ministry of Finance may consider granting 10-15 year corporate income tax exemption for future industries with significant importance and personal income tax exemption for international specialists to work in Super Cluster areas. For other non-tax benefits, permanent residency and permission for foreigners to own land to implement promoted activities are under consideration as

well. However, eligibility for the scheme needs clarity for foreign investors. For example, inclusion of future industries and levels of expertise is required to qualify as specialists. The EABC urges the Ministry of Finance to provide clarity in advance in order to avoid delay to investment decisions.

To qualify for a BOI Cluster incentive package, investment will need to be in the relevant cluster and have cooperation with academic institutions. Applications must be submitted no later than the end of 2016 and production must start no later than 2017.

c) Green Technology

Green Technology or clean technology is the application of aims to curb the negative impacts of man-made activities. Often these activities cause environmental impact and diminish the quality of public health. Thailand has adopted a political action plan to promote sustainable energy production and to actively encourage alternative energy investment. To promote the development of green technologies, BOI grants significant incentives for investment in energy conservation and alternative energy as well as production of eco-friendly materials and products. For instance, cars are required to disclose carbon emissions.

High requirements for cleaner environmental products bring significant gains to the economy. Clean technology not only benefits public health and the environment, it also attracts foreign investment to Thailand. Clean technology also often requires advanced technology, but this technology is not usually found in Thailand. The European automotive sector is well-known for its high environmental standards and is ready to assist Thailand to develop the green technology industry for the automotive sector.

We are pleased to see the Royal Thai Government has already considered ease of doing business a very important issue and put measures forward to improve in many areas, such as clarity and transparency and shortened time, etc. Significant investments already exist for the automotive sector, and they provide economic impact for Thailand's GDP. The EABC recommends that Thailand's cluster policy safeguard existing investments, promote technology and standards that help improve the environment and public health, and extend the investment scheme to attract new investment from foreign investors in environmental technology in the automotive sector. The EABC's recommendations aim to promote Thailand's competitiveness and to raise the public health of the Thai people.

Recommendations:

1. The EABC recommends that the Royal Thai Government ensures the transparency and monitors the effectiveness of the licensing grant process. Serious enforcement in LFA is needed.
2. Safeguarding existing investments requires long-term support and commitment from BOI, and clarity to investment promotion is required to avoid unnecessary delay to investment decisions.
3. Thailand should continue to raise standards for safety and environmental requirements in the automotive sector to help attract green technology and new investments.
4. The EABC recommends the Royal Thai Government continues dialogue with the EABC automotive working group about improving ease of doing businesses. The EABC automotive working group consists of industry experts that can provide policy recommendations to boost Thailand's competitiveness.



Energy and Energy Efficiency

SUMMARY OF RECOMMENDATIONS

1. Energy Security

- 1.1 We encourage the government to renew the licenses of current concessionaires; negotiations with various partners to agree a mutually beneficial outcome should be held by mid-2016.
- 1.2 A great opportunity for Thailand lies in development of the Overlapping Claims Area with Cambodia. The gas reserves there could play a significant role in meeting Thailand's energy needs.
- 1.3 We encourage Thailand to diversify its energy mix and to develop renewable energy sources, in combination with gas, which is a low-carbon fuel.
- 1.4 EABC recommends that Thailand enhances the power transmission and distribution sector and speed up related investments.
- 1.5 EABC suggests evaluating the impact of a possible opening of the T&D power sector for private companies to achieve a faster execution of the PDP2015 compared to now.

2. Energy Efficiency and Energy Saving

- 2.1 Thailand should consider creating and implementing a lighting master plan as part of the country's energy efficiency drive. The lighting master plan will help promote Thailand as a centre for tourism.
- 2.2 Thailand should consider creating and implementing energy efficiency policies for buildings and industries in order to incentivize progress in this domain.
- 2.3 We urge Thailand to promote the efficiency of using fuel in power generation. Cogeneration should be encouraged, as apart from using the fuel efficiently, cogeneration also reduces losses in the power system.
- 2.4 We recommend that the Thai government enlists the help of experts in building and lighting to create environments that are an asset to the nation, attract tourists and act as a driver of economic growth for all sectors of the economy.

3. Alternative/Renewable Energy

- 3.1 EABC supports Thailand's efforts to diversify energy sources in renewable energy, which is clean and abundant in this region.
- 3.2 We support Thailand's efforts to increase transparency, adhere to global standards and ensure accountable management of natural resources.

4. Automotive Energy Development

- 4.1 EABC recommends close consultation between the government and private sector on an automotive fuel development plan as well as providing advance notice and clear timeline of transport fuel portfolio.

Industry Overview

Thailand's total energy consumption has grown continuously in the past decade due to domestic economic growth, demand for energy from increasing production, and demand for power generation, among other factors. Total energy

consumption in 2014 was 2,053 thousand barrels per day (KBD) of crude oil equivalent, an increase of 2.6 percent from 2013 (Energy Statistics of Thailand, 2015). Energy imports increased to 1,171 thousand barrels per day, up 4.4 percent in 2014. Commercial energy imports (net) accounted for 57 percent of primary commercial energy consumption.

Figure 1: Thailand's Energy Consumption per Day (2010-2015)

Unit: KBD of crude oil equivalent

	2010	2011	2012	2013	2014
Consumption	1,783	1,854	1,982	2,002	2,053
Production	989	1,018	1,082	1,078	1,073
Import (Net)	1,001	1,020	1,082	1,122	1,171
Import/Consumption (%)	56	55	55	56	57
Growth Rate (%)					
Consumption	7.2	4.0	6.9	1.0	2.6
Production	10.5	2.9	6.3	-0.4	-0.4
Import (Net)	8.6	1.9	6.1	3.6	4.4
GDP (%)	7.5	0.8	7.3	2.8	0.9

Source: Energy Statistics of Thailand, 2015

Energy consumption in 2014 was valued at 2,280 billion baht, an increase of 2.6 percent. Petroleum products accounted for the largest consumption of energy by value, at 1,336 billion baht, which grew by 0.7 percent, followed by electricity at 662 billion baht, up 6.6 percent. As a result of this energy import reliance, it is necessary for Thailand to continue developing its energy master plan to ensure energy stability and sustainability for the Thai economy.

Figure 2: Thailand's Energy Expenditure in 2014

Expenditure on Final Energy Consumption: 2,280 Billion Baht (Increase of 2.6%) (2014)					
Final Energy Consumption	Petroleum Products	Electricity	Natural Gas	Lignite/Coal	Renewable
Value of Consumption (Million Baht)	1,336,615	662,474	123,964	33,483	123,100
Growth Rate (%)	0.7	6.6	2.4	28.3	-2.3

Source: Energy Statics of Thailand, 2015

The Ministry of Energy reported that oil consumption in 2015 increased by 4.2 percent, as a result of the economic stimulus policy, government expenditure and decreases in the oil price. The Ministry also projects demands for oil in 2016 to increase by 3 percent, the same level that the

National Economic and Social Development Board suggested Thailand GDP will grow. Facing looming energy needs, the Ministry of Energy asked the private sector and its citizens for cooperation to reduce electricity and oil consumption (press release by Ministry of Energy, 6 January, 2016).



In late 2014, the Royal Thai government developed five energy plans to prepare for economic growth, invest in infrastructure projects and be ready for rising demand for energy after ASEAN integration (Ministry of Energy's Power Development Plan: PDP2015, 2015). The five main plans are: (1) Thailand Power Development Plan (PDP); (2) Energy Efficiency Development Plan (EEDP); (3) Alternative Energy Development Plan (AEDP); (4) Natural Gas Exploration Plan; and (5) Oil Management Plan.

The Thailand Power Development Plan 2015 gives importance to:

- **Energy Security:** An energy safeguard to prevent external shocks shall be developed along with investment-opportunity exploration in domestic and international potential energy resources. The main objective is to create self-dependence and diversify sources of energy for future energy uses. Furthermore, an action plan for emergency response must be developed.
- **Energy as Economic Growth Engine:** Building up energy infrastructure in connecting to neighbouring countries is crucial under the AEC, in order to boost ASEAN connectivity. At the same time, creating profitable opportunities for the private sector, especially in the renewable energy sector, will help promote economic growth in the country. Moreover, to encourage investors' and players' confidence, restructuring the energy business toward competitiveness is required.
- **Ecology:** Energy producers must reduce their impact on the environment by reducing carbon-dioxide release from electricity production.

Thailand Power Development Plan 2015 (2015-2036) was approved by the cabinet on 30 June 2015.

The EABC Energy and Energy Efficiency Working Group was established to serve as a forum to discuss critical issues in this particular field, and to enhance the role of the European business community in dealing with Thailand's key energy challenges. To accomplish energy and economic sustainability, four recommendations are proposed here for consideration by the Royal Thai Government and relevant agencies: 1) Energy Security; 2) Energy Efficiency and Energy Saving; 3) Alternative/Renewable Energy; (4) Automotive Energy Development.

1. Energy Security

Thailand has faced consistent challenges with energy security in the past decade. To maintain economic stability and robust economic growth, a new area of the energy sector must be identified to overcome existing challenges facing the Thai economy.

The first concern is addressed as a growing gap between Thailand's energy demands and its domestic energy supply. Due to an increase in income level and the prospect of AEC realization in 2015, Thailand's energy usage and consumption has continuously increased over the past decade. A lack of alternative energy sources would push Thailand close to facing energy shortages in the near future.

The combined reserves for Thai energy can only support Thailand energy demands for 15 years. Thailand currently has around 741 million barrels of crude oil left in reserve, which are expected to be used at an annual rate of 51 million barrels; while the country's reserve of 476 million barrels of condensate will be consumed at an annual rate of 34 million barrels; and reserves of 18,885 billion cubic square feet of natural gas will be used at an annual rate of 1,206 billion cubic square feet.

Figure 3: Thailand's energy reserves (2014)

31 December 2014

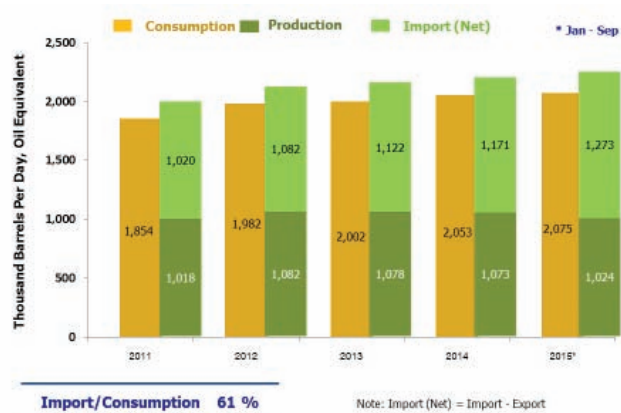
	Reserved			Production Q 2014	Consumption (Yrs.)		
	P1	P1+P2	P1+P2+P3		P1	P1+P2	P1+P2+P3
Crude Oil (million barrels)	223	553	741	51	4	11	15
Condensate (million barrels)	182	411	476	34	5	12	14
Natural Gas (billion cubic square feet)	7,752	15,560	18,885	1,206	6	13	16

Note: P1 = Proved Reserves P2 = Probable Reserves P3 = Possible Reserves

Source: Ministry of Energy, 2016

Thailand's economic growth is at 3 percent annually, resulting in growing demands for energy. This also increases net import of energy. In fact, 61 percent of energy consumption comes from imported energy. The EABC recommends Thailand put long-term measures in place to improve energy security and reduce dependence on imported energy.

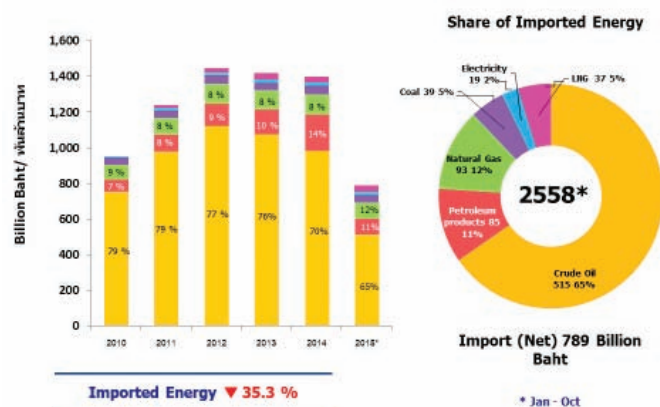
Figure 4: Commercial Primary Commercial Energy (2011 - 2015)



Source: Ministry of Energy, 2016

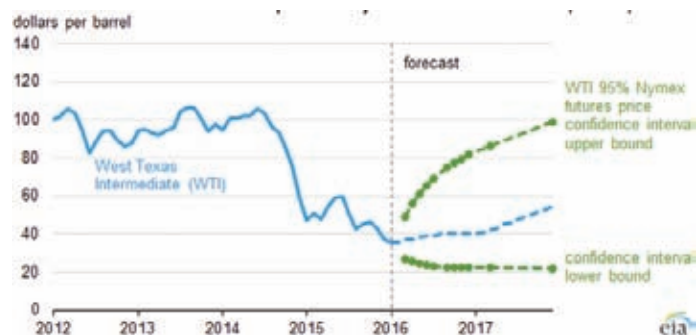
Thailand's imported total energy was valued at 789 billion baht from January to October 2015. The amount has reduced by 35% due to drops in the price of oil. The oil price is expected to remain relatively low in 2016-2017 (EIA, 2016). However, Thailand should focus on becoming less dependent on imported energy. The largest share of imported energy was crude oil, valued at 515 billion baht, or 65 percent of total value.

Figure 5: Value of Imported Energy (2015)



Source: Ministry of Energy, 2016

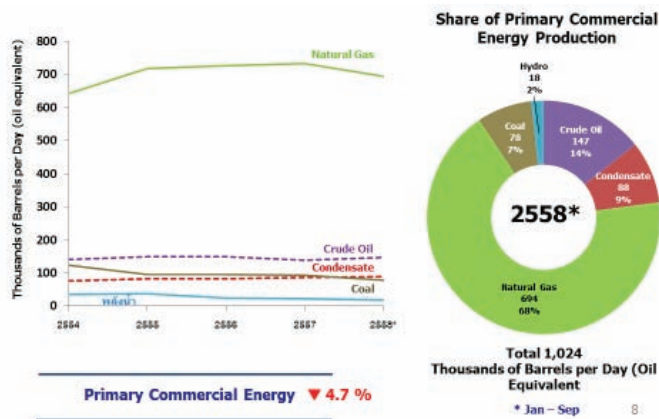
Figure 6: Forecast on Oil Price (2012 - 2017)



Source: The U.S. Energy Information Administration, 2016

Although Thailand produced 700,000 barrels per day of oil, equivalent or 70 percent of local energy production, the country still needed to import natural gas valued at 93 billion baht from January to October 2015. These high energy imports will push Thailand to the point where its energy status is no longer secure, due to heavy energy dependence on external resources.

Figure 7: Production of Primary Commercial Energy (Jan - Sep 2015)



The EABC welcomes the Royal Thai government's commitment to resolving key energy policy issues. Ensuring access to secure and affordable energy supplies is essential to Thailand's long-term economic success. We believe that timely resolution will substantially solve Thailand's looming energy supply challenges, while also helping to meet the country's ambitious greenhouse gas reduction targets.

Recommendations:

1. Future of current licenses for major oil and gas fields, due to expire in 2022-23

We believe the simplest and most effective solution is to renew the licenses to the current concessionaires, who have proved their value as long-term partners. This will best ensure continued investment in the field, and thus uninterrupted supply to Thailand. We encourage

the government to begin negotiations with various partners, to agree a mutually beneficial outcome by mid-2016.

It is very important that Thailand's international partners have clarity on the government's plans if they are to continue investing. Uncertainty will cause them to reduce their investments in advance of expiry.

2. Resolution to the Overlapping Claims Area (OCA)

A great opportunity for Thailand lies in development of the Overlapping Claims Area with Cambodia. The gas reserves there could play a significant role in meeting Thailand's energy needs.

3. Further diversification of the energy mix for the generation of energy, including renewables and gas

We encourage Thailand to diversify its energy mix and to develop renewable energy sources, in combination with gas, which is a low-carbon fuel. The diversification will help Thailand to respect its commitments that were made at COP21, to reduce its CO2 emissions and to enhance its competitiveness.

a) Power Transmission and Distribution

The Power Transmission and Distribution sector (T&D) needs faster execution in building and commissioning infrastructure to achieve the goals of Thailand's 2015 Power Development Plan. Projects are sometimes delayed for several reasons: legal reasons (rights of way), financial reasons (payments to the sector), and non-tariff barriers (limits on technology transfer into Thailand). Increasing installed power capacity from 37GW to 70GW in 2036 requires a doubling of the T&D grid as well.

Recommendations:

1. The EABC recommends enhancing the Power Transmission and Distribution sector and speeding up investments in ageing infrastructure to improve power (energy) security and ensure readiness for transmitting power coming from alternative sources of energy. A stronger interconnection in the ASEAN power grid will also strengthen the strategic position of Thailand and will positively impact costs of power and the industrial development of the country.
2. The EABC suggests evaluating the impact of a possible opening of the T&D power sector for private companies. BOOM and BOOT projects could be a measure of achieving faster execution of the PDP compared to now.

2. Energy Efficiency and Energy Saving

The Thai Ministry of Energy published the “Thailand 20 - Year Energy Efficiency Development Plan (2011 - 2030)”. This is commonly referred to as the EEDP. This document states that “This 20-year Energy Efficiency Development Plan (EEDP) is formulated with a target to reduce energy intensity by 25 percent in 2030, compared with that in 2005, or equivalent to reduction of final energy consumption by 20 percent in 2030.”

Increases in industrial activity as well as the growth of cities and energy users means that demands on energy usage will continue to increase, so to achieve a 20 percent overall reduction in energy consumption will involve major changes in the way energy is delivered to users as well as changes in user behaviour.

One major area of energy consumption is lighting. According to the International Energy Agency (IEA), “Lighting represents almost 20 percent of global electricity consumption. This consumption is similar to the amount of electricity generated by nuclear power. The latest IEA predictions show the total savings potential in residential and services lighting at more than 2.4 EJ per year by 2030.” To achieve energy savings in lighting, the IEA recommends that governments:

- Phase-out inefficient lighting products as soon as technically feasible and economically viable
- Require and promote improved lighting systems design and management by ensuring that building codes promote the use of natural light and include Minimum Energy Performance Standards (MEPS) for lighting systems

Many governments have begun to recognize that major savings in energy consumption and reduced energy costs can be achieved by switching traditional lighting to new lighting technologies, of which LED lighting is currently leading the way in terms of efficiency. This process of change has only just begun and the EABC can help play a part in supporting European businesses in their endeavours to drive these improvements to help Thailand achieve high quality, safe LED lighting with MEPS standards.

Another important consideration is that lighting can be designed for tourism purposes. A lighting design not only saves energy, but is also elegant, tasteful and sensitive to the architecture of the building and well-coordinated with the overall night time skyline. Animated light helps illuminate the city for festivals. The EABC Energy and Energy Efficiency committee consists of industry and design experts; we stand ready to support the Royal Thai Government in developing a night lighting design and fixtures under the Lighting Master Plan.



Recommendations:

1. Implementation of Lighting Master Plan

The EABC believes Thailand and municipalities of Thailand should consider creating and implementing a lighting master plan as part of the country's energy efficiency drive. We believe that only with coordination between government agencies and lighting design professionals can a truly effective light master plan be created, as lighting consumes over 20 percent of Thailand's power usage. Measures including use of natural day light in buildings, motion sensors inside and outside and energy efficient light are encouraged.

2. Energy efficiency in buildings

Thailand should consider creating and implementing energy efficiency policies for buildings and industries in order to incentivize progress in this domain.

3. Energy efficiency in power generation

Thailand should also promote the efficiency of using fuel in power generation. Cogeneration should be encouraged, as apart from using fuel efficiently, cogeneration also reduces losses in the power system.

a) Lighting for Tourism

Corruption in the construction industry, particularly in relation to large projects, often means that the best product does not win and sub-standard low cost products are selected. This affects all energy efficiency-related areas, such as lighting and building materials.

The regional harmonization of lighting standards by ASEAN and the planned implementation of National Roadmaps in the ASEAN region under the guidance of ACE (ASEAN Center for Energy) is a welcome step in coordinating the reduction of energy through light use but its focus is mainly for energy reduction and not the overall effect of light on society and the human environment. This provides an

opportunity to add lighting specifications for the environment and human comfort such as glare, uniformity, dark skies etc. as well as rigorous lighting equipment requirements to ensure that lighting fixtures cannot become nests for insects especially mosquitoes, which can spread many potentially fatal diseases such as Dengue Fever and the Zika virus.

We are concerned that the ASEAN plans when implemented in Thailand will result in a lot of missed opportunities to make lighting an asset to grow the economy and improve people's environments rather than just be seen as an energy saving item.

Recommendation:

We recommend that the Royal Thai Government enlist the help of experts in building and lighting to create environments that are an asset to the nation, attract tourists and act as a driver of economic growth for all sectors of the economy.

3. Alternative/Renewable Energy

In response to continuously increasing energy demand, Thailand, as the leader of Southeast Asia in renewable energy, announced a promotion policy on renewable energy in 2010. The policy aims to transform Thailand into a low-carbon country as well as to respond to expanding energy consumption (BOI 2013). Following this, in 2012, the Ministry of Energy endorsed the Alternative Energy Development Plan (AEDP), aiming to raising renewable energy to 25 percent of total consumption within 10 years (2012-2021). The BOI's new investment promotion scheme, implemented in 2015, includes benefits for energy saving and improved production efficiency sectors. Covering promotion of renewable energy and energy efficiency policies, it will drive positive development in the energy sector. In summary, active development of alternative energy sources can generate clean and sustainable future

energy supplies. A focus on new priority areas is then renewable energy sources like solar, wind, hydro, biomass, and biogas.

According to Thailand's AEDP 2015-2036, a variety of alternative energy sources will be promoted to maintain energy security in the country. Main benefits to Thailand are expected to include energy (oil and fossil) substitution, new types of energy for power and thermal generation, reduction of energy imports, investment promotion in the renewable energy sector, reduction of CO2 emissions, and innovation and research development. In response to such expectations, EU energy companies, as world leaders in renewable energy production and technology, can make a significant contribution to the development of Thailand's energy sector. Strong collaboration between the Thai government and private sector is required in fostering new policies that will promote the development and use of clean energy as well as ensuring energy sustainability for the next generation. A comprehensive bilateral consultation between the government and the private sector will help develop inclusive policies that take into account relevant interests and concerns of all stakeholder groups and local communities.

Figure 8: Thailand's Alternative Energy Development Plan (AEDP), 2015 -2036

Energy Type	Total Potential	As scenario (2015-2036)	Renewable Potential	Target in 2036	Target in 2036
Power	MW	MW	MW	MW	GWh
1. MGN	697.00	65.72	631.28	501.00	3,072.13
2. Biomass	8,492.01	2,451.72	6,040.29	5,570.00	34,155.24
3. Biogas	657.58	312.95	344.63	600.00	3,679.20
4. Biogas (Energy crop)	4,287.00		4,287.00	680.00	4,646.30
5. Small Hydropower	410.00	141.89	268.11	376.00	1,300.64
6. Wind	14,141.00	224.47	13,916.53	3,002.00	6,733.55
7. Solar	42,356.67	1,287.85	41,068.82	6,000.00	8,409.60
8. Large Hydropower	2,906.00	2,906.00		2,906.00	5,235.00
Total	73,947.32	7,396.60	66,550.72	19,635.00	65,281.56
Final Energy Consumption (2036)				326,119.00	131,000.00
RE share (%)				20.02%	4.25%

Source: Department of Alternative Energy Development and Efficiency (DEDE), Ministry of Energy

Several channels can be introduced here as new opportunities in Thailand's energy sector. First, due to the advantages of Thailand's climate, the Thai government is developing a new policy to enhance the share of renewable energy in the domestic market by tapping Thailand's abundant solar potential. Advantages of solar energy include that it is an infinite, sustainable energy resource, and is also very clean.

Given the ongoing work of the AEC, its full realization in 2015 brought opportunities to the energy sector through trade channels and skilled-labour movements. Thailand, with its strategic location in the region, can become an energy hub in various areas; gas, electricity, bioenergy, solar, and other renewable energy sources. In response to this initiative, Thailand must quickly speed up the expansion of its energy infrastructure development and come up with a robust strategy for optimal balance between economic growth, environment sustainability, and energy security. Such infrastructure development can be an investment opportunity for any European companies with energy expertise.



a) Extractive Industries Transparency Initiative (EITI)

The Extractive Industries Transparency Initiative is a global standard to promote open and accountable management of natural resources. The Initiative seeks to strengthen government and company systems, inform public debate, and enhance trust.

We congratulate the Royal Thai Government on its recent progress towards membership of the Extractive Industries Transparency Initiative. The energy industry stands ready to offer its support.

Furthermore, we believe that a range of renewable energy sources can also play a key role in meeting Thailand's energy demand and environmental goals. An active public policy can facilitate a range of such sources, including solar energy, wind energy, micro hydro, biomass, biogas and waste-to-energy. As leaders in green technology, European businesses can offer the best methods and practices to support this.

Recommendations:

1. EABC supports Thailand's diversification of energy sources in renewable energy, which is clean and abundant in this region.
2. We support Thailand's increased transparency, adherence to global standards and accountable management of natural resources.

4. Automotive Energy Development

The automotive sector usually develops long-term plans for engines and fuel types. Removal of certain types of fuel from the gas station will impact automotive and auto-parts manufacturers. Advance notice to the private sector is needed to ensure good management and adaptation in the automotive sector. We encourage the Royal Thai Government to consult with industry prior to moving forward with the policy. Additionally, a clear future timeline and rationale for any removal decisions is very welcomed.

Recommendation:

EABC recommends close consultation between the government and private sector on an automotive fuel development plan as well as providing advance notice and clear timeline of transport fuel portfolio.

Food and Beverages

SUMMARY OF RECOMMENDATIONS

1. Excise Tax

- 1.1 New excise tax code shall not increase tax burden.
- 1.2 Simplicity and transparency of tax system
- 1.3 Any changes to the Liquor Tax in Thailand should be consistent with international best practice and shift towards greater use of specific tax, based solely on alcohol content.
- 1.4 Adequate and consistent enforcement

2. Labelling Notification, Trademarks and GIs on Alcohol Products

- 2.1 Thailand must comply with WTO, Article 22 TRIPs with respect to indirect indication to the GI.
- 2.2 Thailand must notify WTO TBT to ensure that technical regulations, standards and conformity assessment procedures are non-discriminatory and do not create unnecessary obstacles to trade.
- 2.3 Dialogue with the Alcohol Policy Board to explore pragmatic solutions to labelling

3. Excessive Graphic Health Warnings

- 3.1 Alternative methods and effective strategies to reduce harmful use of alcohol

4. Lack of Industry Participation and Consultation in Policy Development

- 4.1 Policymakers shall consult with industry in early policy development.
- 4.2 Respect for, and compliance with, WTO regulations

Industry Overview

Europe ranked in Thailand's top three largest markets for food and beverage exports in 2015. From January to September 2015, the share of food exports from Thailand to Europe was 11.9 percent, and valued at 78.5 billion baht. This represents a drop in value of 12.7 percent compared to the previous year. The key contributing factors were:

- Slowdown in the world economy, reducing purchasing power
- Extensive droughts in Thailand, impacting fruit and vegetable production
- Removal of the Generalized System of Preferences (GSP), where importers overstocked non - perishable products and canned foods in late 2014
- IUU Fisheries declining taste for Thai products.

Figure 1: Thailand's Food and Beverages Export Markets in 2015 (Jan - Sep)

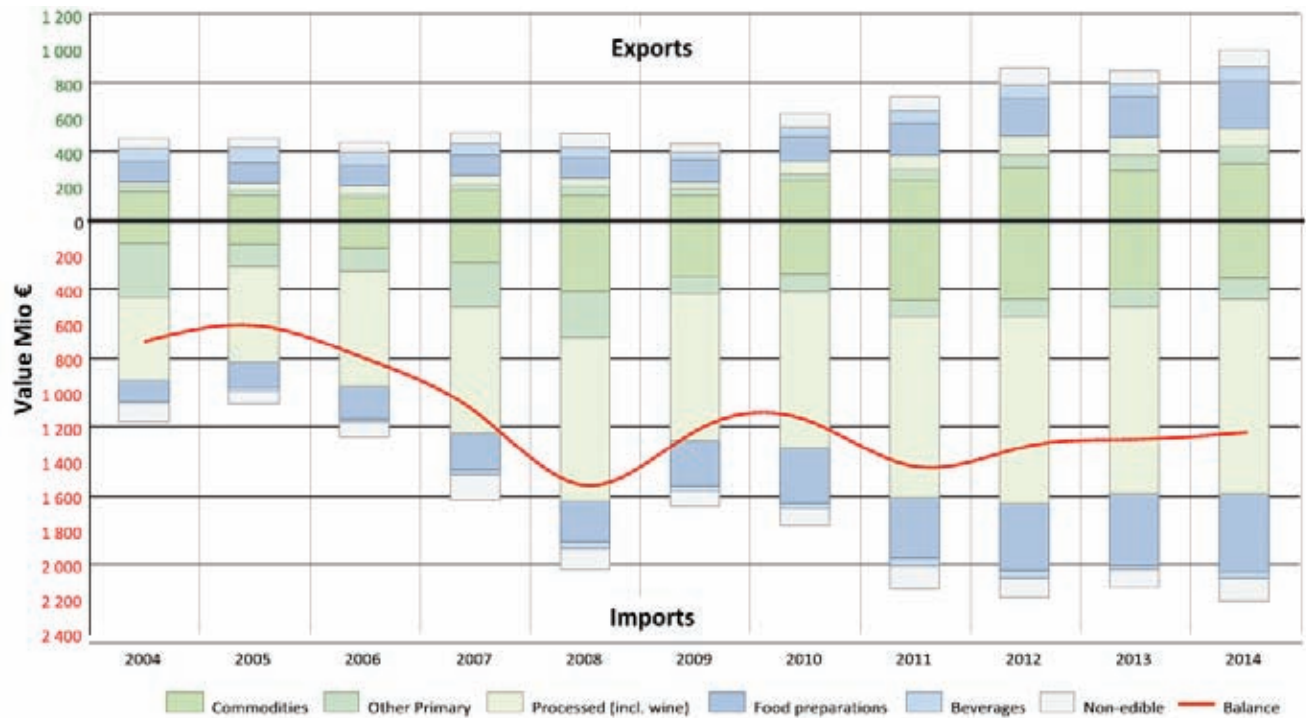


Thailand was ranked 13th for total imports of Agro - Food to the EU, with trade valued at 2.2 billion Euro, while EU exports to Thailand were valued at 987 million Euro in 2014, delivering Thailand a positive trade balance of 1.2 billion Euro (EU Commission Directorate-General for Agriculture and Rural Development Unit, 2015).

	Asia	North America	Europe	Africa	Oceania	Latin America
Exports (Million Baht)	397,554	87,165	78,471	67,729	22,866	8,048
Growth Rate (%)	1.9	0.2	-12.7	-20	-0.8	-11.2

Source: National Food Institute, Ministry of Industry, 2015

Figure 2: EU Agro - Food Trade with Thailand (2004 – 2014)

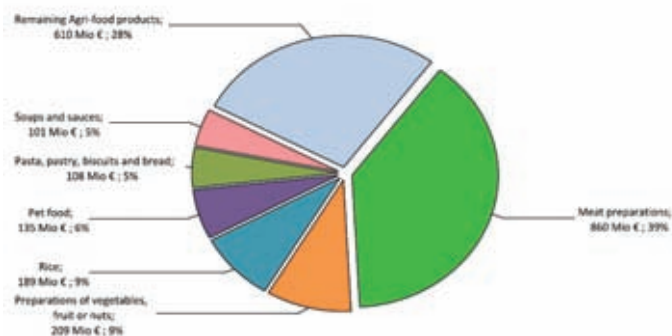


Source: EU Commission Directorate-General for Agriculture and Rural Development Unit, 2015

The main foods imported from Thailand were meat preparations, valued at 860 million Euro or 39 percent of total food imports, followed by fruit and vegetables, valued at 209 million Euro, rice at 189 million Euro and pet food at 135 million Euro.

The top five exports of European food to Thailand in 2014 were milk products, valued at 124 million Euro, food preparations at 90 million Euro, pet food at 89 million Euro, feed ingredients at 76 million Euro and spirits and liqueurs at 63 million Euro.

Figure 3: Top 5 EU Agro - Food Imports from Thailand (2014)



Source: EU Commission Directorate-General for Agriculture and Rural Development Unit, 2015

Figure 4: Top 5 EU Agro - Food Exports to Thailand (2010-2014)

	Exports						
	Value in Million Euro					%	
	2010	2011	2012	2013	2014	Share in all Agro 2014	Change 2013-2014
1 Milk powders and whey	52	72	86	105	124	12.6	18.1
2 Food preparations	44	68	70	76	90	9.1	18.4
3 Pet food	50	61	80	88	89	9.0	1.1
4 Other feed ingredients	50	57	95	79	76	7.7	-3.8
5 Spirits and liqueurs	54	68	60	51	63	6.4	23.5

Source: EU Commission Directorate-General for Agriculture and Rural Development Unit, 2015

Nevertheless, a number of regulatory restrictions and impediments still remain, causing difficulties in conducting business in the industry. The current issues and challenges in the food and beverages sector are discussed in this Position Paper.

1. Excise Tax

Excise taxes on alcohol beverages are an important revenue source for the Royal Thai Government.

The current tax structure is however, complex and discriminatory as well as encouraging non-tax paid activities. While attempts were made in September 2013 to address various issues of the tax system, the introduction of Last Wholesale Price (LWP) and the increase in overall burdens, especially for European imports compared with local products, have increased costs for business, distorted market dynamics and failed to optimize tax revenues. Besides the increasing tax burden on the alcohol-beverage business and the above mentioned impacts, the reforms also spontaneously increased illegal alcohol sales in the Thai market and increased the workload for domestic supervisory officials.



It should also be noted that discrimination remains; in relation to white spirits, there appears to be discrimination against the wine category. Fundamentally, the alcohol excise structure should be simplified towards a non-discriminatory, single, specific tax on a per-litre-of-pure-alcohol (LPA) basis, consistent with international best practice and recognized by the World Health Organization's (WHO) Global Alcohol Strategy.

We therefore fully support the objectives of the Excise Tax Code in seeking to harmonize and streamline the excise tax law in Thailand, which is currently subject to numerous separate pieces of legislation and subsidiary laws/regulations. Indeed, there are key proposals in the current draft that will help support revenue growth and stability, improve transparency, minimize evasion and avoidance practices and simplify for legitimate businesses.

Recommendations:

1. In setting the applied Liquor Tax rates in the new Excise Tax Code, there should be **no increase in taxation burdens**, particularly on premium products. This is essential in order to minimize the non-tax paid trade, encourage revenue growth and support consumer and business confidence.
2. The tax base for any ad valorem component should **be exclusive of excise or other taxes payable**, to ensure simplicity and transparency of the system. European importers of alcohol beverages prefer the previous methodology of 'ex-factory/CIF plus customs duty' as this constitutes best practice for calculating the ad valorem alcohol tax base. It is a commonly - applied international methodology for determining the value of goods for customs purposes and is subject to international Customs Valuation agreements, which impose rigour around the tax base calculation process.

3. There should be a clear pathway over time towards a **fully specific taxation** regime.

4. There must be **adequate and consistent enforcement** to help address tax evasion and illicit trade practices.

2. Labelling Notification, Trademarks and GIs on Alcohol Products

The EABC supported Ministry of Public Health initiatives to lower alcohol consumption among adolescents and drinking and driving responsibly efforts in 2015. Stricter driving enforcements showed a good example of how creativity and enforcement can reduce accidents during the New Year period. We encourage the Royal Thai Government to consult with the industry to explore a more pragmatic way to reduce alcohol consumption.

a) Labelling Notification/Trademarks

Labelling requirements in Thailand can be extremely onerous and often exceed the requirements that are needed to adequately inform consumers. This can lead to additional packaging costs and could be considered as a non-tariff barrier if the requirements for imported goods differ from those on domestic products. Certain requirements should be exempted for specific products where they are not relevant or would be unnecessarily burdensome.

The European beverage alcohol industry is deeply concerned with the recent changes approved by the Alcoholic Beverages Policy Board on labelling of alcohol products.

Specifically, the government approved restrictions on the content of beverage alcohol labels for containers (e.g. bottles, cans), packaging (e.g. IBC boxes) and associated

materials (e.g. neck tags). The notification is intended to remove any words or images from labels that could induce a consumer to purchase beverage alcohol and prohibit the use of celebrities and cartoon images.

However, there is a considerable lack of clarity in many of the terms and the broad scope afforded to regulators in its application, which distorts fair competition, confuses industry and consumers and leads to unintended consequences.

In this case, the labelling regulation (Notification of the Alcohol Beverage Control Committee Re: Criteria Procedures and Conditions for Labels of Alcoholic Beverages B.E. 2558) undermines the important functional and economic rationale of trademarks and geographical indications (GIs) in international commerce as tools for distinguishing products (by manufacturing procedures) and importantly for Thailand which is currently a member of WTO, it can lead to an unintended violation of the TRIPS Agreement. The value of trademarks and GIs as a source identifier is shared by both traders - through the ability to create competitive opportunities on the basis of factors other than price competition - and consumers, in their ability to classify products of origin, quality and manufacturing procedures etc.

Thailand can seek to regulate alcohol beverages in furtherance of legitimate consumer and health protection in a way that is consistent with its obligations under the TRIPS Agreement. However, the policy flexibility is not unfettered. Such obligations refer to specific legal obligations that Thailand must follow when adopting and implementing product regulations affecting intellectual property rights, such as trademarks and GIs, to ensure effective and adequate protection of these rights. Therefore, Thailand is obligated to provide the registration and protection of any sign (including words, figurative

elements, colours, etc.) that is distinctive - i.e., capable of distinguishing the goods of one trader from another. Only in limited circumstances may Thailand invalidate, cancel or prohibit the use of trademarks. For example, if the trademark in question is deemed to be misleading or deceptive, goes against public morals or violates public order.

b) Geographic Indicator (GI)

The use of trademarks and GIs (geographical origins) that accurately refers to the origin, qualities and characteristics of the products to which they relate and which are not misleading or deceptive, are essential tools to ensure an open and effective marketplace. This was recognized by the European Court of Justice in an important judgment in 1990, in which the Court explained that “trademark rights are... an essential element of the system of undistorted competition” and that “enterprises must be able to gain customers by the quality of their products or services; and this can be done only by virtue of the existence of distinctive signs permitting identification of those products and services.”

The labelling regulation announced by the Royal Thai Government, which came into effect on 20 October 2015, requires the alcohol industry to remove marketing and language such as ‘premium,’ ‘aged 21 years,’ or ‘Product of Scotland’ from the labels of beverages. In response to this regulation, if the trademarked terms accurately refer to the method of preparation of the alcohol beverage in question, its origin or qualities, there is no basis to prohibit their use under the TRIPS Agreement. Such terms do not make false health claims but merely identify the product and its characteristics. Furthermore, there is no offensive element from a public morals perspective about these terms, they only simply identify the product and its characteristics and distinguish it from its competitors.



The industry opposes the regulation in its current form and reiterates its request to the government to engage in a good faith dialogue on all issues regarding the regulation of alcohol based on international best practices.

Recommendations:

1. Thailand must comply with WTO, Article 22 TRIPS with respect to indirect indication to the GI.
2. Thailand must notify WTO TBT to ensure that technical regulations, standards, and conformity assessment procedures are non - discriminatory and do not create unnecessary obstacles to trade.
3. The EABC recommends a dialogue with the Alcohol Policy Board to explore pragmatic solutions to labelling. Moreover, as the labelling notification enforced on 20 October 2015 with the guidelines issued on 30 September 2015 remained unclear, the EABC requests a dialogue with the Thai authorities to establish comprehensive guidelines on interpretation and implementation of these measures.

In addition, the European food and beverage industry in Thailand, through the EABC Food and Beverage Working Group, are happy to provide useful alternatives to Thai agencies. Such an example is the Commercial Communication Code which can be used as a platform or example of best practices for local players or Thai authorities.

3. Excessive Graphic Health Warnings

A draft Notification prepared by the Alcohol Beverage Control Committee proposes to mandate graphic, pictorial warning labels on all beverage alcohol products. These labels would be at least 25 percent of the area of the largest label on a bottle and 25 percent of the surface area of the

entire box. The European beverage alcohol industry believes that it is fundamentally inappropriate to apply such images to alcohol packaging/labels.

There is no scientific evidence to suggest that these graphic warnings are efficient and indeed, no other country in the world applies such measures. They are extreme and unlike the World Health Organization's (WHO) Global Alcohol Strategy, the proposal does not make the very important distinction between the harmful use of alcohol and alcohol consumption per se.

Importantly, the proposal raises a number of serious concerns and could lead to unintended consequences that are not in the interest of Thailand's international standing and reputation. For instance:

- Damage to Thailand's international image as a preferred tourism destination at a time when the overall economy and tourism numbers are extremely volatile
- Potential intellectual property rights implications under national and international law. The proposal curtails intellectual property rights and would need to be carefully considered in light of Thailand's obligations under the General Agreement on Tariffs and Trade (GATT) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
- Potential increases in illicit activity as the use of pictorial warnings that cover the majority of a product's label will make it easier for counterfeit and other non-tax paid activities
- Damage to business confidence as the proposal will substantially increase supply chain costs and erode brand equity

Recommendation:

Thailand should not accept graphic health warnings, but should instead consider alternative and more effective measures to reduce the harmful use of alcohol. The interventions need to be evidence-based and target specific problems.

As noted above, the industry, via the EABC Working Group, would like to engage in dialogue with the Alcohol Policy Board to explore pragmatic solutions to labelling as well as other areas of potential collaboration, including, addressing drinking and driving, reducing underage drinking, providing relevant information through education, providing responsible service and sale of alcohol.

4. Lack of Industry Participation in and Consultation in Policy Development

a) Policy Consultation

In 2015, Thailand promoted and encouraged the private sector to participate in large infrastructure projects under Public-Private Partnerships (PPP). PPP's aim is to attract cooperation from the private sector to co-invest in projects with the Royal Thai Government. Significant marketing efforts were undertaken by the Royal Thai Government for roadshows to attract foreign investment. These costs can be mitigated and processes to obtain investment funds can be fastened.

Thailand should involve the industry in the early stages of setting up plans for investment projects, because often these investments contain amendment to laws and regulations that need to be in compliance with third parties to provide a suitable investment climate. Not only can the industry help spot related concerns, it also can help provide best practices to achieve the desired outcome.

However, the EABC sees that the private sector tends to be involved much later, often when the government needs private investment. Hence the government needs to spend a significant amount of money to educate investors, yielding slower processes to obtain necessary funds for projects.

Recommendation:

We urge the Royal Thai Government to involve the industry when formulating national policies. EABC working groups stand ready to bring best practices to assist Thailand to be more competitive and to create a suitable environment for European investments.

b) Respect for, and compliance with, WTO regulations

Being a WTO member, Thailand has benefited from the 147 member countries, both developed and developing and from all regions of the world. These countries are required to observe WTO's fair and free trade principles from WTO's general principles like non-discriminatory treatment (MFN and National Treatment), transparency and protection for domestic manufacturers with tariffs only. The latter including obligations bound by members in sub-agreements on tariff reduction, subsidies and obstacles to trade, free trade opening for agro-food and the adoption of standards, which must be fair and non-discriminatory (Ministry of Agricultural and Cooperatives, 2016).

Having WTO rules governing international trade helps promote fair competition in trade and create confidence in both traders and investors. Incompliance leads to doubts about Thailand's commitment to take an active role of leading agro-food products and the country's stance as the world food supplier.



The EABC strongly encourages Thailand to comply with WTO rules set to promote the country's position as a respectful, food exporting nation on the world stage. This in turn would enhance Thailand's position and respect for its virtue and dignity as the kitchen of the world.

Recommendation:

Respect for and compliance with the WTO will raise Thailand's position on the world stage for agro - goods and create a transparent trade environment.

Healthcare and Pharmaceuticals

SUMMARY OF RECOMMENDATIONS

1. Fostering investment attractiveness for innovation and research collaboration

- 1.1 Tax and non - tax incentive schemes for innovation shall provide competitive benchmarking in the region.
- 1.2 Enabling viable and accessible local market with available skilled workers. The public and private sectors must work together to advance R&D and ensure access, viability and sustainability of the investment.
- 1.3 Thailand needs to provide a suitable environment for local companies to develop their products and services to serve the demand of global consumers.

2. Enhancing regulatory ecosystem and removal of technical barriers to support ease of doing business

- 2.1 The EABC urges the Royal Thai Government to consult with all stakeholders prior to the submission of the Bill to the Cabinet to enhance transparency and practical resolutions.
- 2.2 Price inquiry/ control should not be compulsory in draft Drug Act in alignment with international regulatory practice.
- 2.3 Thailand must support prevention of patent infringement by generic drug companies. With the disclosure of patent information, adding a condition for generic drugs to notify patent status could be specified in Ministerial Regulations.

3. Appropriate Intellectual Property ecosystem; key enabling factor of pharmaceutical innovation

- 3.1 The EABC recommends Thailand prioritises increasing competent patent examiners in high technology research especially in chemicals and pharmaceuticals, where the number of patents granted is significantly low due to a lack of competent examiners.
- 3.2 We recommend the DIP commits to training, to improve the quality of qualified officers in the short, medium and long term. It is stressed that merely increasing staff is not satisfactory – these new examiners must be skilled in a particular art, such as pharmacy, mechanical engineering, electronics etc. and must be adept at patent analysis.
- 3.3 We encourage the DIP to consider outsourcing options to improve efficiency.
- 3.4 Thailand should establish patent term restoration to compensate for long patent approval process and delay of regulatory marketing authorization to encourage effectiveness and productivity for government procedures.

4. Enabling market environment and sustainable healthcare financing approaches to support innovation

- 4.1 The EABC encourages more industry consultation or regular dialogue to ensure transparent procedures and to enhance access to medicines.
- 4.2 We support transparent procedures for the pharmaceutical listing, pricing and tendering process, considering the value of innovation to therapeutic outcomes and clinical needs rather than cost savings.
- 4.3 Thailand should exercise open competition in order to best serve consumers and patients.
- 4.4 Continuing our recommendation from the previous EABC Position Paper, it is essential that legislation, in procurement and regulatory frameworks, as well as the Trade Competition Law, must be reviewed for further liberalization to allow competition on an equal basis.



Industry Overview

The emergence of the ASEAN Economic Community provides an excellent platform for Thailand to strengthen policies promoting itself as a Super Cluster and 'Medical Hub', encompassing improvement of medical services and integrative wellness centres, as well as to promote medical research and development. To pursue the objective of medical research excellence, the Royal Thai Government needs to promote research and development (R&D) capabilities in science, medical and public health research, including the creation of medical products that can be commercialised to drive the Thai economy and ensure sustainable health security.

The innovative healthcare industry represents a prime example of the knowledge based economy not dependent upon low labour cost and low manufacturing cost for success. As a regional leader in the principle of universal health coverage and as a popular destination for medical tourism, Thailand stands ready to benefit from its core competencies and break free from the middle income trap to become an innovation-driven economy, given appropriate strategies, policies and enabling legislations are implemented.

In an era of newly emerging diseases and re-emerging diseases, innovation is extremely vital to address global health needs, and the research-based biopharmaceutical industry is fully committed to developing new and more effective medicines to serve those needs. Given the high investment cost and high risk of failure, respect for intellectual property rights in both developed and emerging economies, supported by sound government regulatory processes, a well-developed health delivery system and adequate healthcare financing, are key enabling factors to ensure a greater chance of success in innovation.

Among the emerging markets of China, the Republic of

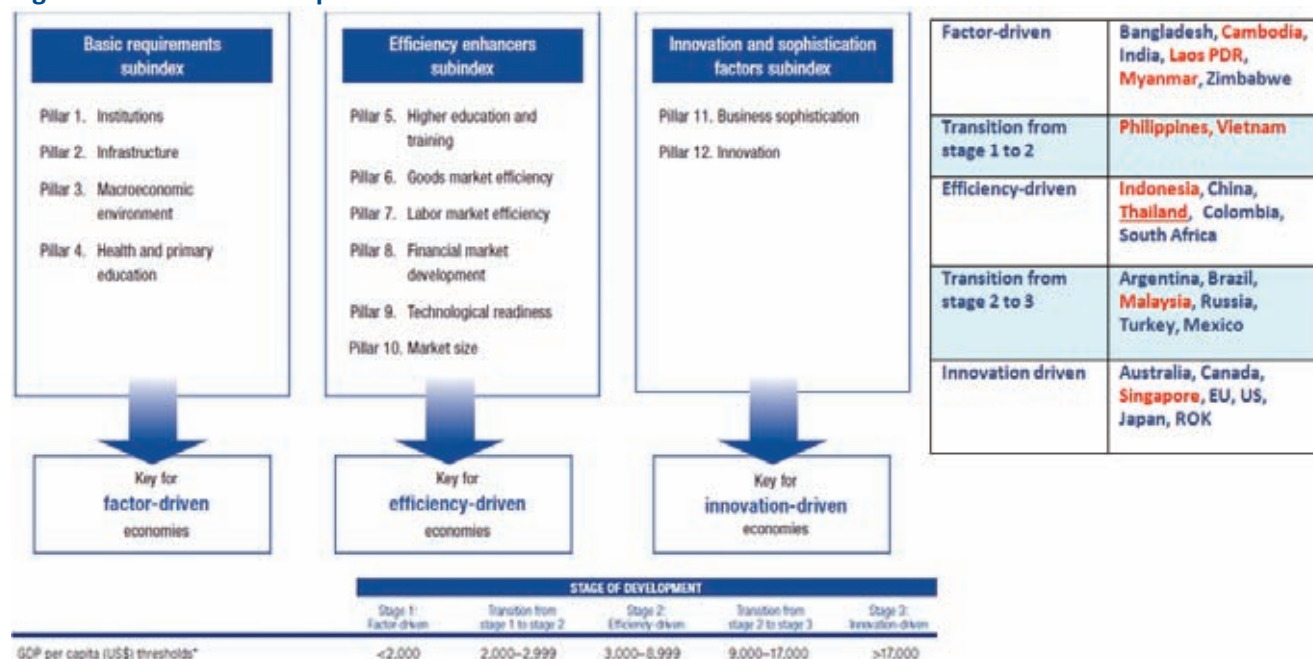
Korea, Brazil and Russia, overall spending on R&D for medicines has increased dramatically over the past decade while in others it is growing more slowly. Incremental innovation, which tailors medicines for local markets in middle-income countries, is well practiced within the region with a significant number of products developed in India and China, as well as a significant number of innovative products in Phases II and III.

Although there is no international blockbuster drug yet emerging from this region, participating in a range of innovative activities results in extending benefits in the long term, including:

- Clinical research contracts that help to sustain a nucleus of experienced researchers in participating centres;
- The infrastructure to participate in clinical research brings benefits directly to patients and should bring medicines to market more quickly;
- Undertaking later phases of development can provide the platform from which domestic or international companies establish networks to undertake a full range of R&D activities within a middle-income country;
- Ultimately, this may open up the possibility of developing new treatments for diseases that are a high priority in that country, or on a regional basis in Asia or Latin America, which may be economically viable without being dependent on the US and European markets for commercialized revenues.

According to the Global Competitiveness Index 2015-2016, the Thai economy remains at the third stage of development driven by efficiency enhancers, as of the previous year. To become an innovation-driven economy which increases competitiveness, and consequently contributes to the economy's resilience, it has to increase productivity through business sophistication and innovation.

Figure 1: The Global Competitiveness Index Framework



Resource: The Global Competitiveness Report, World Economic Forum 2015–2016

Thailand stands to benefit from the changing business model of innovation in the 21st Century which has moved away from Vertically Integrated pharmaceutical models where one entity undertakes all operations in-house to a Horizontal Cluster of independent universities, research-institute combinations and SMEs which jointly collaborate in the invention and patenting of novel medicines. The choices of portfolio to be researched are now aligned with the target country's clinical needs and health/disease trend; in-license of intellectual properties developed locally is becoming the business norm as global business partnerships form to serve the global market. In parallel, many companies from developed economies are outsourcing R&D to more efficient partners in developing economies where the innovation eco-system is sufficiently mature for technology transfer. This is where Thailand starts to emerge as a semi-developed competency for R&D in medical research.

Thailand, with its pool of researchers and existing unindustrialized research, stands ready to benefit from this trend given pro-innovation reform in key strategies, policies and laws.

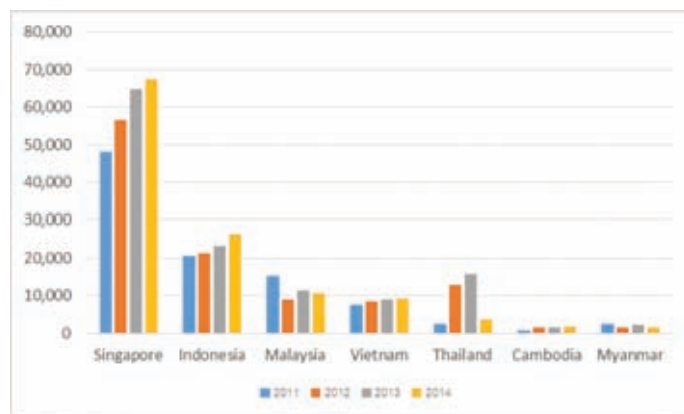
To become a regional leader in healthcare services and the medical research and development sector, Thailand needs to develop a long-term innovation embracement policy that is strong and consistency implemented; there are needs to be coordinated between the private sector, academic and research institutes, multi-government agencies and policy makers. Regulatory and intellectual property ecosystems as well as fair market competitive environment are necessary as both international and domestic companies will only invest in the risky research process if it is possible to protect the intellectual property of these investments and to ensure business certainty in market access. Finally, a sustainable system for innovation

requires coordination among the public and private sectors. This document aims to underscore some of the hindrances preventing Thailand from becoming an innovation-led economy and a true leader in healthcare provision.

1. Fostering investment attractiveness for innovation and research collaboration

To attract research collaborations and sustainable direct investments in R&D and innovative activities, framework conditions and tax & non-tax incentives conducive to innovation are vital. Whilst the most important condition is a large stock of well-educated labour and human capital, which accelerates technological catch-up, a viable regulated market is needed for technological collaboration and transfer where private and public or public-interest actors (such as foundations and NGOs) can play equally important roles in providing incentives for sharing. Although there is a positive relationship between FDI and the development of innovation, market size and market growth rate are the predominant factors for FDI. Figure 2 shows that Thailand needs further enhancement to attract a fair share of FDI, compared to its ASEAN neighbours.

Figure 2: Net Inflows of Foreign Direct Investment (FDI) in ASEAN countries, 2011-2014 (USD Million)



Source: The World Bank, 2016

Recommendations:

1. To attract research investment and enhance research collaboration, tax and non-tax incentive schemes for innovation should be established, competitively benchmarking in the region.
2. Ensure viable and accessible local market with available skilled workers. The industry cannot go in alone. The public and private sectors must work together to advance R&D and ensure access, viability and sustainability of the investment.
3. Thai enterprises cannot focus solely on the domestic market. They need to develop their products and services to serve the demand of global consumers; otherwise, they will lose market share to other ASEAN enterprises.

2. Enhancing the regulatory ecosystem and removal of technical barriers to support ease of doing business

Referring to the enforcement of Licensing Facilitation Act, B.E. 2558 (2015), the EABC appreciates ongoing collaborative actions of Thai Food and Drug Administration and the Office of Public Sector Development Commission to streamline regulatory process efficiently in order to facilitate business operations and competitiveness.

Whilst this development supports the policy agenda of Medical Hub Super Cluster by enhancing the regulatory environment to promote ease of doing business and investment climate, the legislative amendment of Drug Act creates concerns on technical barriers, especially in the sections relevant to price inquiry and price control condition for drug registration requirements of innovative medicines, which deviates from and is contrary to internationally accepted regulatory standards.

The current version of the Thai Drug Act was established in 1967. Presently, the Thai Food and Drug Administration (FDA) under the Ministry of Public Health is proposing a new Drug Bill for consideration by the Cabinet and National Legislative Assembly.

The European industry has raised key concerns on the regulatory requirements for marketing authorization applications² included in the new Act, notably:

- Mandatory disclosure of patent information of innovative medicines during marketing authorization submissions;
- Disclosure of price, either in the format of retail price or price structure, for innovative medicines during marketing authorization submission;
- Empowerment of the Thai authorities to establish price control mechanisms in relation to marketing authorization approval in the event that prices of patented innovative medicines are deemed unreasonable or not cost-effective.

The decision to deny market entry of innovative healthcare products on a subjective, and as yet translucent price level determination as opposed to the internationally accepted norm of safety, quality and efficacy, will not only create an excessive barrier to innovative and essential medicines and restrict public health benefits, but will also send out the wrong signal to potential investors in R&D. It is highly recommended that such articles should not be associated with marketing authorization approval as the

ramifications on availability of novel medicine decided on subjective price considerations will have negative impacts from a social, scientific and economic perspective. To date, a similar provision has not been established in countries with known competent regulatory capacity.

Trade wise, these additional requirements represent technical barriers to trade (TBT) and are discriminatory towards new patented medicines, which will develop into additional concerns if Thailand would like to look forward to free trade negotiations with other nations.

Recommendations:

1. A multi-stakeholder consultation process should be re-established to enhance transparency and stakeholder involvement prior to the submission of the Bill to the Cabinet for consideration.
2. Removal of price inquiry/control from draft Drug Act should be considered in alignment with international regulatory practices.
3. With regards to the disclosure of patent information, adding the condition for generic drugs to notify the patent status of the medicine to be registered with authorities, could be specified in the Ministerial Regulation. This is in order to prevent patent infringement of the generic drug companies that will cause unnecessary business conduct costs to the generic companies themselves.

²Reference is made to the following sections:

Section 48: The application for Drug Marketing Authorization (Registration) under section 48 shall include the following particulars:

Section 48 (10): Patent information, if the drug is a patented drug under patent law, or information concerning rights in Thai traditional medical knowledge if the drug is registered under Thai traditional medical knowledge in the category of personally owned formula under the law on protection and promotion of Thai traditional medical knowledge;

Section 48 (11): Price structure if the drug is a patented drug under the patent law, subject to the rules and procedures announced by the relevant committee.

Section 49: The Licensor (Thai FDA) shall not be approved for marketing authorization if the Licensor considers that:

Section 49 (5): The patented drug under the patent law has an unreasonable price structure or is not cost-effective

3. An appropriate Intellectual Property ecosystem; a key enabling factor of pharmaceutical innovation

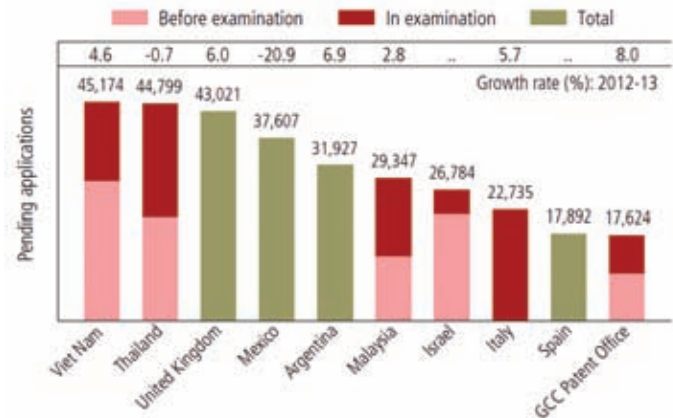
In alignment with government direction to promote R&D and drive the economy through innovation based industries, it is necessary to have an appropriate intellectual property ecosystem, especially through effective patent registration and systematic enforcement, to encourage innovation development and attract investors. In this context;

- Patents encourage the disclosure of information to the public, increasing the public's access to technical and scientific knowledge, otherwise, an individual or corporate inventor may choose to keep the research details of an invention secret.
- In addition, they provide an incentive and reward for innovation and investment in R&D and future inventions. Patent pendency results in uncertainty of investment security and business risk for innovators and increases the possibility of infringement during the pending approval periods.
- Delays in patent approvals may impact local researcher's ability to develop incremental innovation from existing patents. Incremental innovation (improvements over existing technology) is the most likely area in which Thai innovators will be able to make an impact. A delayed patent system provides a vague and uncertain patent landscape on what subject matter is considered patentable and what can therefore be improved to the benefit of the Thai economy.

In compliance with WTO TRIPS agreement, the term of a patent is limited for 20 years starting from the filing date of the patent application, which is in line with international standards as well as clearly defined in Article 33. The present average period of time for Thai patent approval (from application to grant) is 12.6 years, especially in terms of pharmaceutical patents. Data collected by the WIPO

affirms high figures of patent backlog compared to other countries, as demonstrated below:

Figure 3: Patent Application Backlog



Source: WIPO Statistics Database, 2014

Additionally, data exclusivity, in compliance with the WTO TRIPS agreement, Article 39, is necessary to provide a measure of certainty to the innovator that they will be provided with a period of protection for their efforts of testing a drug and ensuring its safety and effectiveness for patients no matter when, where or how long it takes to bring a drug to market. Patents are an important form of intellectual property, but are not themselves necessarily sufficient to create the favourable environment needed to support the development of medical advances. Data exclusivity is not an extension of patent rights, and it does not prevent the introduction of generic versions of the innovative drug during the data exclusivity period, as long as the marketing approval of the generic version does not use or rely upon the innovator's test data.

The Department of Intellectual Property (DIP) is aware of the necessity to resolve the patent backlog by increasing appropriate resources of competent patent examiners. However, this effort should be additionally prioritized to

focus the increase of appropriate resources in the areas that require high skill of technological advancement like pharmaceuticals and biotechnology in order to support the national R&D agenda.

Further to resource management, the Patent Act amendment to streamline the patent registration process was a recent key improvement which DIP brought to the agenda in 2016. The EABC supports this legislative amendment, which focuses on the examination bottleneck at both the formality checking stage (i.e., the process causing patent applications to not be published within the timeframe) and the substantive examination phase, as soon as the scopes remain to align with international standards and international patentability in respect of novelty, inventive steps, and industrial application.

Alternatively, patent term restoration or adjustment has been established in the international legal framework regarding unreasonable delay in patent registration, which would redress the impingement on the patent rights of affected patent applicants for lost time and investment. Observing international standards such as those of the EU, patent term restoration (also known as a supplementary protection certificate) will also be given to a patentee wishing to encourage innovation by compensating the patentee for the long period of time taken to obtain regulatory approval of their human and veterinary medicinal products on the occasions of unreasonable delay. Such restoration applies only after the corresponding general patent expires and has a maximum lifetime of five years. The term 'extension' has been seen and distorted as somewhat of a scheme, biased towards monopolization, in which de facto is prejudiced to those investing and working in research and development. The term 'restoration' better illustrates the concept.

4. Enabling market environment and sustainable healthcare financing approaches to support innovation

Recommendations:

1. Prioritize an increase of adequate resources of competent patent examiners in high technological advancement to bring approvals within a reasonable timeframe, which will ensure sustainable solutions for all stakeholders.
2. We recommend that the DIP commits to training to improve the quality of qualified officers in the short, medium and long term. It is stressed that merely increasing numbers is not satisfactory - these new examiners must be skilled in a particular art, such as pharmacy, mechanical engineering, electronics etc. and must be adept at patent analysis.
3. Alternatively, the DIP may consider further outsourcing options to improve efficiency.
4. Alternatively, establish patent term restoration as a solution to create fair practice to compensate rights holders, considering the current patent backlog in Thailand as well as the delay of regulatory marketing authorization. Patent term restoration should occur only in case of delay. This should enhance the effectiveness and productivity at the government procedural level with mutual benefits to Thai entities and foreign direct investment.



Having adequate and sustainable healthcare financing is one among key enabling factors to ensure a greater chance of success in innovation development, due to the market environment. It is important that the government manage to have appropriate and adequate sources of funding since increasing chronic diseases and life expectancies associated with an aging population tends to drive overall healthcare expenditures up. This will also ensure sustainable access to healthcare, treatment outcomes and quality for patients, which require public and private efforts to provide alternative and collaborative solutions in long term.

This should be developed through a multi-stakeholder approach, aiming for sustainable long term solutions rather than short term measures, which may result in limiting access.

In the current circumstances of the national government procurement and national listing system, the procedures for pricing, reimbursement and tendering may be unclear, inconsistently enforced, and lack transparency. In addition, Thailand is one of the countries that is often seen to provide preferential treatment to its state-owned pharmaceutical company. It is observed that state-owned pharmaceutical companies enjoy particular exemptions and privileges that other privately-owned domestic companies do not receive. As mentioned in the EABC 2013 Position Paper, the regulations of the Office of the Prime Minister on Procurement B.E. 2535 (1992) allows the state enterprise, specifically the Government Pharmaceutical Organization (GPO) strong preferences and price advantages. This practice distorts the market mechanisms of the public healthcare and pharmaceutical market (see Annex V). Together, such preferential treatment may raise doubts about the competitive disadvantage borne by the private sector.

Recommendations:

1. Encourage more industry consultation or regular dialogue to ensure transparent procedures and to enhance access to medicines.
2. Establish transparent procedures for pharmaceutical listing, pricing and tendering process considering the value of innovation to therapeutic outcomes and clinical needs rather than cost savings. This would affirm that all Thai citizens would receive the most innovative medicines and treatments.
3. A level playing field should be exercised with open competition in order to best serve consumers and patients. Any preferential treatment for state-owned pharmaceutical companies or national companies should be eliminated.
4. Continuing our recommendation from the previous EABC Position Paper, it is essential that legislation, in procurement, regulatory frameworks, and Trade Competition Law, must be reviewed for further liberalization to allow competition on an equal basis.

Information and Communication Technology (ICT) including Digital Economy

SUMMARY OF RECOMMENDATIONS

The ICT sectors, including what has come to be known as the ‘digital economy’, can represent about 10 percent of a nation’s GDP. They are strategic; if functioning efficiently they can have a positive multiplier effect on the rest of the economy. Thailand is currently lagging well behind in telecommunications infrastructure (notably broadband infrastructure) and ICT facilities. Thailand’s GDP, capacity for innovation and other aspects could be greatly enhanced if telecommunications were reformed and broadband policies implemented. The ICT section of this position paper is divided into four sub-sections: Digital Economy, Telecommunications, Digital Broadcasting and IT. Recommendations are shown, and major issues are highlighted separately.

This chapter underscores the importance of services sector liberalisation.

1. Digital Economy

- 1.1 A reformed and renamed MICT is welcomed. However the fundamentals of telecoms reform and a well-structured industry, underpinned with broadband, should not be left unaddressed or considered unimportant. There is a reform gap.
- 1.2 A trusted internet (with cybersecurity and civil society governance) will produce better results for business, individuals and the economy than one where the perception of the internet is a vehicle to monitor and collect data. Governance requires implementing the multi-stakeholder model.
- 1.3 How data is collected, managed and used is a critical issue in the world of big data and analytics. The proposed law continues to have some issues.
- 1.4 National security issues should be managed by a government agency subject to strong Rule of Law bases, not by state-owned enterprises which are also operating networks.
- 1.5 Encouraging Thai companies to increase their use of ICT and develop new business models, a key strategy of digital economy, requires enabling structures, mechanisms and regulations. Investment in ICT is a form of investment in innovation - to date there are few mechanisms such as grants and direct funds which encourage companies, particularly SME, to invest in such innovation.
- 1.6 Skills are in short supply and for the whole ICT sector (and the entire economy) there is a long overdue need for work permit and visa reform including a practical business visa.

2. Telecommunications

- 2.1 A structure conducive to fairness, innovation and effectiveness is long overdue. Lack of reform and evolution of state-owned enterprises has become a major problem. Effective competition regulation is missing. Commercial spectrum should continue to be issued by auction. The Foreign Dominance Notification continues to be an impediment to investment. A strong, effective and truly independent regulator is needed; measures to weaken it are not recommended.



3. Digital Broadcasting

3.1 Allocation of spectrum in late 2013 gave a great shot in the arm to the sector. The industry is seeing innovation and opportunities for participation. Clear rules on spectrum use including about digital dividend spectrum will be welcome.

4. Information Technology (IT)

4.1 The software development industry and other start-ups need access to funds. Government procurement can be enhanced greatly.

EABC seeks an innovative, attractive and efficient sector which contributes more positively to the economy which it serves, to quality of life. The papers from the ICT Conference of 2 July 2013 'Unlocking ICT' continue to be a good reference point to illustrate many of these policies. The EABC 2013 position paper including ICT provides further details, not all of which are included in this 2016 paper. Both are on the EABC website.

Industry Overview

ICT (Information and Communications Technology) is a strategic sector, especially in ICT services. Changing the sector's name from ICT to Digital Economy & Society, as is planned, does not itself change the strategy, activities or economic bases. Such changes would rely on adjustments to policy, strategy, and mindset and the body of laws (known as the Digital Economy family of laws). It needs to be remembered that the Digital Economy is enabled by (hard and soft) telecoms infrastructure. Thus an efficient, competitive, innovative, well-functioning and well-regulated telecoms sector is essential.

By way of illustration, it is noted that after one major economy in the region changed its Ministry to 'Broadband and the Digital Economy', the country's next government changed it back to 'Communications'.

The vision which recognises and captures a digital economy is highly commendable. In order to meet expectations of the name change and administrative changes, and more importantly what they really mean in terms of capturing a wide spectrum of potential, reforms will be needed. This chapter shows that changes have been positive in some areas but that some of these reforms do not appear to be progressing, and in one case, even considered important.

1. Digital Economy

A definition of Digital Economy shows how reliance on telecoms infrastructure and a well-structured, well-functioning services sector is an essential factor in making a digital economy work.

The 'digital economy' is all economic activity mediated by software and enabled by telecoms infrastructure.

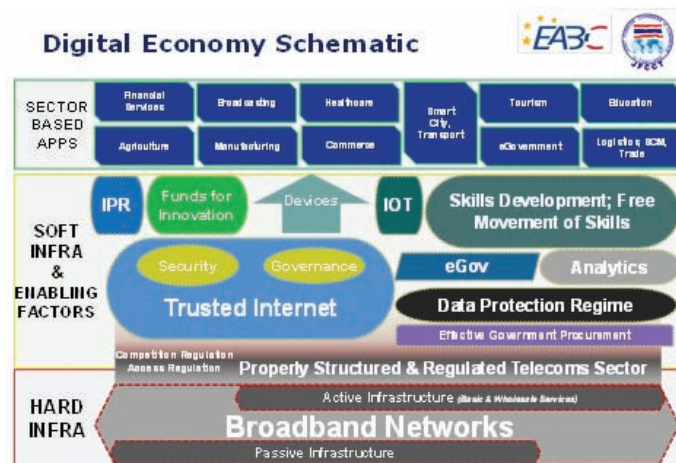
This includes core telecoms services such as voice, messaging, data, and video.

The goods and services within the digital economy can be broadly grouped as:

- **intrinsically digital** - streaming video, ebooks, computing services, Software-as-a-Service, social media (e.g. Facebook, LINE)
- **substitutes for established equipment and services** - virtual private communications networks, security services, virtualised PBXs, and services delivered on-line (e.g. accounting / other business processes, graphic design, software development, Software-as-a-Service, data analytics, knowledge-based outsourcing)
- **marketing, sales, logistics, etc. of physical goods** - e.g. Amazon, eBay, Alibaba, Tarad.com, Pantipmarket

Digital Economy is the means of enabling participation by all in social and economic enterprise, and also includes the role played by governments in developing infrastructure and services.

The Digital Economy works as we see it in three layers - the descriptions build up from bottom to top:



Source: EABC ICT Working Group, March 2015

a) BASE LAYER: HARD INFRA - Broadband infrastructure supporting a well organised, properly structured telecoms sector

The various models to address the broadband question are covered in other published materials, with some further information below. Some fundamentals about a properly structured industry follow:

- All operators licenced from the one regulator on fair and comparable terms
- Fairly administered spectrum allocation policy (all commercial spectrum to be issued by auction) and regional harmonisation
- Reform in foreign equity limits and the repeal of the Foreign Dominance Notification
- Evolution and policy-forced change to the role of State-Owned Enterprises and their reform to becoming contributing infrastructure and base services, but not propping them up with mandatory use, or creating new assigned roles and avoiding creating new monopolies. SOEs should not play a role in mobile retail.



And most importantly, the creation of a viable wholesale market with regulated access prices. Cloud services for example rely greatly on effective broadband.

Please see more about the right structure, and broadband, in the Telecommunications section.

b) SOFT INFRA AND ENABLING FACTORS: Key areas covered

Trusted Internet - Multi-stakeholder model

If the internet is overly-policed, confidence in its operations will be diminished. If its main purpose is seen to be about surveillance, it will not be respected or trusted. The internet needs to be a tool for interaction between citizens, business and government. If trust in reasonable confidentiality, security and operability is low, its value will diminish and it will not support Digital Economy objectives. The multi-stakeholder model (contrasted with a state-controlled model) is now accepted by the vast majority of the world's states. It is recommended as the model to use and all relevant laws should support it.

There are two critical dimensions to the functioning of a trusted internet:

- Cyber **security** - all participants must play a part for it to be effective, it cannot be left to a government agency alone. CIOs in big companies, responsible people in SMEs, CIOs in government and individual users all should play a role in the use of internet.
- Civil society **governance** of the internet - the rules of engagement are like using a roadway. Civil society and industry groups agree on rules. Support and buy-in are needed for effective operation. Thus good practices, security, peer pressure to shun malware and other offensive conduct is needed, along with protection of freedoms which also have certain respected boundaries. CIOs, individual users, organisations need to play a role in security via standards and good practices.

A top-down only approach (e.g. criminal law only without codes of conduct) for security and governance does not work.

There are at least two relevant laws here amongst the family of eight Digital Economy laws - the Computer Crimes Act (to remove overly - onerous reporting and maintenance and certain other provisions). The cybersecurity law should also be Rule-of-Law based and able to be understood and complied with, without negatively impacting business and individual activity.

Please see more below on Security and Trusted Internet.

eGovernment

Reference is made to the latest version of the EABC/JFCCT policy paper on eGov on the EABC website. Key relevant points include citizen/business interaction with government; inter-agency interaction and whole-of-government interaction, in phases. eGov appears both as an enabler (in the middle group of our chart) and as a set of applications (in the top group). Every opportunity should be taken towards on-line penetration for all government interactions. For example, the new Licensing Facilitation Act (referred to in the Cross Sectoral chapter of this Position Paper) does not appear to have on-line usage targets. This is seen as a missed opportunity. We recommend review of the Licence Facilitation Act by mid-2016 for such enhancements.

eCommerce

Well supported eCommerce is an essential part of transactions. While promoted by the Board of Investment (BOI), more is needed to enhance this area. The EABC has recommended a review of all elements of eCommerce (e.g. secure platforms, a payment system allowing for returns, and other elements) to support enhanced BOI promotional benefits, which include tax benefits. The idea is to achieve a valuable BOI promotion, and some standards need to be reached.

Fair treatment of **online intermediaries** (e.g. ISPs, data centres) in terms of responsibilities in the context of copyright infringement (by online merchants or others) is always needed, along with better means of reducing online copyright piracy. The amendments to the Copyright Act, which came into force in early 2015, strike a reasonable balance between the rights of IP owners on the one hand and the need by on-line intermediaries (e.g. ISPs, data centres) to carry out ordinary business, on the other. On-line intermediaries are in no position to police unknown copyright infringements which the inventory or practices of on-line merchants may show. A Court order or other regulated official process for take down or denial of access, where due process has been followed and subject to reasonable constraints, is something which on-line intermediaries are generally able to support. Please also refer to the Intellectual Property Rights chapter of this Position Paper for more information.

Data Protection Regime; Analytics

Trust in Thailand as a big data management jurisdiction is important. Thailand must be a well-respected place for data management. Thus, a data protection law needs to provide for the collection, storage and use of data with relevant consents along the way. A Rule-of-Law based regime for cross-border treatment is an essential part of this as it is standard practice for data to be processed offshore, which should not circumvent a local law. The Asia-Pacific Economic Cooperation (APEC) recommendations and model; for example, are helpful. Open Data (or publicly available data which is useful for analysis) is a development worthy of support.

Analytics will be more and more part of business and government. Doing this and moving to promote Open Data without a legal data protection regime will be difficult. Public data (anonymised as necessary) will need to be accessible by many.

A Personal Data Protection law has a number of purposes, beyond consumer protection. We see the objectives as including:

- 1) Ensuring a status of **integrity about personal data**; personal and public data must be accurate and able to be trusted. To achieve that, it must be reviewable (subject to possible constraints about secondary data created by a data custodian) by the relevant individual to enable correction of error etc. This is a consumer protection objective as well as an economic objective; the two are related. Consent is needed at all three stages: collection, use, disclosure - in context and with possible exceptions.
- 2) Helping to establish **Thailand as trusted and attractive location** for innovative data analytics and the use of data for commercial and public benefit purposes by local and foreign companies doing business in Thailand. This will attract data analytics firms to locate in Thailand and encourage the local use of data analytics, including of public data. Impediments to this aim should not deter pursuit of the objective. Such impediments include Thailand's relatively poor reputation to date in terms of reliable and resilient hard and soft telecommunications infrastructure, data centre policies which only go part way towards establishing Thailand as a hub with too much direct government involvement, and related legislation which over-reaches such as computer crimes legislation and proposed cybersecurity legislation.
- 3) Supporting a legal regime for **cross-border transfer of data** for analytics purposes and end-use purposes. This should be a Rule-of-Law based regime (not leaving it to the discretion of a committee). Data nationalisation, or the requirement that all 'Thai data' must be processed within Thailand, is unworkable in any practical sense. First, the data controller must be responsible under Thai



law, no matter where the data is exported to, and second, the other location must either have a protection regime at least as secure as Thailand's, or must have some recognisable and accreditable data protection requirements and practices. The former EU-US 'Safe Harbor' regime (being replaced by a 'Privacy Shield' arrangement) has some applicable principles but the EU-US situation is not easily adaptable to one covering disclosure and use of Thai data abroad. There may possibly be some highly sensitive categories of personal data (e.g. certain personal medical records, some aspects of banking, national security profiles) which may only be available for processing in certain ways. Rules need to be worked out for these cases.

Cross border usage also raises matters of extraterritorial reach of the PDP law and (potentially) conflict of law issues. Thus, the Personal Data Protection law could more clearly define its territorial scope of application. An overly broad extra-territorial application will be difficult or impossible to enforce, and will cause unnecessary international friction. At the same time, the extent to which foreign actors collect, use and disclose the personal data of Thai nationals, not least via the Internet, necessitates applying aspects of the Personal Data Protection law in an extra-territorial manner. Otherwise, Thai nationals may be completely unprotected in relation to such collection, use and disclosure.

The EABC supports attempts to find a sensible balance and notes that laws such as the Personal Data Protection law contains several different categories of rules. Some rules (in sections 21 and 26 in the most recent draft seen, for example) are aimed at preventing direct abuse, while other rules (in section 32 of that draft, for example) are aimed at more administrative goals. While it may be reasonable to ask a foreign company to abide by the first type of rules as soon as that foreign company collects data from Thai nationals (even in a once off transaction), the same limited degree of contact may not justify Thailand imposing on the

company the duty to prepare items for examination by the Committee.

In light of this, a binary - all or nothing - approach to when the Personal Data Protection law applies to a foreign actor would, we suggest, be inappropriate.

One option is to introduce a 'layered' approach to when the Personal Data Protection law applies to actors outside Thailand; that is, the legal rules contained in the Personal Data Protection law could be broken down into three layers (abuse-prevention layer, rights layer, and administrative layer) with different, incrementally demanding, jurisdictional rules attached to each layer. Adopting this structure would see the Personal Data Protection law's approach to extra-territoriality adopt world's best practice.

- 4) Supporting the use of trusted **Public Data or Open Data**, based on anonymized or originally anonymous (i.e. non-personal) data.
- 5) Supporting **'Smart City' objectives and initiatives** including traffic management applications

The recent (at the time of publication) moves to classify the draft data protection law, along with (as it is understood), the Cybersecurity law and amendments to the Computer Crimes Act will not help build confidence in the laws. During 2015, the consultation process on the family of Digital Economy laws, facilitated by ETDA and others, was much admired. The importance of consultation is not just about being fair, but the fact that it allows for industry education, buy-in and support. See more about Consultation generally in this chapter.

Funds for Innovation

Private sector-led initiatives in software development, application development and other tools have been great in recent times. Funding sources for start-ups in a variety

of applications are lacking and a system is needed. The EABC ICT Working Group has adopted the Innovative Venture proposal, which makes recommendations on availability of funds. A short description of some key problems follows.

Although the Thai start-up community has been successful in developing from a grass-roots level there are many challenges faced by Thai start-ups that can be largely attributed to government policies and regulations. For Thai founders of cash-starved tech start-ups the effort and costs to maintain a registered business is prohibitive and existing laws pertaining to immigration, revenue and investments make it nearly impossible to attract foreign investors. The comparably high effective tax rates, labour laws and weak capital markets ensures that once a Thai start-up reaches a point that when it needs investments from institutional sources to commence generating taxable income and hiring local software engineers and other support staff, it is compelled to register an entity in a neighbouring country in order to attract the necessary funds. Indeed a vast majority of funded Thai start-ups have a registered entity in either Hong Kong or Singapore.

The Business Security law which allows for various assets to be used as security is a welcome step.

Skills Development; Free movement of skills

This is covered under the IT section. The relevant issues are the same.

c) TOP LAYER: Various sector applications and take-up

The opportunities for development and take up of various applications are enormous. The financial services sector has much catching up to do (many FinTech enterprise, SME and individual applications are in the market) and there are many further opportunities in manufacturing, smart city and tourism.

Viability depends on the quality of the building blocks in our Digital Economy schematic - how the telecoms sector functions, how the soft infrastructure (laws, regulations, policies and processes) contribute to an effective means of facilitating technology onward.

As mentioned in Cross Sectoral Issues Chapter, Thailand in 2016 has slipped to 49th place in the World Bank Ease of Doing Business rankings. Some remedies for this situation are described in the Cross Sectoral Issues chapter.

For advanced services promotion, liberalisation of services generally is important. Many of these sectors rely on services support. Higher-end professional services which are very 'digital' including Knowledge Process Outsourcing and support, and support for IHQ / ITC policies will need access to higher end professional services.

d) Digital Economy family of laws

No.	Name of Law	Purpose	Comments
1	Frequency Act, aka NBTC Act	Amends Frequency Act 2010, rule of NBTC and how spectrum is issued.	<ul style="list-style-type: none"> • Robust independent NBTC important, "policy" vs "regulation". • Too much power to a committee. • Purpose should be about confidence in the jurisdiction and consumer protection. • Cross border notification.
2	Personal Data Protection Law	PDP law will affect all	<ul style="list-style-type: none"> • Surveillance, record-keeping?
3	Computer Crime Act amendments	Tighten CCA	Surveillance, record-keeping?
4	Digital Development for Economy and Society	Consolidates into one law, these three laws: <ul style="list-style-type: none"> • Committee for Digital Economy and Society • Promotion of Digital Economy • Digital Development Fund for Economy and Society law 	<ul style="list-style-type: none"> • Policy making power: in a committee. What checks and balances? • Establish National Digital Economy Promotion Committee and committee office • Establish Digital Dev Fund for Economy and Society, DDF for E&S Committee.
5	Ministry, Department and Bureau Reform law	Reform MCT into MoDE	Power?
6	ETA amendment	Upgrade ETA/ETDA	Liability?
7	Cybersecurity law	Due process? Establish NCSC, powers?	s. 35 controversial. Note "trusted internet" concepts.
8	Draft Royal Decree establishing ETDA	Revises ETDA	
9	Competition Law upgrade (ongoing)	Promote and regulate competition.	Should apply to telecoms sector. See separate paper on this.
10	Structural reform- Mandate access to wholesale services and infra from SOEs (missing)	Towards properly structured industry	

The EABC has prepared detailed submissions on the key laws. Some summary notes appear in the table above. The EABC has also co-hosted Open Fora on Saturday mornings with ETDA on major topics during 2015. The EABC highly commends ETDA for the consultation and industry and user engagement which has occurred. There are two gaps in

these laws - noted as items 10 and 11 in this table: SOE reform (see below) and effective competition regulation.

2. Telecommunications sector - major issues

a) SOE Reform

The background to how the telecoms structure can optimally function is well covered in the EABC Policy paper 2013¹ and in various other submissions and ICT conference materials on the EABC website². These recommendations are not repeated here, but continue to be relevant.

A plan is well overdue for reformation of the two State-Owned Enterprises (SOEs). At press time, this has not been sufficiently addressed in the Digital Economy plans and is identified as a gap in the Digital Economy laws (see table). One outcome of the 1800 MHz spectrum auctions in late 2015 was the undesired consequences in terms of SOEs role, which appear to have been brought about by the same kind of threats which were successfully used in 2010 to derail a planned 3G auction. It seems that special privileges have been given to the SOEs.

The plan should not be about trying to make each SOE profitable and sustainable. Rather the same global model should be used - consider the valid role of the state in the telecoms sector and define a role for an SOE. There are two SOEs because CAT used to do international and TOT domestic. That made sense in decades-old technology. The rest of the world has determined that it no longer makes sense. There is no need for two such organisations.

The biggest issue in this kind of reform is industrial. One possible approach in this plan is to promise all staff a job somewhere, but not necessarily in the same organisation. Then have a training and re-skilling plan to back it up. This would be less costly than continuing with the losses,

market distortions and locked-up value which occur now.

There was a plan for corporatisation, then partial privatisation, but it stalled shortly after corporatisation in about 2003. Today, the SOEs compete with their own concessionaires, and at the same time receive very large amounts in regulatory fees and revenue sharing payments from those same concessionaires, and have special grants of assets from government. After the expiry of the three year moratorium (late in 2013) in the 2010 Frequency Act, much of the revenues which were streamed to the SOEs should be going to their shareholder, the Ministry of Finance (MoF). Propping up the SOEs with revenues from areas where they compete with the private sector is not a good model for a competitive and innovative industry. Changes to the Frequency Act or special deals to prolong inefficient operation should be avoided.

We believe that such reforms of the SOEs are an essential and valuable step in reform of the telecommunications sector.

Historically the SOE evolutionary path in the sector based on global practice has been:

- i) Government departments providing monopoly post, telephone and telegraph (hence the term 'PTT') services
- ii) A separated regulator which becomes independent.
- iii) Corporatisation, often with postal services restructured to another entity
- iv) At least partial privatisation (we stalled about there in Thailand in around 2002-2003)
- v) Injection of different financial targets and seeking out value-adding roles
- vi) The reformation or restructuring of the SOE

¹Accessible at: <http://www.eabc-thailand.eu/business/download/167/4/2013+European+Business+Position+Paper.pdf>

²Accessible at: <http://www.eabc-thailand.eu/advocacy/102/ICT.htm>

We may consider the varied development paths of British Telecom (BT), Telstra, Singtel, Telekom Malaysia (TM), and PLDT. Over some years, all have become listed entities in reasonably competitive to very competitive markets which have strengthened the players in those markets and in most cases enabled the 'PTT' to invest overseas. The TM evolution story in particular is an impressive one (in April 2013 TM won a prestigious regional award for best broadband carrier). The transformations may have come with some pain but they were not ultimately avoided.

These developments have brought benefits to businesses, government and consumers in the home market, strengthened the former 'PTT', added wealth to the home economy, well beyond what it might have enjoyed from an unreformed SOE and the industry with an unreformed SOE, and contributed skills and innovation to the overseas markets in which they have invested. No such development has occurred in Thailand.

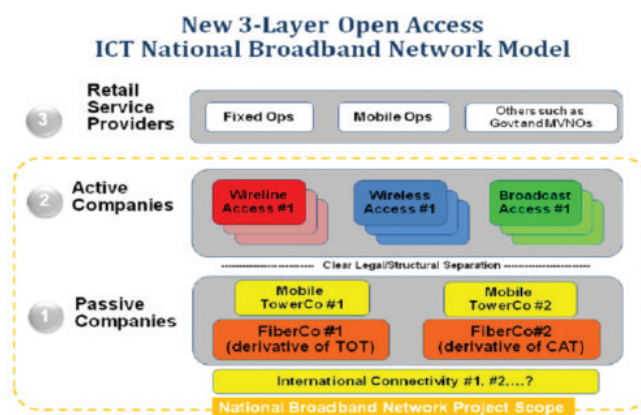
b) Ideal structure - or at least a functional one

We have never achieved an ideal structure for telecommunications in Thailand. Operators function on different deals (rather than all operators being licensed directly by the NBTC), and there is no widespread, effective and regulated wholesale market. The result is a relative lack of innovation for business, individual users, and government. Competition is more about price and less about innovation and service. Mobile broadband has the potential to change that in offering streaming to handheld devices and a vast range of easily accessible, affordable applications. All this would work better with the right structure. More details are in the 2013 EABC Position Paper.

c) Broadband

Having considered broadband developments in other parts of the world, a similar structure for a broadband backbone is essential to achieve economy and effectiveness. This should not be a gift to the SOEs and the SOEs should not

have a controlling role. To illustrate, a model based on thinking in 2010 appears below. This three layered approach is typical of structures used elsewhere. This should only be taken as a concept. Clearly there would need to be further developments. A broadband company should be operated by a trusted, professional manager or small management company, answerable to all owners - including asset owners which have leased capacity to the enterprise. Industry strategic planning is needed for this, engaging with user groups also.



Source: Thailand National Broadband Network Committee (ca.2010)

We recommend the following principles be used:

- i) A wholesale market for services should be developed immediately and not wait for any considerations around an NBN or indeed the deployment of one.
- ii) A PPP model for an NBN be investigated, where shareholders / contributors would be the SOEs, with other infra owners, financial investors etc. with the SOEs not having a majority. Some government funding and soft loans (including possibly from regional development agencies) are likely to be needed. To ensure investor confidence, an independent manager of the asset owner is recommended. The new PPP Law should support such projects. Risk sharing considerations are reflected in the new PPP law. The new law does

- need resolution of the arbitration issue; it is recommended that arbitration be allowed for government contracts.
- iii) Infra owners can vend or lease in but there is no monopoly - existing wholesale and infra providers should be able to continue
 - iv) Appropriate separation (e.g., structural or operational) as between infra owner and retail service provider needs to be determined. A range of wholesale services should be available at non-discriminatory, cost-oriented rates.
 - v) Professional manager answerable to the owners and stakeholders.
 - vi) Facilities-based competition should continue and not be terminated.

d) Spectrum

The EABC general spectrum policy is:

- i) All spectrum for commercial use should be coupled with licences directly from the NBTC. The industry needs to put the concession era completely behind it.
- ii) All spectrum for commercial use should be auctioned, as the only fair and transparent way to allocate.
- iii) Generally, 'technology neutral' allocation is needed. While additional revenues from restrictive use for say LTE may be attractive, it puts barriers in the way of innovation.
- iv) Spectrum should be returned from SOEs subject to proper strategic plans based on fundamental reforms and restructuring.
- v) Additional conditions such as a prior application of the terms in the Foreign Dominance Notification should not apply.

An 1800 MHz auction intended to support LTE/4G was held on 11 and 12 November 2015 in a marathon event. Huge over-payments (more than 200% of estimated real spectrum value) for two lots of 15MHz duplex spectrum

will mean challenging business cases for the two 'winners', even with 18 year licences. There will be retail price caps. If normalised for relative ARPU (Average Revenue Per User - the operator's main revenue source), these prices are believed to be the highest in the world to date in an 1800 MHz LTE spectrum auction.

The 900 MHz auction for LTE / 4G use was held in a similar marathon event on 15 December 2015. In each case, tradeoffs were done (according to press reports) to appease the SOEs to avoid legal challenges to the auctions. In 2010 the SOEs successfully legally blocked a planned 3G auction.

While the 2015 auctions will mean high Treasury receipts, and fair issuance of commercial 4G spectrum, it has meant some tough business cases, and has also resulted in special privileges for the SOEs (see more in the SOE reform part of this chapter).

These market distortions have resulted in the necessity of ad hoc deals amongst operators. A focus on sound principles of regulated free and fair competition would be preferable.

e) An Independent regulator

While the basic tools for competition regulation exist, they have not been deployed in a manner which will best facilitate free and fair competition (even leaving aside the basic structural issues which do not support good competitive outcomes. Enforcement (which to date appears to be absent) is more effective when it is undertaken by a body which is independent of both government and of the firms in the industry. The agency should thus be free not only of corrupt behaviour (needless to say), but also of partiality towards any political party or firm.

We recognise that apparent, formal independence of a regulator can conceal de facto dependence on government or business interests. However, such situations are not easy to document. Accordingly for full independence we look

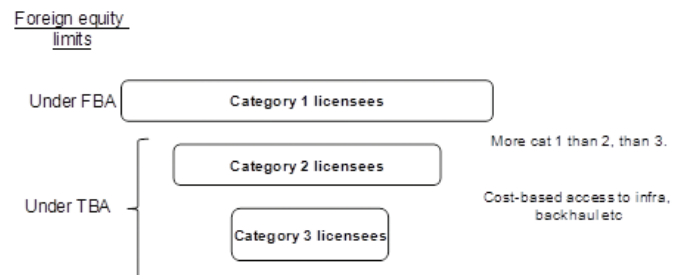
Independence of the NRA is an essential for investor confidence and for trust in the sector. Independence is generally understood in the industry to mean two things:

- Experience has shown that there is a third element; ***the governance of the regulator***. Precedents for this are:

- A board which is fully comprised of executives will thus have more challenges in achieving an independent status. The agency should consider having independent,

A 'superboard' may provide oversight. While this is a positive move, we maintain our existing recommendations. It would be a concern if a committee such as a National Committee for Digital Economy and Society being a direct part of the Ministry (howsoever named) would have a role to make a range of specific directives to the NBTC.

There are statutory limits of 49% in the telecoms sector for category 2 and 3 licences. These categories are further restricted by the Foreign Dominance Notification, a very controversial regulation which aims to import additional factors into the definition of foreign ownership. The Notification is the subject of protracted discussion at the Council for Trade in Services (the WTO's GATS body). The 2013 EABC Position Paper covers this in more detail. The issues have not changed.



The Cross Sectoral Issues chapter of this Position Paper describes restrictions on foreign equity participation, and thus effective competition, in the services sector. It also has a useful description of what service sector liberalisation means.



g) Other Major Issues

Security and the Trusted Internet

As has been noted, proper engagement through Internet governance is essential; Security and freedom are not opposites. The multi-stakeholder model works; top down (only) will not work, in our recommendation.

The internet is an essential tool for business - we must be able to continue to have confidence in it. There is a fear that if government-controlled and under constant surveillance, data, not just metadata may be made available to competitors.

This section considers security further.

Security should start with network / operational security; but a broadband network and its proposed dominance by an SOE will not give the necessary confidence that it will be operated fairly. An SOE should not have a special role like that, the SOEs (or one, if merged) need to evolve to being competitive, focused operators, not organs of government policy.

Liberalising all aspects of international gateways and addressing bottleneck issues such as at cable landing stations will improve the ability to access affordable bandwidth for international use.

Industry collaboration for peering, domestic internet exchange etc are all encouraged, but producing a new government-controlled CAT-led collaboration should be reconsidered urgently. A network company which needs to be trusted by the whole industry should not be the driver of a kind of security which includes national security ideas. Rather in terms of security, network and operational security should be its focus.

For *national security issues*, a separately managed government agency - not tied in with capacity building or fundamental infrastructure operation, will give a proper focus on purpose and avoid concerns about conflict of interest. It is a genuine concern in business circles that a competitor may offer a bribe to an official to provide access to confidential company data. Opportunities for such conflict should be removed, and not built in by design.

Cloud based solutions

Cloud-based solution lends themselves well to enterprise and government applications. Various policies and regulations that apply to data centres and shared infrastructure are needed in order to support the deployment of cloud solutions better. The Business Software Alliance (BSA) published a cloud readiness scorecard in 2013 covering 24 economies that representing 80% of the world's IT spend. The Asia Cloud Computing Association (ACCA) published a similar study in 2015. Unfortunately, Thailand does not rank highly.

The proposal in this chapter includes many of the areas which would enhance Thailand's rankings. The Networked Readiness Index (NRI) published as part of the Global IT Report by WEF and an academic partner (INSEAD) is likely to show improvement in the case of Thailand when (subject to some changes) the Digital Economy policies and laws start. The 2015 ranking of Thailand at 67 shows no change in ranking over 2014 (also 67), though this ranking is an improvement over 2013.

The EABC recommends a review of BOI promotions to support a more service-focused approach (rather than on hardware) for cloud services. Successful cloud services need an effective data centre market and services and excellent broadband infrastructure and services.

Consultation - general

As described in another part of this chapter, during 2015, ETDA conducted a number of consultations and industry engagements on the proposed Digital Economy laws. This was a very valuable exercise and ETDA and participants are to be congratulated. Such activity engages and educates the industry and is an investment in support and buy-in for the laws which eventuate.

In this rules-based, highly interdependent industry, consultations are an essential part of industry buy-in and education. Through consultations the industry can effectively operationalise. Rushed or only single-stage consultations often miss these elements. Thus we recommend:

- An overall programme of industry consultation and turnaround of drafts (at least two for each major area), managed by a small team with the time and skills to support it, like a programme management team.
- Drafts plus industry comments published on a website, in both Thai and English
- Hiring a law firm and/or a consulting firm (with some strong economic regulation background) for the necessary periods to help prepare materials, process the inputs and responses.

A similar approach (although possibly without the external facilitator) is important for development of policy. If policy consultation is open and transparent, the result will be much more solid.

At the time of publication, there is an issue about three laws in particular being classified - i.e. being taken out of public discussion. It is recommended that these drafts be made public for the reasons stated.

3. Digital Broadcasting; Digital Content

Digital Broadcasting has not only brought greater spectral efficiency and quality of images, but also a whole range of ways of interacting with customers, managing images etc. Now in full operation, digital content will need a regime for intellectual property protection and data protection. There are however major issues with the viability of a number of the licensees and several public differences of opinion between NBTC and broadcast licensees.

In late 2013, the NBTC held auctions to issue the country's first commercial digital spectrum, and then issued 24 commercial digital terrestrial TV licences. This heralded a new era in converged digital media.

As with telecommunications, broadcasting uses spectrum, a scarce national resource. Digital broadcasting has far greater spectral efficiency (Mbps for each MHz of bandwidth) than does the analogue use of spectrum, allows for much better picture quality and also supports a range of other value-adding features and functionality. Digital television (DTV) is the transmission of audio and video by a digitally processed and multiplexed signal. The DVB T-2 standard is adopted in Thailand for broadcasting (along with all ASEAN nations other than the Philippines). Broadly, however, digital TV in various forms uses a variety of network types. There is fantastic convergence amongst moving visual images which are broadcast, or streamed over mobile broadband or WiFi, and provided to just about any screen type. The industry has spawned take up in technology and services, with a range of value-adding, innovative platforms and applications which push traditional boundaries at a very fast rate.



Similar to most countries, Thailand has started digital broadcasting well ahead of the end of analogue transmission (Analogue Switch Off date or ASO), which will take some time. The forces of convergence between telecoms (especially mobile) and broadcasting are playing out now and the outcomes are fascinating.

4. Information Technology (IT)

a) Procurement: eAuction, Unlimited Liability, Software IP

We believe that improvements in these four areas will enhance value appreciation on the supply side. We are happy to provide further details.

- (i) **eAuction:** eAuctions can be a useful tool for commodity purchases. Multi-variant analysis (rather than just price) is necessary for the typical package of ICT hardware, software and services so that overall value for amount spent can be understood. We recommend judicious use of eAuctions and a revised model which supports proper appreciation of overall value. A good test of transparency is that all parties can have confidence in the system.
- (ii) **Unlimited liability:** This is an unnecessary term in most supply contracts. Governments elsewhere have come up with solutions to address the issues by including caps on liability. Unlimited liability can be a deterrent to gaining real value.
- (iii) **Software Customs Duty / import duty on software:** Duty on software imports is hard to administer. We recommend 0% percent import duty.
- (iv) **Open standards and interoperability** are important for systems which will function efficiently and harmoniously.
- (v) **Source code handover:** the requirement, where it is practiced, to hand over the source code can be a deterrent to getting the best solutions

b) Skills in the IT/ICT/Digital Economy sectors; Free movement

ICT skills are in short supply. Two actions are needed - education and re-skilling, and relaxation on out-dated and restrictive visa and work permit rules and regulations.

The nature of the industry is global. Confining source pools to national boundaries makes it harder to find the right skills and limits innovation. Our recommendation is to strive for an innovative and entrepreneurial mind-set in graduates and other ICT industry participants. This implies a change to education and also to certification for ICT skills. We do not note it separately here; however, intellectual property protection is an essential ingredient in the attractiveness of various IT hub plans.

Universities grapple with ensuring that graduates are appropriately skilled. An IT Finishing School is one solution. Use of an IT Competency Framework is another. Generally, a move away from rote learning to encourage enquiry and imagination is needed.

As computer-related courses are taught in English, enhancing English language education (and its particular contribution to the soft skills of problem solving and project management) is especially important.

We caution against a **licensing** approach for IT skills and we see this as an unnecessary and non-value-adding measure. The marketplace is already a good determinant of skill levels and fit. Similarly, the idea of a government **certifying** agency will not in our view contribute towards the better development of skills nor the better deployment of skills in Thailand and Thai skills abroad. In this respect the ASEAN ICT Master Plan we believe needs revising. Again, however, an IT Competency Framework would be a useful means of being able to identify skills.

Recommendation Capitalising on the benefits of innovation and IT leadership will mean support for free movement of a range of skilled people, and investment in education and training in ICT areas and English language training. An IT Competency Framework will be useful, but without a licensing or certification regime.

Work Permit and Visa: The Cross Sectoral Issues chapter of this Position Paper makes recommendations on work permit and visa reform. These include a change to the law to change the definition of ‘work’ and having an easy to obtain business visa, the idea being to limit ‘work’ to real local employment-type activity, whereas ‘business’ would cover a wide-range of activities normally associated with doing business, including meetings of all kinds, seminars and conferences of all kinds, trade fairs and exhibitions of all kinds and covering all kinds of activity. In the ICT sector, skills need to be deployed at short notice and often for very short periods (e.g. configuring a customer set up in a data centre; working on an agile-based software development project).

Recommendations:

Critical success factors for a Digital Economy

1. Telecoms networks underpin the digital economy. The structure and operation need to be effective, efficient and innovative; reform is needed to include an effective wholesale market
2. SOEs must evolve to be licensed, competitive operators, not instruments of policy. Policy vision should be about the industry as a whole and how it can play a more effective role in the national economy.
3. SOEs should not compete with the private sector and should focus on fixed line wholesale services and infrastructure provision
4. All commercial operators licensed by NBTC; all commercial spectrum should be allocated by auction

5. Higher expectations about service quality - especially mobile broadband
6. Security should start with network and operational security, all parties have a role
7. Continued liberalisation of IIGs - a strategy for lower cost international capacity; private sector-led sharing and pooling / peering
8. National security should be run according to law (cybersecurity and revised computer crimes act) using an overlay platform, by a government agency not involved in network operation, not being mixed with an SOE operator. Trust is essential
9. The multi-stakeholder model of internet governance (now accepted by a majority of the world’s economies), with any necessary adaptations, is the only workable model. A top-down model will not work. A Trusted Internet is vital. This model includes civil society governance and multi-party responsibilities for security.
10. Funds for innovation for start-ups and later stage development
11. Free movement of skills, education change and re-skilling
12. A range of other enabling factors such as the personal data protection law, eGov penetration, better standards for eCommerce



Insurance

SUMMARY OF RECOMMENDATIONS

1. Liberalisation of insurance industry

- 1.1 Key areas of liberalisation
- 1.2 Major principles of a liberalised insurance market

2. Enhancing the development and competitiveness of the insurance industry

- 2.1 Increase capital requirements
- 2.2 Improve regulations and product approval process to encourage innovation
- 2.3 Remove investment restrictions and encourage foreign investment in the sector to promote skills and bring expertise
- 2.4 Remove the restrictions on pricing by removing the use of tariffs

3. Other recommendations

- 3.1 Promote insurance knowledge to create well-informed and empowered consumers as well as qualified insurance professionals
- 3.2 Promote higher standard of ethics within the insurance industry

Industry Overview

The insurance sector contributes significantly to the wellbeing of a nation. This is achieved through the economic activity the sector generates as well as the benefits it brings to society as a whole. The general insurance industry brings value in many different ways, but principally by providing methods of transferring risk and providing the peace of mind that individuals and businesses of all sizes seek. The life insurance sector also provides risk transfer and protection in respect of mortality, disability and longevity risks through health, life and pension insurance products.

Nations that have well developed insurance industries are able to focus on the economic and social welfare aspects of their population that are not readily insurable, knowing that insurable risks are catered for by the insurance industry. According to The Geneva Association (The International Association for the Study of Insurance Economics) in their 2012 publication The Social and Economic Value of

Insurance the ways in which insurance contributes to society and economic growth can be summarised as follows:

- It allows different risks to be managed more efficiently;
- It encourages loss mitigation;
- It enhances peace of mind and promotes financial stability;
- It helps relieve the burden on governments for providing all services of social protection to citizens via social security systems;
- It facilitates trade and commerce, supporting businesses and economic growth;
- It mobilises domestic savings; and
- It fosters a more efficient allocation of capital, advancing the development of financial services.

1. Liberalisation of the Insurance Industry

Representing a cross-section of insurance businesses operating in Thailand, which have in one form or another European influence over them, the EABC Insurance Working Group wishes to engage with the Government to create favourable conditions for investment and sustainable growth in the insurance market in Thailand.

Liberalisation of industries often has unknown and sometimes undesirable effects on stakeholders, be they business owners, consumers or members of the public in general. The important issues when seeking liberalisation of the insurance sector are as follows:

Recommendations:

1. A need to ensure the financial stability of all the players in the market - be they insurers, intermediaries or other service providers, thus capital requirements and adequate solvency measures remain vitally important.
2. A need to ensure that products and services provided represent fair value for consumers and that customer service meets standards that the industry's governing bodies set for their members.
3. A need to ensure that all legitimate insurance claims are paid speedily and each and every customer is treated fairly.
4. A need to ensure that all employees in the insurance sector are properly qualified to perform the duties and roles they are engaged to do through professional qualifications, for example through examination and achievement of the Chartered Insurance Institute (CII London) qualifications.
5. A need to ensure a consistently applied standard of ethics throughout the insurance industry.

2. Enhancing the Development and Competitiveness of the Insurance Industry

The following key issues and recommendations - representing the collective views of the working group members - aim to enhance the development and competitiveness of the insurance industry in Thailand amidst the growing insurance markets of ASEAN and beyond. Issues and recommendations described here aim not only to promote a favourable and competitive environment for insurance businesses and the industry, but also to make the social and economic functions of insurance align with the public interest, especially in relation to consumer protection and benefits.

a) Capital

A significant increase in the amount of capital invested in the Thai non-life insurance industry should be encouraged. The benefits of this would be that insurance risks in Thailand could be underwritten and retained within the country and the reliance on foreign reinsurers reduced. This position could not be achieved in the short term but a long term plan to encourage foreign capital investment in the insurance sector should be considered as a priority. The Risk-Based Capital (RBC) regulations, which came into force on 1 September 2011, are a welcome introduction to the Thai non-life insurance market and will create a financially stronger sector; however, it does not in itself generate new capital, rather it improves the quality of the asset base. The next step is therefore to create a climate where foreign, and in particular European, investors see good investment opportunities for insurance businesses operating in Thailand.

Recommendation:

Thailand is encouraged to implement measures which effectively require insurance companies to increase capital to significantly higher levels than now required by law.



b) Regulations / Product Approval Process

The regulatory framework, which governs the Thai insurance industry, is commendable, in that it recognizes the importance of capital, expertise, customer protection and the resolution of disputes. The regulations governing the introduction of new products however cause some insurance businesses to be reluctant to innovate; thus, the consumer does not necessarily obtain the product that would most suit them. This applies particularly in the personal lines, life and healthcare areas. The 'file and use' regulations allow a degree of freedom for simple products but, where the products are more complex, the approval process appears to be long and difficult mainly due to a lack of transparency, inconsistency, and lack of standard procedures.

In certain cases of innovative insurance products, such long and difficult approval processes (which can happen in a very subtle way) result in the said product being copied easily over time and before any market momentum has been established. Consequently, an insurer who creates a new product will lose their competitive edge and later be discouraged to innovate again. A key example is the way that a 'Unit Linked product' has been introduced into the Thai market. Many of Thailand's ASEAN peers have a flourishing Unit Linked product sector, with markets like Indonesia and the Philippines enjoying more than 60 percent sales of Unit Linked policies. Unit Linked products expand customer choice; greatly improve the health of the life insurance industry by reducing guarantees, and help customers to plan insurance needs to their individual circumstances. Whilst Unit Linked products are now available in Thailand, design constraints are highly restrictive and sales licensing requirements are prohibitive. As local companies begin to understand these products and start introducing them into their respective portfolios, lobby groups gain more traction and so laws will inevitably be changed to support them, but this process takes time

and ensures that any competitive edge is all but removed by the time the process unravels.

Furthermore, where new products are introduced, there is often a long time lag before tax rules change to bring these new products on to an equal footing with existing products. This adversely impacts consumer choice and stifles the success of these new innovations. The Unit Linked product, again, is a good example of this, whereby personal tax deduction is out of line with both traditional insurance products and with Long Term Equity Funds (LTF) and Retirement Mutual Funds (RMF).

Recommendations:

In the spirit of freer trade and enrichment of customer choice, regulatory bodies need to embrace innovation with a more coordinated and open approach so that all market players can leverage their respective competitive advantages. A review of these regulations followed by an open and transparent approval process with time limits would be a most desirable objective. Given the importance of regulations in the insurance sector, a dialogue with the relevant government departments to improve these and other regulatory issues would be welcomed.

c) Expertise Shortage/Difficulties in Attracting and Retaining Foreign Investors and Experts

Foreign entry can help enhance competitiveness and market efficiency. Literature on trade and investment in financial services, including insurance, suggests greater competitiveness is achieved from foreign entry to domestic markets by forcing domestic players to operate more efficiently. Foreign entry also facilitates the use of modern skills and technology, improve risk management, the provision of specialized value-added services, and financial deepening through the provision of services in under-served segments of the market such as SMEs.

The issue of insurance expertise shortages can be separated into two parts as follows;

ij) Difficulty in attracting foreign investors

Restrictions on foreign participation in the life and non-life insurance sector have relaxed in the past year, as a result of the Life and Non-Life Insurance Acts (No.3) issued in March 2015. Previously, permission for majority foreign ownership could only be granted by the Ministry of Finance if the insurer was in a condition that “may cause damage to the insured or to the public”. This permission, allowing foreign ownership above 49 per cent, can now be granted “to promote the strength of [an insurer] or for the soundness of the [insurance business]”. This presents a considerably broader scope for such permission to be requested and granted, and suggests that the considerations and justifications of the authorities have moved towards solidifying the insurance sector as a whole. These changes have been implemented in preparation for intense competition under full implementation of the AEC.

Additionally, there is a technical change to the standard minimum Thai shareholding level. Previously, more than 75 percent of shares had to be held by either: (i) Thai individuals or Thai non-registered partnerships (in which all partners are Thai nationals); or (ii) entities registered in Thailand that have more than 50 percent of their voting shares held by persons falling within item (i) or by a parent company fulfilling the same conditions. This level, previously set at more than 75 percent, has now been amended to 75 percent exactly. Additionally, as was the case before, the OIC can give permission to relax this level to 51 percent, allowing for 49 percent foreign ownership, and it is thought they will do so fairly routinely upon application.

Further, the new Acts require that when any relaxation or permission as regards foreign ownership levels is granted,

it must be published in the Government Gazette, together with the rationale and conditions or timeframes.

To progressively liberalise trade in financial services within ASEAN, Thailand is also working toward recognition of professional qualifications (such as insurance intermediation, brokerage) with a view to facilitating their movement within the region. Unfortunately, this has not led to any concrete, measurable result in terms of improved market access.

It is worth noting that, despite recent changes, the foreign equity caps in the insurance sector are more restrictive than in other parts of the services sector and this is regarded as a key market access obstacle which needs to be addressed.

ii) Difficulty in attracting foreign experts

Difficulty in obtaining work permits and visas still remains due to lengthy procedures, recognition of employees' qualifications, and lack of transparency in regulations at various administrative levels. Certain existing laws and regulations in Thailand are impediments to the development of more robust critical sectors. It is very important that the potential EU-Thailand Free Trade Agreement (FTA) negotiations lead to positive outcomes with regard to materializing a combination of administrative and legislative remedies to ease restrictions, with the aim to facilitate the free movement and recruitment of skilled and unskilled expatriate workers who duly correspond to Thailand's economic development and business needs.

For example, high registered capital and a specific ratio of Thai to foreign employees are required for each work permit issued to a company. These metrics are not appropriate for SMEs, especially in the services sector and when critical skills are needed. SMEs, many of which provide important services to much larger organizations, often



begin as sole proprietorships, or with just two or three partners and no additional employees.

Even long-established services companies often need only a small staff to generate significant revenue. Their primary assets are the skills and intellectual capital of their employees, not plant and equipment, and they therefore have no need for high initial capital investment. There is regional competition for skills and Thailand should encourage the intake of skills and entrepreneurs from around the world to invest and start-up in Thailand, regardless of ratio or initial capital commitment. SMEs (Thai- or foreign-owned) should not be restricted from hiring foreigners to provide needed know-how. Such skilled workers will not take away local jobs but, rather, will enhance competencies and competitiveness overall, and help in overall business recovery.

Thirty-nine occupations and professions are closed to foreigners in accordance with the Royal Decree Prescribing Works Relating to Occupation and Professions in which an Alien is Prohibited to Engage B.E. 2522 (1979). In applying for a work permit for an occupation that is not prohibited, conditions related to the paid-up capital of the sponsoring company and the ratio of Thai staff to foreign employees must be observed.

In the current context of business interconnectedness, it is arguable that business operations have become global. Particularly in many strategic parts of the services sector which are regarded as international, supply of jobs is outstripping the supply of local workers to fill these vacancies to ensure smooth business operation. This inevitably means foreign talent and business people are required to overcome the skills shortage. To strengthen Thailand's position as a competitive regional business hub, restrictions on visa and work permits should be eased and immigration rules should not hamper - but on the contrary facilitate - sustainable growth of the Thai economy.

The European insurance industry is recognized for its great strength, both in terms of financial security and professional expertise. By encouraging European investors to participate to a much greater extent in the insurance sector, there would be a number of significant benefits for Thailand. One of these benefits would be increasing the skill-base within the insurance sector.

Recommendations:

It is desirable to see liberalisation within the insurance sector, not just for the benefit of a small group of European investors but for the country as a whole and for all Thai consumers.

1. To successfully bring expertise into the insurance industry of Thailand, it is important to build the necessary pre-conditions for Thailand to become an attractive investment destination for foreign insurance investors and experts. It is of great interest to the European insurance industry to seek further liberalisation of Thailand's services sector and implementation of the existing review mechanism on List 3 in the FBA, and further review of the Life and Non-Life Insurance Acts, to duly remove restrictions and encourage foreign investment in the sector. Both existing and potential European investors in the insurance sector would welcome the removal of all shareholding limits, leaving them the freedom of choice over partners in a Thai insurance firm.

2. The EABC recommends a combination of administrative and legislative remedies to ease restrictions with the aim of facilitating the free movement and recruitment of skilled and unskilled expatriate workers who duly correspond to Thailand's economic development and business needs. The EABC and its Insurance Working Group express their readiness to work closely with the Royal Thai Government toward achieving this objective.

d) Tariff System

This key issue is in response to the ‘Business-Friendly’ principle. With reference to Section 30 of both the Life Insurance B.E. 2535 and Non-Life Insurance Act B.E. 2535, insurance premium rates shall be under the supervision of the OIC. This means that pricing for all types of insurance products requires prior approval from the OIC. Accordingly, insurance companies will not have the freedom to set the price they deem appropriate. Since pricing is regulated, insurance companies have to compete on other merits; such as providing better services and various forms of sales promotion.

Although the reason behind those Sections is largely for consumer protection and to help small and medium firms to compete with larger players, they also have an adverse effect, in that the tariff system indirectly hinders the motivation to innovate by creating new insurance products. Since the R&D of innovative insurance products may require a considerable amount of investment and time, the company that innovates to create such a product will have to set premium rates that are worth the innovation cost, i.e. actual market value. However, if the OIC views that such a rate is too high or unreasonable, it has the authority to adjust the rate, which may not be fair to that insurance company. The most critical issue is that the Thai insurance industry can lose its dynamism, new insurance products will be rarely introduced to the market, insurance companies will mainly focus on competing on current simple products, and price-cutting momentum will be reinforced. Eventually consumers, instead of being protected, will be left with products that do not meet their risk management requirements due to the very low premium rates they pay.

3. Other Recommendations

Recommendations:

1. In response to the ‘Disclosure-Based’ principle, which aims to create educated consumers who can effectively make well-informed consumption decisions, the EABC encourages the OIC to take a leading role in dispersing knowledge to create well-informed and empowered consumers and actively encourage the public to have sound risk management systems. Consumers need to make purchases with confidence; therefore, they need to know which insurance products are available in the market and which are likely to meet their requirements. They also need to gain access to all critical information and clearly understand insurance products they are contemplating purchasing.

An effective way to achieve this goal is to develop a simple targeted communication plan, which is to divide the target audiences into small groups (either by age, education, area, income, etc.) and then customize the content and messages that each group can relate to.

2. Repatriation of funds by investors is subject to criteria which are unclear, inconsistent, and lack transparency and standard procedures. Such activity has to be conducted through time consuming negotiations with the OIC and results are not guaranteed. The EABC wishes to work closely with the OIC and other related government agencies to relieve the said difficulty obstructing the free transfer of capital and payments in connection with investments by foreign investors. The removal of such restrictions will make Thailand’s market much more attractive.



Intellectual Property Rights (IPR)

SUMMARY OF RECOMMENDATIONS

1. Amendments to IP-related legislation

- 1.1 Amendments to Trademark Act on accession to Madrid Protocol and illegal refilling practices; and amendments to Trademark Act on protection of scent and sound marks
- 1.2 Challenges of Thailand accessing the Madrid Protocol (International Trademark Registration System)
- 1.3 Amendment of the Geographical Indications Act B.E. 2546 (2003)
- 1.4 Amendment of the Patent Act to Facilitate Accelerate Registration Process

2. IP Policies

- 2.1 Trademark elimination via plain packaging policy and excessive measures restricting normal use of trademarks
- 2.2 Patent and Trademark registration procedures via Licensing Facilitation Act (LFA)

3. Intellectual Property Rights for ICT

Industry Overview

Continual improvement and effective protection of Intellectual Property Rights (IPRs) are key drivers of Foreign Direct Investment (FDI). Generally speaking, a lower to middle income country would hope to attract inward FDI so as to improve its overall investment climate and business infrastructure than to strengthen its patent regime sharply, an action that would have little effect on its own¹. For Thailand however, as an upper middle income country² and

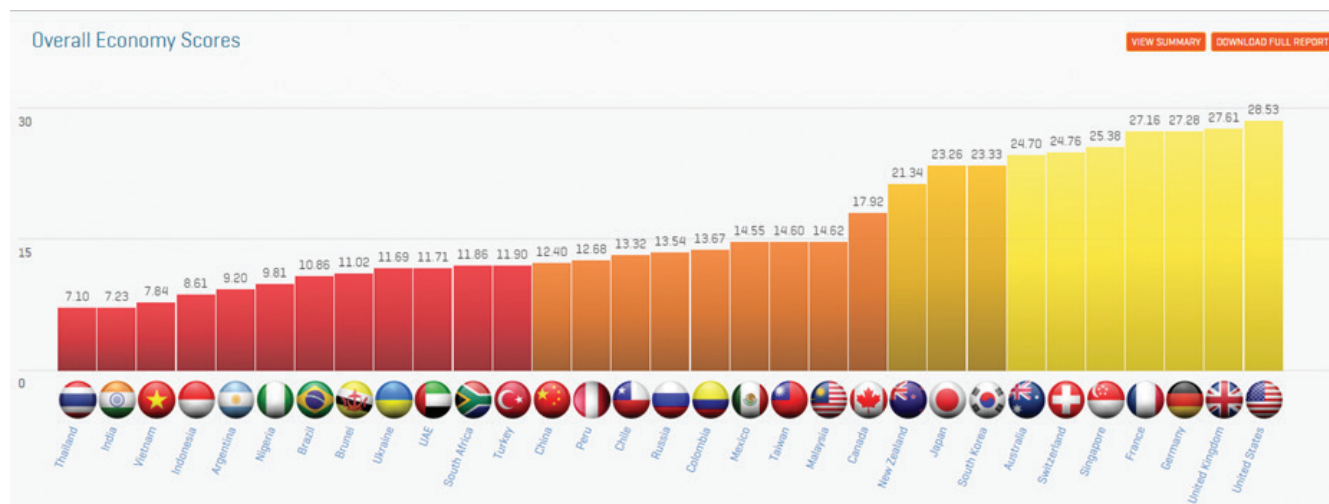
struggling to break out of the “middle income trap” with a low score of 7.1, dropping from a score of 7.3 in the previous year as a result of weak compliance with TRIPS Agreement violations, high physical counterfeiting rates, and consideration of plain packing policy, the latest Global Intellectual Property Centre (GIPC) International Index³, raising its IPR regime standards is imperative.

¹Maskus, Keith E. 2000. *Intellectual Property Rights in the Global Economy*. Washington, D.C.: Institute for International Economics.

²World Bank. 2013.

³U.S. Chamber of Commerce’s Global Intellectual Property Center. February 2015. *GIPC International IP Index*. Third Edition.

Figure 1: GIPC International Index



Source: www.theglobalipcenter.com/gipcindex

An effective IPR regime is a critical consideration for multinational firms when making investment decisions among middle-income countries with strong abilities to absorb and learn technology. For Thailand, this fact is confirmed by its 39th and 54th place in the ranking of efficiency enhancers and innovation, and the sophistication factors' index⁴ of the Global Competitiveness Index (GCI) 2014-2015.

The international mobility of skilled workers and the associated international knowledge diffusion are important drivers of domestic innovation and thus important development challenges. Given this relationship, WIPO Development Agenda Recommendation 39 mandated a project in 2014 in order to seek a better understanding the link between international mobility of skilled workers and IP policies and its impact on IP protection, international

diffusion of knowledge, and innovation and development.⁵

For effective development and implementation of a national IPR strategy aimed at transforming Thailand from an efficiency-driven to an innovation-driven economy in line with developed countries, it is important to strengthen not only Thailand's IPR legal framework but also the IPR enforcement system. This effort must be supplemented by other important elements such as raising public awareness about the importance of IP.

In addition, to become one with the ASEAN Community, providing internally-accessible markets via free movement of goods, services, investments, and labour, IPR-related challenges become more significant. The ASEAN IPR Action Plan 2011 - 2015 sets strategic goals that ASEAN member countries are required to follow, including a balanced IP

⁴ - Efficiency enhancers comprises national scores of higher education and training, goods market efficiency, labour market efficiency, financial market development, technological readiness, and market size.

- Innovation and Sophistication factors comprise national scores of business sophistication, and innovation.

⁵WIPO. 2014. Project Document: Committee for Development and Intellectual Property (CDIP).

⁶ASEAN Intellectual Property Rights Action Plan 2011-2015.



system, participation of ASEAN Member States in global IP systems, systematic promotion of IP creation, awareness and utilisation, regional participation in the international IP community, and intensified cooperation among member states⁶. For Thailand, the mentioned goals appear to be ambitious as the country's IP-related frameworks and law enforcement gap remain unfulfilled. The EABC endeavours to support Thai authorities in addressing these challenges by proposing a number of key issues that should be considered, as defined by the EABC Working Group on Intellectual Property Rights. This would serve as a basis for attracting and maintaining FDI as well as fulfilling ASEAN IPR Action Plan aimed at transforming ASEAN into an innovative and competitive region through the use of IP.

Thailand has been fully integrated into the ASEAN Economic Community since 31 December 2015, and this integration brings development of both hard infrastructure (transport) and soft infrastructure (laws and standards). The impact of integration presents challenges to lawmakers to harmonize with ASEAN requirements. Therefore, Thailand urgently needs to rewrite IPRs.

An effective intellectual property regime can attract investments and innovation and, and lead to increased technology transfer which will drive the Thai economy to be more competitive in ASEAN. Attempting to shift to an innovation-driven economy, the Thai government has to establish effective patent and copyright laws as a basis of the framework required. Since IPR plays such a key role in the development of new technology and innovation, it must be kept constantly under review and be aligned with current international standards through Thailand's membership of the relevant international treaties. In this chapter, the EABC recommends necessary changes to IP law and policies to foster Thailand's competitiveness.

1. Amendments to IP-related legislation

Amendment to the Trademark Act supporting Thailand's accession to the Madrid Protocol, and allowing a registration of unconventional marks, is currently under consideration by the National Legislative Assembly (NLA).

a Amendments to Trademark Act on accession to Madrid Protocol and illegal refilling practices; and Amendments to Trademark Act on protection of scent and sound marks

The EABC has underlined during various meetings with the Thai authorities the urgency to protect unconventional marks such as scent and sound as well as to prevent illegal refilling, which affects various industries including food and beverages, perfumes and cosmetics, and automotive, in order to reassure the protection of consumers as well as the rights of IP owners. The Thai Department of Intellectual Property (DIP), during various discussions and consultations with the EABC and its European business representatives, duly took note of the issues and concerns. Since then, relevant provisions have been proposed for amendments to the Trademark Act.

The EABC fully understands that due process for ratification of legislation at a parliamentary or Council of State level is required to finalise such amendments, and that such processes may take months to fulfil. The EABC will continue to pay close attention to the progress of the amendments to legislation.

Recommendations:

1. Ensure full utilization of existing enforcement measures, whilst the provisions for protection of unconventional marks and against illegal refilling practices come into force. Efforts should be rapidly dedicated to target illegal refilling practices, which should be recognized as a basic act of trademark infringement.

In this vein, in order to act efficiently to eliminate illegal refilling acts, definitions referring to private refilling acts and/or broadly accepted practices could be avoided. Within the framework of the provisions on illegal refilling practices, the interpretation of provisions for enforcement agencies and/or implementation plans should allow the possibility to broaden the definition of illegal refilling practices to encompass fundamental issues often related to illegal refilling, such as 3D trademark packaging protection and protection of trade dress.

2. Regular feedback on progress made to proposed legislative amendments would be much appreciated by relevant stakeholders

b) Challenges of Thailand accessing the Madrid Protocol (International Trademark Registration System)

EABC identifies a few of the possible issues likely to arise with Thailand joining the Madrid System:

Advantages Expected:

The key advantage of the Madrid Protocol is the streamlining of international trademark registrations.

The Madrid Protocol is a useful tool to enable local businesses to protect their trademarks in multiple jurisdictions by filing one application accompanied by one set of fees.

Possible Challenges:

1) Lack of preparation/resources at the Department of Intellectual Property (DIP)

- New rules will significantly impact current trademark registration system (multi-class, new set of fees etc.), possibly causing confusion among users;
- The Thai Trademark Act should be amended to take into account the Madrid Protocol context;
- High risk of failure by DIP staff to meet deadlines;
- Medium risk of delays in communication between the DIP and WIPO in order to ensure full compliance with the Protocol;
- Risk that less efforts are dedicated by DIP staff to provide consultancy services and helpline for users for national applications;
- Risk of high reliance on WIPO due to lack of knowledge locally;
- Whether Thai classification will subsist with the Madrid System;
- Risk that DIP staff will not be able to deal with additional workload as none of the staff has experience in new procedures. These problems may be compounded with only some staff being proficient in the language(s) being used for the Madrid system;
- Additional registrars shall be hired in anticipation of this new type of work; and
- Whether the Thailand trademarks database will be able to support the incoming trademark applications, both those filed through the Madrid Protocol and those filed directly through the national route.

2) Concerns for trademark owners, stakeholders, attorneys and agents

- Communications between the DIP and the IB could result in problems for the DIP, and would have a domino-effect on trademark owners and agents;
- Timeframes of the system are inflexible. Significant adverse effects could result from the failure by users of the system to meet particular deadlines;
- Stakeholders are required to be well-informed about the implications of the Protocol. It may be that Agents



will be reluctant to introduce the Protocol as they fear the loss of clients, reduction in their work and the reduction in revenue. The rationale for this is that foreign applicants will resort to filing through the Protocol, as those applying through the national route may not require the assistance of local agents.

Recommendations:

We urge the Royal Thai Government to hold regular consultations with the EABC. Our IPR working group welcomes the opportunity to support Thailand and to provide best practices in these areas.

c) Amendment of the Geographical Indications Act B.E. 2546 (2003)

The EABC welcomes Thailand's recognition of the importance of geographical indications (GIs). However, Article 22(2) of the WTO TRIPS Agreement, which sets out protection for GIs, has not been implemented by the Geographical Indications Act (the Act) or in the associated Ministerial Regulation B.E. 2547 (2004).

Section 3 of the Act, which gives a definition of GIs and sections 27 and 28, which give protection to GIs, do not fully implement the provisions of Article 22(2) of the TRIPS Agreement because these sections only appear to protect the registered geographical indications themselves and do not prohibit the use of any means that indicates or suggests the GI.

In addition, Article 23 of the TRIPS Agreement has not been fully implemented by section 28 of the Act. Whilst the additional protection provided by Article 23, which prohibits the use of certain expressions in association with wine and spirit GIs, has been implemented, Article 23's prohibition on the use of GIs in translation has not been included in section 28.

Recommendations:

Amendment of the Act is necessary to comply with all the requirements of Articles 22 and 23 of the WTO's Trade Related Intellectual Property Right (TRIPS).

d) Amendment of Patent Act to Facilitate Accelerated Registration Process

The period of patent approval from the submission to the approval date remains unpredictable and can be counted as long as 12.6 years on average in Thailand, due to a lack of human resources - particularly chemical and pharmaceutical patent examiners - at the DIP. The bottlenecks, resulting in only 1,286 patents granted in 2014⁷, give rise to uncertainty of investment protection for rights holders and increase the possibility of infringement from local generic companies during the pending approval periods, which damages both local businesses and innovators. Under such unpredictable circumstances, the patent term restoration or adjustment have never been established in the Thai legal framework.

As mentioned above, the current delay in patent approval discourages applicants from seeking patent protection in Thailand. On a related note, a good source of profit for the patent office is the annual renewal fees for maintenance of patent applications or patents. Some jurisdictions, like the European Patent Office (EPO), require the payment of an annual fee from the third year on for a pending patent application. In other jurisdictions like Singapore or Thailand, the renewal fees are due only once the patent is granted, although the patentee has to pay accrued renewal fees from the fourth or fifth year on. Consequently, it is evident that the patent office under the DIP faces the loss of potential revenue from renewal fees should the patentee opt to abandon the patent before it is granted. In

⁷http://www.wipo.int/ipstats/en/statistics/country_profile/profile.jsp?code=TH

conclusion, not only does the huge delay of the DIP in granting patents discourage applicants to seek protection in Thailand, but this also means missing out on potential earnings for the DIP.

2. Policies Related to IPs

a) Trademark elimination via plain packaging policy and excessive measures restricting normal use of trademarks

The EABC recognizes and respects the rights of the Royal Thai Government to protect its citizens and to implement proportionate regulations to ensure the health of the population, including the control of alcohol beverages and tobacco products; however, we do not believe that unnecessary and unproven restrictions or impingements on trademarks are appropriate means of achieving this goal. Instead, they could lead to several unintended consequences.

The draft tobacco consumption control act seeks to introduce a plain packaging of tobacco products. Such policy would result in companies having to relinquish their use of registered trademarks, or valuable elements of registered trademarks, in order to comply with the new requirements.

These requirements would clearly damage intellectual property rights in Thailand, negatively impact foreign and Thai companies alike, and also set a legislative and regulatory precedent that is inconsistent with national and international trademark laws, as well as Thailand's obligations under the World Trade Organization agreements. In fact, Australia, the only country to implement a plain packaging law, is currently facing legal challenges from five WTO nations.

Where intellectual property rights are concerned, the policy or legislation on plain packaging would surely eliminate trademarks and their respective value. Because of this potential elimination of trademarks, such policies risk being in contravention of TRIPs Article 20⁸, which prevents unjustifiable encumbrances of trademark rights.

Similarly the Alcohol Labelling Notification impedes the use of certain registered trademarks for alcohol beverages and likely constitutes a serious barrier to trade, especially to international companies, and some brands could be forced to exit the Thai market. Furthermore, such a Notification is difficult to comply with due to its ambiguity and broadly defined terms. This raises a grave enforcement concern, considering the reward scheme. Most importantly, plain packaging of any protected trademark products would increase and ease the production and transaction of counterfeit goods.

Recommendations:

1. The EABC strongly urges the Thai government to protect Trademarks for businesses. There remains no direct evidence that plain packaging or notifications on alcohol label policy or the like improves public health, and it has the tendency to devalue trademarks. This in turn makes businesses compete on price, which is likely to increase tobacco and alcohol consumption. Thailand is also member of WTO. We recommend it is necessary for Thailand to comply with WTO's TRIPS to improve IP protection for foreign investments and to promote a suitable environment for innovation.
2. Consider alternative social policies to address the consumption of alcohol beverages and tobacco products

⁸TRIPs Article 20 states that the use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as, use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings.

3. We encourage regular consultation with the EABC IPR working group prior to the formation of any policies related to IPs, in order to improve foreign perspectives on Thailand's investments and competitiveness.

b) Patent and Trademark registration procedures via the Licencing Facilitation Act (LFA)

The implementation of the Licensing Facilitation Act B.E. 2558 (2015) in July 2015, requires all government agencies that grant permit approvals to issue and release a public manual for the application process, encompassing relevant regulation, required steps and estimate timeline. In practice, however, the enforcement of the LFA creates difficulties for some business communities. There are two main concerns; a timeline and a single submission of required documents. Since the LFA has been enforced, formal documents missed in the filing at the time of the patent application can be submitted only once within the non-extendable deadline of 90 days from the application filing date. It turns out that allowing a single submission of required documents provides room for authorities to easily reject applications, and is a burden on applicants, who are requested to provide unnecessary or unrelated documents.

Recommendations:

EABC requests clearer instructions from the Thai Government and flexibility in the submission process.

3. Intellectual Property Rights for ICT

IPR protection is an important aspect of building a knowledge and innovation economy and in supporting investor confidence overall. The Digital Economy brings new and important issues such as the management of data and privacy. These are covered in the ICT section.

Software Piracy: Software piracy practices in Thailand are at an acute level. It is common practice for example to use counterfeit operating systems and other unauthorised versions of software. BSA, the Software Alliance, notes that Thailand's piracy rate has marginally improved, but at about 70% is still amongst the highest in the world. The harm this causes is not just about loss of benefit to IP owners, but more directly it is about the harm to systems through infections, and the time and effort they take to rectify. Remedies include a range of measures:

- i) A change in attitude to non-tolerance of the use of pirated software
- ii) More affordable versions - e.g. academic and student versions and SME versions, all with appropriately packaged functionality levels
- iii) Education about the negative consequences of the use of pirated software
- iv) Greater likelihood of being caught, and enforced penalties for breaches

Copyright - eCommerce context

In the bricks-and-mortar world, a shop or provider of goods or services (merchant) can be liable for infringing IPRs in the goods of services provided. In the online world, the online merchant may be similarly liable.

Responsibilities of online intermediaries (e.g. data centre operators, and ISPs, including mobile network operators) have spawned much debate. Apart from online merchants, the conveyors or hosts of data are not in ideal positions to be the protectors of IPRs.

For ISPs (which merely provide access) the only real remedy is to block access to the site. This is also the case for data centre operators, although in for these, take down orders are also possible. Blocking orders which are validly obtained through a court process or are validly issued by a government agency after due process may apply, but they can be a big stick in situations where only a limited number of infringing goods is relevant, and there have been situations of harm caused to an online business through over-reach with such orders.

Amendments to the Copyright Act which came into force in early 2015 appear to have achieved a good balance between the need to protect IPRs on the one hand and a workable means for online intermediaries to go about their business on the other.

The operation of the amendments is being monitored for any possible suggested adjustments.

Rail and Road Infrastructure

- Thailand shall use the European standards for infrastructural investments as they bring world-leading state-of-the-art technology. Together with ISO standards they are the only international standards for infrastructure and bring significant benefits.
- Thailand shall consider European expertise for railway systems to supervise tenders. This will manage to avoid the trap of very high following costs for operation and maintenance.

Industry Overview

While Thailand already excels in transport compared to other ASEAN member countries, ranked in top 3 on the World Bank’s 2014 Logistics Performance Index, more investment is needed to meet rising demands for infrastructure and logistics services to improve social and economic opportunities and country competitiveness, and to become a regional logistics hub of ASEAN. Logistics is already a large industry in Thailand. It contributes 300 billion baht to the economy annually, accounting for 3.2 percent of the country’s GDP (BOI: Thailand Investment Review, 2014).

Office of Transport and Traffic Policy and Planning, the country’s logistics costs are relatively high, at 14.3 percent of GDP.

Compared to roads, rail plays a small role in terms of passenger and freight services, with less than two percent of the freight share. The network covers only 4,043 km, most of which - 3,763 km - is single track. The network consists of five main lines to different parts of Thailand, covering 47 of 77 provinces. Shipping goods via rail could take very long time. This is because there are few dual and

Figure 1: Transport costs

Mode of Transport	Usage (%)	Freight Volume (Baht/Ton-Km)
Road	87.50	2.12
Water	11.08	0.65
Rail	1.40	0.95
Air	0.02	10
Total	100	2.02

Source: OTP, 2013

Roads are the dominant form of land transport, with a total length of 400,000 km, consisting of 70,000 km for highways, 48,000 km for rural roads and 352,000 km for local roads (OTP, 2015). The road network carries 87.5 percent of traffic, with moderately high transport costs of 2.12 baht/ ton-km, while rail and water are relatively low-cost transport but have only been used for 11.08 percent and 1.4 percent respectively. According to the

triple tracks, trains need to wait for the track to switch. Additionally, 60 percent of the rail network is in bad condition because of a lack of maintenance, and many rural pathways cross path tracks, requiring the train to run slowly and often causing accidents (Transportation development strategies plan 2015 - 2018, Ministry of Transport). To respond to the rail challenges, a huge investment plan in 2015 - 2016 was pre-approved by the Cabinet on

1st December 2015 for 1.796 trillion baht. Of that amount, 1.58 trillion baht will be spent on the rail network.

Thailand's Eleventh National Economic and Social Development Plan aims for higher-quality infrastructure and transport systems to improve logistics and connectivity between Thailand, its provinces and neighbouring countries. The plan will increase economic activity. Modernizing the railway is a core component of the strategy to expand Thailand's role as a logistics hub for trade and commerce in the GMS and ASEAN, as well as open up more remote regions of the country to support inclusive growth (Country Partnership Strategy: Thailand 2013 - 2016, Asian Development Bank). The investment program is anticipated to shift in the transport sector from roads to rail and increase in competitiveness by reducing logistics costs.

Figure 2: Thailand Quality of infrastructure

No	Infrastructure	Value	Rank / 140
1	Quality of overall infrastructure	4.0	71
2	Quality of roads	4.4	51
3	Quality of railroad infrastructure	2.4	78
4	Quality of port infrastructure	4.5	5.2
5	Quality of air transport infrastructure	5.1	38
6	Available airline seat km/week, millions	2,866.9	14
7	Quality of electricity supply	5.2	56
8	Mobile telephone subscriptions/100 pop	144.4	31
9	Fixed-telephone lines/100 pop	8.5	88

Source: *The Global Competitiveness Index 2015 - 2016, World Economic Forum*

While Thailand's overall logistics performance recovered somewhat to rise three ranks to 35th in 2014, that is the same rank as it held in 2010, demonstrating no improvement over that period. International shipment is important for Thailand in becoming an ASEAN logistics hub. Simpler,

easier, faster and cheaper ways for businesses to move goods in and out of Thailand are needed. Developing regional connectivity in transport and logistics systems will need physical transportation links with neighbours and harmonization of rules and regulations within ASEAN.

Figure 3: Thailand Logistics Performance 2014

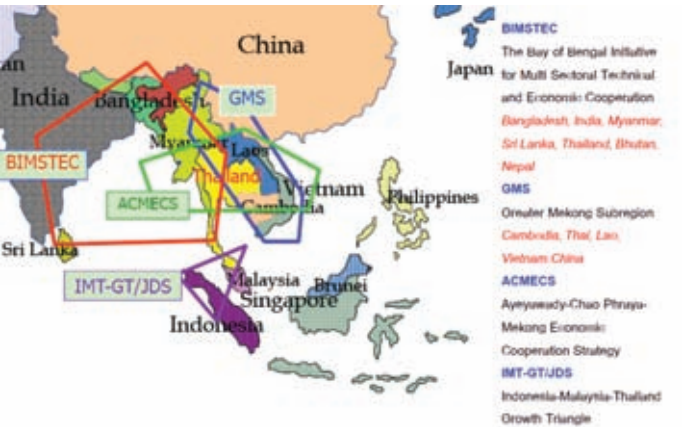
Economy	Rank /160	Overall	Customs		Infrastructure		International Shipment		Logistics quality and competence		Tracking and tracing		Timeliness	
			Rank	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score
Thailand	35	3.43	36	3.21	30	3.40	39	3.30	38	3.29	33	3.45	29	3.96

Source: Logistics Performance Index 2014

The 11th National Economic and Social Development (NESDB) Plan (2012-2016) aims to move Thailand forward on a more sustainable path and pave the way to achieve high-income country status in the long run (NESDB, 2014). In this development, infrastructure will advance in multimodal transportation management systems that integrate roads, railways, water and air transport, improving efficiency and international standards for speed, safety, and punctuality. Overall efficiency should reduce logistics costs; hence, increasing competitiveness. Upgrades include a National Single Window system, distribution centres, and cross border trade. To make it more efficient, improved railway transport connecting road and railway networks, dual-track rail lines along major routes, locomotive and rolling stock should be added. Transportation services need to focus in the areas that will improve quality and standards.

The formation of the ASEAN Economic Community will lead to greater cooperation in economic, social, cultural and security matters. International connectivity has been the focus of the development in this plan. It will bring together the Greater Mekong Sub-region (GMS) Economic Cooperation Program, the Indonesia-Malaysia-Thailand Growth Triangle (IMT-GT) and Ayeyarwady - Chao Phraya - Mekong Economic Cooperation Strategy (ACMECS). This cooperation will be achieved through the utilization of economic corridors.

Figure 4: Thailand’s Transport Connectivity Enhancement



Source: Thailand’s Infrastructure Investment Presentation, Ministry of Transport

One goal of establishing the AEC is liberalization of services, which include logistics. The AEC will require international rail freight transport and international road freight transport, which are the main weaknesses in Thailand’s logistics performance. Increasing integration with ASEAN would require successful deployment of standards at an ASEAN level, for example, the National Single Window and Standardizations and Authorizations for railways. This will ensure seamless connectivity which will result in further economic growth for Thailand as a logistics hub for ASEAN.

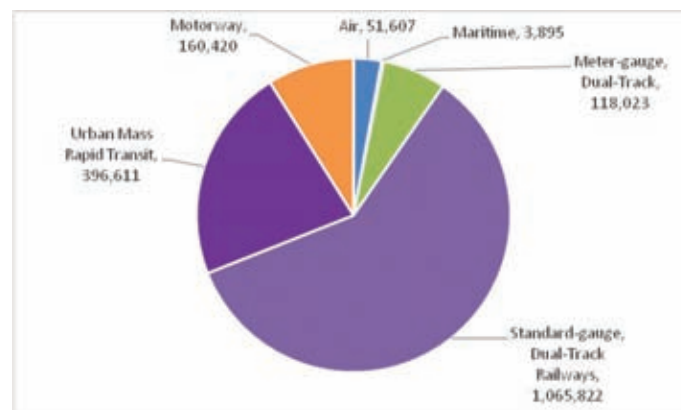
The Ministry of Transport considered and understood the urgent need for improvements to meet rising demands for transport infrastructure and to align with the objectives of Thailand's 11th National Economic and Social Development Plan, Strategy 4 - Restructuring the Economy toward Quality Growth and Sustainability and Strategy 5 - Creation of Regional Connectivity for Social and Economic Stability. To carry forward, the Office of Transport and Traffic Policy and Planning developed an eight-year (2015-2022) Transport Infrastructure Development Strategy with the aims of enhancement of social security by improving people's quality of life, promotion of economic productivity by reducing public transportation cost and time, and strengthening competitiveness as well as positioning Thailand to receive optimal benefit from the AEC. Five key programs will be driven forward, including: (1) inter-city rail network, (2) highway network linking key regions with neighbouring countries, (3) public transportation network within Bangkok and vicinity, (4) air transport, and (5) maritime transport.

On December 1, 2015, the cabinet pre-approved 2016 Action Plans for Transport Infrastructure Investment (Immediate Phase), including a total of 20 projects at an investment cost of 1.796 trillion baht (expected bidding in 2016-2017), covering;

1. Air: 1 project, 51,607 million baht
2. Maritime: 2 projects, 3,895 million baht
3. Land transport: divided into 4 types;
 - 3.1 Meter-gauge, Dual-Track Railways: 5 projects (118,023 million baht)
 - 3.2 Standard-gauge, Dual-Track Railways: 4 projects (1,065,822 million baht)
 - 3.3 Urban Mass Rapid Transit: 5 projects (396,611 million baht)
 - 3.4 Motorways: 3 projects (160,420 million baht)

Significant investment will be related to 14 rail transport projects, accounting for 1.58 trillion baht. This plan will meet the objectives of the Ministry of Transport to drive forward social and economic development in the long-term, stimulate the economy, create jobs and promote income distribution for Thailand.

Figure 5: Transport Projects Under Immediate Investment Plan 2016-2017 (Million Baht)



Source: 2016 Action Plans for Transport Infrastructure Investment (Immediate Phase), OTP

Figure 6: 20 Transport Infrastructure Projects under Immediate Investment Plan



Source: 2016 Action Plans for Transport Infrastructure Investment (Immediate Phase), OTP

Focusing on rail and road infrastructure development, Thailand is currently constructing the new Purple and Red lines as well as extensions to the existing Green and Blue lines (BTS and MRT). In addition to these mass transit developments in Bangkok, the upgrade of the national rail infrastructure is articulated in the 8-year Infrastructure Development Plan with the establishment of double-tracking on six main railway lines and their extension to the borders (Figure 7), including track strengthening from 16T to 20T axle load. This is one of Thailand's strategies to become an ASEAN regional transportation hub.

In terms of road development, one of the five programs emphasizes capacity enhancement for the highway network to link with key areas in the country such as other regional capitals and industrial zones. The road infrastructure development strategies cover the development of four-lane road networks linking Thailand's key economic regions to the borders, construction of new motorways, and facilities

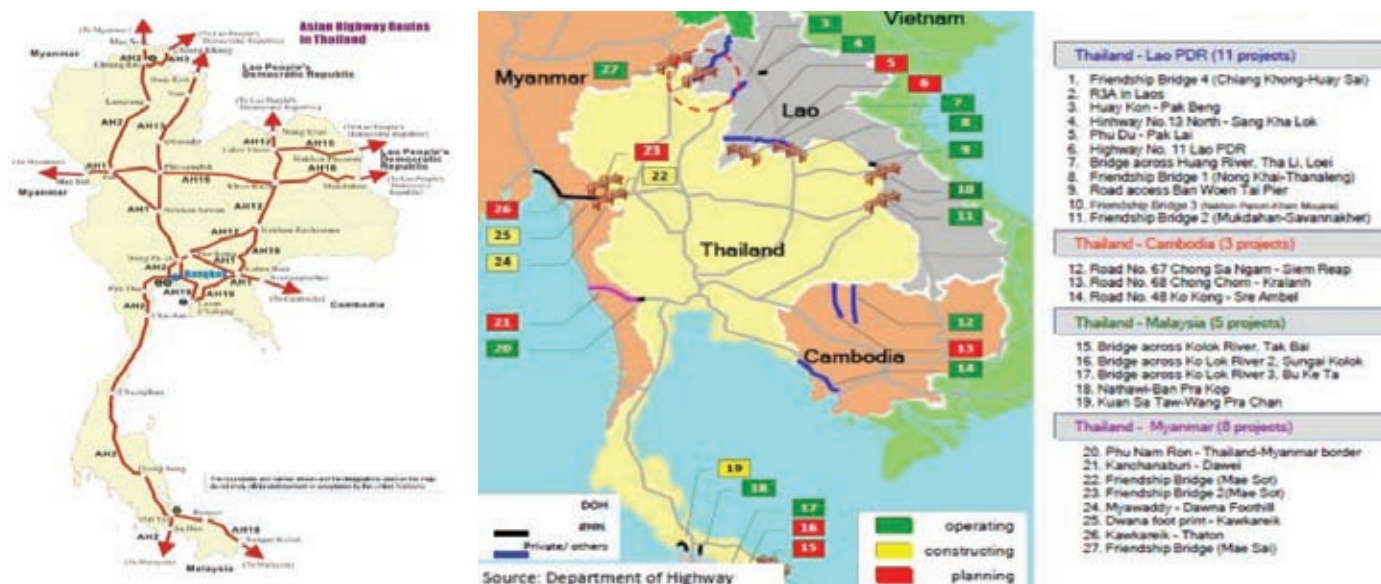
along main roads, for example container yards. Thailand has put considerable effort these road projects (Figure 8) in preparation for the ASEAN Highway Network (AHN) Project under the ASEAN Connectivity Master Plan, AEC. Thailand has also offered its assistance to neighbouring countries in developing the AHN project and promoting connectivity in ASEAN.

Figure 7: Thailand Railway Network



Source: NESDB, 2014

Figure 8: Thailand Road Network in response to AHN



Source: NESDB and Department of Highways, Thailand

Thailand has also progressed in the regional development of rail and road infrastructure as well as supporting regional integration. The evidence is shown through the development of economic corridor network as well as cross-border transport facilitation, especially in the Greater Mekong Sub-region (GMS). The GMS was conceptualized in 1998. The program strategy emphasizes Thailand's infrastructure development in transportation, energy and power supply, telecommunications, and other areas. With the support of the Asian Development Bank (ADB), the GMS program focuses on three main economic corridors; the North-South Corridor, the East-West Corridor, and the Southern Corridor (Figure 9). The new GMS Strategic Framework (2012-2022) focuses more on integrated, multi-development and spatial development in particular sub-regions - China, Cambodia, Lao PDR, Myanmar, Thailand, and Vietnam. To date,

investment under the GMS Framework has been made in 55 infrastructure projects, with total investment capital of THB 420 billion, covering major areas of roads, airports, railways, hydropower, and tourism infrastructure. The key purpose of GMS is to complement regional integration through ASEAN Connectivity. Therefore, efforts are being made for standardization of roads in ASEAN, improvement of road safety, achievement of the first GMS railway link by 2020, and establishment of the Greater Mekong Railway Association (GMRA). The objectives also include cross-border trade and investment facilitation; for example, upgrading border crossing point facilities, harmonization of cross-border procedures, National Single Window (NSW), eCommerce, and improvement of laws and regulations in trade and transport.

Figure 9: ASEAN Economic Corridor



Source: ASEAN Business Advisory Council

Regarding the funding of such infrastructure projects, Thailand once received financial support from the Asian Development Bank (ADB). Currently, the Thai government is pushing through the idea of an infrastructure fund registered with Thailand's Stock Exchange and overseen by the Ministry of Finance. The ten pilot sectors eligible for this Fund cover rail transport, electricity, water supply, roads/expressways/toll ways, airports, deep seaports, telecommunication, alternative energy, water management/irrigation, and disaster prevention.

Considering the scale of Thailand's infrastructure development program, the European Union is keen to offer assistance, leveraging the expertise they have acquired in building sophisticated transportation systems in Europe. In particular, EU organizations can help Thailand in the areas of regulatory standardization and the interoperability of transport systems. For example, Europe managed to develop standards and regulations allowing seamless rail operations across borders. Supporting Thailand adopting suitable interoperability standards would certainly position the country as a leader in developing the Great Mekong Sub-region (GMS) network. This would strengthen Thailand's competitiveness and would improve the Thai economy.

The EABC Rail and Road Infrastructure Working Group was set up in 2014 to address concerns related to the industry. Their key mandate is to establish a strategic direction for the Rail and Road Infrastructure sector in Thailand as well as to provide a constructive contribution to the long-term economic partnership between Thailand and Europe.

1. EU Technical Assistance in Upgrading Thailand's Rail and Road Infrastructure

We are pleased to see Thailand moving from road to rail in order to increase country competitiveness and attract foreign investors. A vast rail network will certainly become a very important aspect for ASEAN as a regional hub. Many investments in the transportation network have been focused on lowering the cost of procurement, to the detriment of the total cost of ownership. The use of outdated standards and negligence in providing systematic maintenance are responsible for the poor state of many structures. This leads to safety and availability issues, as well as higher operational and maintenance costs.

2. Standards and Authorisations

The most important message: Detailed planning and technical conditions shall be based on the RAMS principle, i.e.

Reliability
Availability
Maintainability
Safety

Those principles are shown in the international standards **IEC 62278 / EN 50126** and lead to planning around and checking of the **Life Cycle Cost** of a railway system. If this is not considered in the significant planned investments, there could be a dangerous **financial trap**.

The supposedly low-cost offerings of ‘friendly nations’, may lead to a financial disaster when the long-term costs are too high. This can happen if the Life Cycle Cost aspects are disregarded because the contracts for the financing of investment are binding Thailand to specific foreign products from the ‘friendly nations’ that are not based on the principles of RAMS or LCC, but to ruthless long-term profit maximization.

Thailand could be forced to bear enormously high and hardly affordable follow-up costs in the long-term, for example over 30 years. This can be up to **five times** the original cost of investment

Therefore, it is highly advisable:

- To order a supervision of the tenders by experts with many years of experience in comparable rail systems. The European Union has many such experts.
- Introduce a Central Authority for the Thai Railways as a department of the Ministry of Transport. This body shall be the only one who determines which standards are to be applied and which products are approved for railway systems of any kind.
- To adopt international European standards. Only European standards, which are used throughout the world, will ensure that the LCC costs are kept low, the RAMS principles are respected and there is genuine

competition and continuous technical development with a large number of suppliers. All suppliers - including Chinese and Japanese suppliers - are able to deliver in accordance with CEN and CENELEC European standards.

As European Standards are international standards, developed over decades by the European Union’s member states, they allow for the introduction of national values and particularities and are outstandingly suitable for use by the Kingdom of Thailand.

Reliability, availability, maintainability, safety and high cost efficiency requires common standards for all national railway systems. If all national railway investments and operations are based on the same standards, staff deployment will gain quality and exchangeability at lower costs. Maintenance and spare part management will also be more efficient, and it will be easier to find experienced suppliers and service providers.

This programme will need a Central Railway Authority as used in many other nations. If a Central Railway Authority will be in charge to determine the mandatory standards and to give approval for railway products and services, Thailand will gain plenty of advantages: in addition to RAMS and the lowest LCC, it would be a big step towards compliance. Corruption is quite often rising, when subordinate authorities are assigned to decide on standards and approvals for products and services.

The European Union is able to provide assistance to establish such an authority, following the example and experience of European authorities.

The EABC is also ready to support Thailand’s direct access to European Standards.



3. ASEAN Interoperability

For Thailand to become an ASEAN logistics hub, the country needs to lead the way in the development and harmonisation of the Trans-ASEAN integrated railway network. When railroads lack a standard gauge, the trains of different companies need to be transferred from one railroad to another, moved across town and loaded onto freight cars, which increased costs for business and reduces Thailand's competitiveness.

The main goal is technical interoperability to reach harmonization of ASEAN railways. A unique train control system for Thailand has to be designed to be fully (technically and operationally) interoperable across ASEAN. This means that any train equipped with such a system may run on any line, as long as the trackside equipment is also fitted with this system. Therefore, the number of countries who have incorporated European Standards has increased steadily over past years. Since 2010, 42 countries have been using EU standards. European standards are multinational standards and allow in an open system to implement best-fit technology, increasing the international supplier base and providing long-term life cycle benefits. They guide designers in developing structurally durable and cost optimized structures by considering the whole project life cycle whereas other standards do not adequately address life cycle costs and environmental issues. As Thailand is moving to the era of railway systems, extensive investment projects would need state-of-the-art standards and authorization to prevent high consequential costs.

The EABC highly recommends that Thailand become a member of International Union of Railways UIC.

The EABC strongly supports the ASEAN International Rail Academy founded by Kasetsart University's KURail Faculty.

Recommendations:

1. RAMS principle and Life Cycle Cost consideration
2. Tender supervision by internationally-experienced, independent experts
3. The introduction of a Central Railway Authority
4. Compulsory use of CEN and CENELEC European standards

4. Developing railway engineering talent in Thailand

To successfully deliver the planned infrastructure projects, Thailand will need to carry on investing in the development of its human capital. Training is essential in order to assure that experience and knowledge is transferred for future projects. The pool of postgraduate engineers is not sufficient to deliver the planned investments or sustainable in the short term.

An additional benefit of developing a strong transportation engineering base in Thailand is that the country will increase its share of exports of products and engineering services to other ASEAN member countries.

The EABC is willing and able to support know-how transfer through the provision of experts. This will enable the Thai industry to further its expertise in railway construction and engineering, with the aim for Thailand to become a regional ASEAN hub for state-of-the-art railway technology. EU organizations ranging from universities to private companies are already involved in training Thai transportation engineers, consultants and project managers. They have been organizing seminars to support vocational education, technical colleges and university cooperation. However, the current demand for rail experts far exceeds qualified trainers in Thailand. Liberalization of the services sector will immediately impact the country's knowledge in rail, which is urgently needed.

Recommendation:

We urge Thailand to consider that European expertise for railway systems is needed, and to relax visa and work permit regulations, which prevent attracting people with expertise. European experts and consultants are a good source of knowledge for Thailand's forthcoming era of a vast rail network. By utilizing the knowledge gained from the nearly 200,000 km of track in Europe, Thailand will instantly see improvements in rail knowledge among students, rail enterprises and related businesses. In a very short time, Thailand will not only be a centre of excellence for regional logistics, but a centre of excellence for rail human capital as well.

Transport and Logistics

SUMMARY OF RECOMMENDATIONS

1. Long term goals for customs facilitation

- 1.1 Introduce incentives when revenue collection exceeds the annual targeted budget or cases where there is clear fraudulent intent
- 1.2 Increase transparency, certainty and objectivity of customs processes and determination of imports, exports, regulations
- 1.3 Clearly indicate ways in which companies can comply with regulations and accept the concept of “reasonable care”, submitting voluntary disclosures, publishing guidelines for compliance, etc., when enforcing customs requirements. Transparency is needed.
- 1.4 Indicate channels for appeals by the trading community which is fair, objective and non-bureaucratic where there are disputes with Customs
- 1.5 Clearly state service commitments of Customs vis-a-vis the trading community, and likewise the expected commitments from the trading community to Customs
- 1.6 Align regulations and processes with international and regional best practices
- 1.7 Ensure Thai Customs officials are remunerated fairly
- 1.8 Increase trade facilitation in application of customs controls
- 1.9 Remove dual language requirements, which are a source of uncertainty and additional cost and time required for customs clearance
- 1.10 Ratify the ASEAN Framework Agreements on the Facilitation of Goods in Transit and on Inter-State Transport and transpose into Thai Law

2. Short term measures in customs and trade facilitation reforms

- 2.1 We support formal customs entry in English. Dual languages should not be a requirement.
- 2.2 Thailand needs to raise the de minimis level and the threshold for low-value, dutiable (Cat. 3).
- 2.3 We urge the Thai Customs Department in principle to allow consolidated shipments to be break bulked, as a matter of policy. Operational details can be worked out with the logistics service providers.
- 2.4 The Thai Customs Department should streamline clearance procedures.
- 2.5 The EABC encourages the Thai Customs Department to revise Customs Notification 79/B.E. 2554 and allow submission of data for outbound shipments 30 minutes before flight departure in line with international best practices, to promote higher exports.
- 2.6 We support Thailand in separating tariff codes for controlled and non-controlled items to facilitate the import of non-controlled items, in particular, for life sciences products.
- 2.7 Thailand needs to reduce delays in the application process for free zone licenses by providing more clarity to the guidelines especially in terms of process and requirements.
- 2.8 We recommend Thailand to improve its e-Paperless procedures. Manual handover of original ID or passport to customs brokers for several days when processing the registration should be eliminated and replaced by a more streamlined process.
- 2.9 The Thai Customs Department should implement an e-transit system to increase efficiency.

3. Rules on foreign direct investment

3.1 We recommend Thailand opens the postal market for competition.

3.2 We encourage Thailand to review its regime for foreign investment, in particular in the services sector, which plays a critical role in supporting the growth of strategic manufacturing sectors.

Industry Overview

Thanks to its strategic geographical location, Thailand has a unique opportunity to position itself as the leading logistics hub in ASEAN. The Government has stated an objective of lowering logistics costs significantly in order to improve Thailand's competitiveness in preparation for the ASEAN Economic Community (AEC) (OTP, 2016). The quality and cost of logistics services depend on conditions such as foreign ownership rules, opening hours of ports and airports, and customs operations. There are several measures which can be undertaken in the short and long-term to achieve these objectives.

1. Long term goals for customs facilitation

Trade facilitation seeks to reduce the transaction costs faced by exporters and importers to stimulate trade, investment and improves productivity. Customs plays a critical role in facilitating trade as customs and other border procedures have a direct impact on trade costs. Streamlined procedures, simplified documentation requirements and automation are the most critical aspects for efficient customs clearance procedures.

The Thai Customs Department has in the past decade introduced a number of laudable initiatives, such as an automated clearance system and simplified procedures for reliable traders. However, there are certain aspects have an adverse impact on these measures:

- The **legal framework lacks sufficient clarity** and therefore becomes subject to interpretation from individual customs officials. Detailed, technical

guidelines are not always made publicly available, which makes enforcement and customs clearance procedures a source of uncertainty for the business community.

- The current **reward and penalty scheme** within Customs encourages individual customs officials to take an aggressive and rigid stance in customs clearance, including customs valuation, document inspection, controls and audits, in order to get rewarded even for minor, administrative errors. There is insufficient recognition of compliant practices of the trading community. This, together with insufficient clarity in the legal framework and regulations makes compliance difficult for traders. The legal and enforcement system should provide transparency and opportunity for the trading community to comply with prevailing regulations without facing subjectivity or doubt, or case-by-case interpretations of the law. However, where there are clear instances of non-compliance, traders should be penalised. Current Thai regulations are not only unclear, but also subject to internal contradictions and varying interpretation. In addition, there should be limits and specific conditions before any rewards or incentives should be accorded to Customs. It is recommended that rewards are only allowed where revenue collection exceeds current budgeted targets set by the Ministry of Finance, or for cases which have clear fraudulent intent. This is to prevent abuse of the reward and penalty scheme.
- Customs should **recognise reasonable care by the trading community** to encourage compliance with



laws and regulations. This addresses intent of a non-compliance or violation: distinguishing between unintentional non-compliance from intentional/fraudulent violations. Other countries like the US have clear programs that encourage companies to voluntarily comply with regulations, recognising reasonable care, allowing the trading community to voluntarily disclose errors/violations without attracting significant penalties etc. It should not be the case that all cases be deemed fraudulent and therefore attract significant penalties. Customs should take into account “reasonable care” by recognising internal compliance programs of traders, publishing clear guidelines on how to comply and allow for inadvertent/unintentional errors by the trading community. This does not exist in Thai Customs legal and enforcement framework at the moment.

- Customs has during the last year **re-introduced certain manual procedures**, despite the existence of a well-functioning electronic customs clearance system.

In order to improve Thailand’s competitiveness, stimulate trade and lower logistics costs, we proposed the following measures to be considered:

- **Undertake comprehensive customs reform:** There is scope to undertake a comprehensive legal and administrative reform and overhaul of the Thai Customs administration. This could include corporatisation of the Thai Customs Department, introducing a different governance or management structure within Customs etc. This is to ensure the following:

Recommendations:

1. Eliminate the current system of financial incentives in the Thai Customs penalty regime, or introduce specific conditions where incentives are allowed or disallowed for e.g. incentives allowed only when revenue collection exceeds the annual targeted budget or cases where there is clear fraudulent intent
2. Increase transparency, certainty and objectivity of customs processes and determination of imports, exports, regulations
3. Clearly indicate ways companies can comply with regulations by making them transparent and objective, and accept the concept of “reasonable care”, submitting voluntary disclosures, publishing guidelines for compliance etc. when enforcing customs requirements
4. Indicate channels for appeals by the trading community which are fair, objective and non-bureaucratic where there are disputes with Customs
5. Clearly state service commitments of Customs vis-a-vis the trading community, and likewise the expected commitments from the trading community to Customs
6. Align regulations and processes with international and regional best practices
7. Ensure Thai Customs officials are remunerated fairly
8. Increase trade facilitation in the application of customs controls
9. Remove dual language requirements, which are a source of uncertainty, and add additional cost and time required for customs clearance

- **Simplify procedures for goods in transit:** Thailand's current regime for goods in transit particularly affect cross-border road freight services and works against the Government's objective of establishing Thailand as a logistics and transit hub. Currently, regulations do not allow loading in the same vehicle goods in transit and goods for import, unless all goods are formally imported into Thailand (i.e. even goods in transit). In addition, Sadao being one of the major border crossing points in terms of number of vehicles and volumes, is not a pre-approved transit point, meaning that all vehicles passing in transit have to go through separate approval procedures.

Recommendation:

Thailand should ratify the ASEAN Framework Agreements on the Facilitation of Goods in Transit and on Inter-State Transport, including all protocols, and ensure that they are transposed into Thai law. This will found the basis for the implementation of the ASEAN Customs Transit System (ACTS), where Thailand is a pilot country together with Singapore and Malaysia. Without alignment to the above-mentioned Agreements, the ACTS will not be able to be successfully implemented in Thailand.

2. Short Term measures in customs and trade facilitation reforms

There are a number of measures that can be undertaken in the short and long term which can support improved regional and global connectivity and competitiveness. Certain reforms, some of which are outlined below, can be undertaken with relatively little effort, but with a large positive impact on customs clearance lead times.

a) Formal Customs entry in English

Thailand's National Single Window application, known as the Paperless Clearance System, was launched in 2008.

While the new system has enhanced the clearance process, it requires the import and export customs entry to be performed in both English and Thai languages.

This requirement is not conducive to trade and is not aligned with international best practices. In particular, this is also in contravention with the current Thailand Customs Act, Section 113, which only requires the submission to be performed in either English or Thai language. The use of English alone will greatly facilitate the preparation of customs entries, speed up the delivery process and improve staff productivity.

Recommendation:

We recommend that Thai Customs remove with dual language requirements, which are a source of uncertainty and additional cost and time required for customs clearance.

b) Raising the de minimis level and the threshold for low-value, dutiable (Cat. 3) shipments

Trade facilitation seeks to reduce the transaction costs faced by exporters and importers. Reducing these costs stimulates trade, investment and business innovation. A so called de minimis regime provides streamlined border clearance and exemption from customs duties and other taxes below a specified threshold. For low-value shipments, the cost of collecting duties/taxes may far outweigh the revenue collected. Governments can thus refocus their revenue collection efforts on revenue sources such as high value and high risk shipments, reducing the costs borne by importers and speeding up the delivery of imports. The World Trade Organisation (WTO) and the World Customs Organisation (WCO) have also recognised the important trade facilitation aspect of de minimis thresholds. The introduction of an appropriate de minimis facilitates trade, promotes e-commerce and lightens the workload for customs clearance by adopting a more focused approach towards higher value shipments.



Most ASEAN economies already have de minimis arrangements but they vary considerably. In Thailand, the threshold is currently only THB 1,500 (around USD 48). A study has shown that the net economic benefits to Thailand with a de minimis threshold of USD 200 would be USD 43.4 million per year, whereas the corresponding figure with a USD 100 de minimis threshold has been estimated to USD 27 million per year.

Similarly, a higher threshold for low-value, dutiable shipments (Category 3), would simplify the customs clearance process and ease the administrative burden for business.

Recommendation:

We would welcome the Thai Customs Department revising provisions related to simplification of imports, such as de minimis, and rising the de minimis threshold to at least THB 3,000 (around USD 100) or higher. We also propose that the current threshold for Category 3 (low-value, dutiable) shipments is raised from THB 40,000 to THB 80,000.

c) Restrictions to Break Bulk Consolidated Shipments in the Free Zone

Importers typically consolidate shipments to allow for greater efficiency and better costs controls when importing into Thailand. However, Thai Customs has disallowed the break-bulk of shipments in the free zone upon importation and after clearance even though this does not violate any regulation or legislation.

The impact of this is higher costs and slower speed to deliver, as the consolidated shipments needs to be double handled, delivered to a facility outside of the free zone, and break bulked prior to delivery. This weakens Thailand's competitiveness as other ASEAN countries do not place similar restrictions to break bulk consolidated shipments in a free zone.

Recommendation:

To stimulate the growth of Thailand's increasing cross-border e-Commerce trade, which largely benefits Thailand's SMEs, it is proposed that Thai Customs in principle allow consolidated shipments to be break bulked, as a matter of policy. Operational details can be worked out with the logistics service providers.

d) Green line import permit entry

As part of the Thai Customs Department's efforts to streamline and modernise its customs procedures, it had introduced the use of electronic data interchange (EDI) to facilitate customs clearance via the e-Customs system. The regulations with regards to electronic customs clearance state that customs entries can be done by electronic means into Customs computer systems. The regulation furthermore states that Custom's IT system is to transmit approval information / license to the Customs computer system through an integrated system, and can serve as a single processing point. In this regard, under the importation declaration and clearance process in the e-Customs system, there is no need for submission of any paper documents, as all data would be transmitted electronically.

However, The Suvarnabhumi Customs Bureau Notice no. 4/B.E.2556 requires that all brokers and business firms, effective from 3 June 2013, submit the original import license prior to the issuance of the cargo permit for "Green Line" inbound shipments, and to print all cargo permits at the Airport Customs Bureau Office, at an additional cost of THB 40 per shipment. This decision introduces a parallel manual processing of paperwork, in addition to the paperless clearance requirements previously in place. It thus runs counter to Custom's own regulations which do not require hard copies to be presented. This has resulted in delays of up to half a day.

Recommendation:

We would recommend that Thailand does away with these manual procedures and reinstates the prevailing fully automated procedures, according to the regulations of the Thai Customs Department.

e) Data submission 2 hours before flight departure for express shipment

According to Customs Notification 79/B.E. 2554, express operators need to comply with data submissions for export shipment two hours prior to flight departure. However, international standard, such as in the EU and US, allows express operators to submit data 30 minutes prior to departure. This policy adversely affects Thai exporters, since time in transit is a critical condition for to be able to compete in today's global markets.

Recommendation:

The EABC encourages the Thai Customs Department to revise Customs Notification 79/B.E. 2554 and allow submission of data for outbound shipments 30 minutes before flight departure in line with international best practices, to promote higher exports.

f) Same tariff code for controlled and non-controlled items

Some life science products which are so called "non-controlled items" have to use the same tariff code as controlled items for customs clearance, such as blood for laboratory tests. However, blood for lab tests is not considered a controlled item by the Thai Food and Drug Agency (FDA). Since express customs procedures are not allowed for controlled items, every time blood samples are imported to Thailand, they need to be processed through formal customs clearance. This adds considerably to the customs clearance lead time for laboratories and hospitals in Thailand. As a consequence, it works against the Government's aspiration of making Thailand a life sciences hub in ASEAN.

Recommendation:

To avoid these types of problems from occurring, we would recommend that Thai Customs Department issues completely separate tariff codes for controlled and non-controlled items, respectively. This will facilitate the import of non-controlled items, in particular core products which Thailand needs in order to become a manufacturing hub for life sciences, where delivery time is critical.

g) Delays in applications for Free Zone licenses

The stipulated timeline for completion of the application process for a free zone license (for all operators in a Free Zone area) with the Customs Department is one month (22 working days). However, in reality, this process lasts for two months (45 working days). This is due to the fact that several departments within Customs are involved in this approval process (e.g. admin, IT, audit department). Due to the lack of clear procedural guidelines, the process takes time since applicants are unclear about what is considered a complete application, and the process appears to be ill coordinated internally within Customs.

Recommendation:

To avoid opportunities for poor governance and practices, we recommend that this process is clarified in a guideline which is made publicly available, so that the process and requirements can be made clearer for the applications and the processing time shortened.



h) e-Paperless Registration

The Thai Customs Department has since 2008 implemented a system called e-Paperless to support electronic trade and trade facilitation. But the way to certify an importer's identity through the e-Paperless system still highly manual since Customs requires original ID or passport for registration. This causes additional cost and delays for the importer or exporter, who has to hand over original ID or passport to customs brokers for several days processing of the registration with Customs.

Recommendation:

We would recommend that Thai Customs Department provides an online e-paperless registration by scanning the original ID card/passport and uploading it to customs web service to assure and confirm identification for registration. Recognised, reliable customs brokers and logistics companies have robust procedures in place for registration of customers. We would welcome if the Thai Customs Department relies on this category of operators to verify the identity of its customers upon registration rather than having to go through a separate procedure with Customs.

i) Implementation of e-transit system

We are very supportive of the Thai Customs initiative of implementing an electronic system for transit shipment manifests, the so called e-transit system. However, although this has been discussed since 2015, the implementation has not yet commenced.

Currently, the submission of required paperwork for transit shipments is entirely manual and mirrors the process for Category 4 shipments. Paperwork consolidation (same as export shipment, i.e. one entry = 30 HAWB) is not allowed.

Recommendation:

To simplify transit shipments and align Customs processes with the Government's aim of making Thailand a transit hub, we would recommend that the paperwork for transit shipments is allowed to be simplified and consolidated (similar to export shipments). In addition, we would urge Customs to indicate the timeline for the implementation of an E-transit system.

3. Rules on foreign direct investment

Conducive policies are the key to encourage efficient and competitively priced logistics services and do not require a lot of government resources, but would still have a large positive impact and create important spill-over effects in the local industry.

a) Gradual liberalisation of the postal sector

According to the Postal Act of 1934, the Royal Thai Government has the exclusive right to handle postal services. Collection, delivery or handling of letters and postcards fall under a monopoly held by Thailand Post. The breach of the postal monopoly by private postal, courier or express delivery operators is currently subject to a fine of THB 20 for each letter and postcard that is delivered from abroad to an addressee in Thailand. This creates an uneven level playing field, since the monopoly also covers segments which are outside the scope of basic postal services (such as express mail).

Recommendation:

We would recommend Thailand go down the same path as many other countries in gradually opening the postal market to competition.

b) Liberalising logistics services

The ASEAN Logistics Roadmap contains a list of sectors where ASEAN member countries “shall endeavour to achieve substantial liberalisation” by 2013. The objectives of the Logistics Roadmap are to “create an ASEAN single market by 2015 by strengthening ASEAN economic integration through liberalisation and facilitation measures in the area of logistics services”. The AEC further commits to allow for foreign (ASEAN) equity participation of 70 per cent by 2013. Current rules in the Foreign Business Act limit foreign direct investments in logistics services to 49 percent equity ownership.

Recommendation:

We would encourage Thailand to review its regime for foreign investment, in particular in the services sector, which has a critical role in supporting the growth of strategic manufacturing sectors.

Annex I: EABC’s Comments on Draft Customs Bill B.E. ...

Draft Customs Bill, B.E. ...	Comments
<p>Section 164 Any person who imports or brings into the Kingdom any tax-unpaid goods or any goods which have not duly passed through Customs, or exports or takes such goods out of the Kingdom, or assists in any way in importing or exporting or removing or assisting in removal of such goods from any ship, quay, airport, godown, warehouse, place of security, or store room without due permission, or provides the place to store, keep or conceals such goods, or permits or arranges for other persons to do so, or is involved in any way in carrying or moving, or dealing in any manner with, such goods, shall for each offence be liable to <u>a fine of 4 times the duty-paid value of the goods</u> or to imprisonment for a term of 3 months up to 10 years, or to both.</p> <p>The acts stipulated in this section shall be deemed offenses <u>regardless of whether they were intentional</u> or effected by carelessness.</p> <p>Any goods related to the offences under this Section shall be forfeited regardless of whether any person must be penalized or not.</p>	<p>1. Penalties: The fine of 4 times the duty-paid value of the goods, in our opinion, disregards the notion of intent. In our opinion, the offenses proved to be unintentional should be penalized commensurately. We, therefore, propose that the fine be <u>not exceeding 4 times the duty-paid value of the goods</u>.</p> <p>2. Intention: The 2nd paragraph of Section 164 of the Draft explicitly disregards the actor’s intention. However, we are of the opinion that the acts under Section 164 may, in fact, be affected intentionally or unintentionally. Therefore, <u>we propose that the 2nd paragraph of Section 164 of the draft be removed.</u></p> <p>As an example, the United States’ 18 U.S. Code §145 regarding smuggling into the United States defines the scope of offense by clearly stipulating, “Whoever knowingly and willfully, with intent to defraud the United States, smuggles....” Such language reflects the recognition that smuggling may be affected intentionally or unintentionally, and only the intentional smuggling is an offense under said law.</p>
<p>Section 165 Any person who imports or brings goods into the Kingdom, or exports or takes goods out of the Kingdom, or is involved in any way in importing or exporting goods by <u>evading, or attempting to evade, the payment of customs duty, with intent to defraud</u> the government of the tax payable on the goods, shall, for each offense, be liable to a <u>fine of 0.5 times to 4 times the additional amount of duty payable,</u> or imprisonment for a term of not exceeding 10 years, or to both.</p>	<p>We agree with Section 165 of the Draft, which clearly requires that for an act to be considered an offense under this Section, there must be fraudulent intent. We also see support the <i>fine calculation based on the amount of additional amount of duty payable rather than on the duty-paid value of the goods.</i></p>

Draft Customs Bill, B.E. ...	Comments
<p>Section 166 Any person who imports or brings goods into the Kingdom, or exports or takes goods out of the Kingdom by violation of restriction or prohibition applicable to such goods, shall, for each offense, be liable to <u>a fine as per the law prescribing that prohibition or restriction, or to imprisonment for a term of 3 months up to 10 years,</u> or to both.</p>	<p>1. Penalty: We propose that the penalty, be it fine or imprisonment, under Section 166 be as per the legislation prescribing the prohibition or restriction.</p>
<p>The acts stipulated in this section shall be deemed offenses <u>regardless of whether they were intentional</u> or effected by carelessness.</p> <p>Any goods related to the offences under this Section shall be forfeited regardless of whether any person must be penalized or not.</p>	<p>2. Intention: The 2nd paragraph of Section 166 of the Draft explicitly disregards the actor's intention. However, we are of the opinion that the acts under Section 166 may, in fact, be affected intentionally or unintentionally. Therefore, we propose that the 2nd paragraph of Section 166 be removed.</p>



Annex II: Continual Recommendations on FBA by Sector

• *Financial services: banking and insurance*

Due to the sector specific legislation, Thailand's **banking industry** remains restrictive to foreign participation. Currently, the largest five domestic commercial banks control over 60 per cent of the retail banking market with limited forms of competition. Stringent conditions for potential new foreign entities include majority ownership restrictions, limitations on the number of branches (a maximum of three for branches and 20 for subsidiaries), rules on minimum capital requirements and origin of assets and high joining fees for the retail payment system. Incoming foreign banks have also reported substantial administrative burdens and lack of transparency and certainty on legal and tax areas.

In addition, Thailand has Special Financial Institutions (SFIs) which are governed by a special Act under the Ministry of Finance. These financial institutions - currently eight banks - account for 23 percent of banking assets and 26 percent of deposits in the system, and as they are not subjected to BOT oversight and regulation, often these banks compete with commercial banks on an uneven playing field. While they can be deemed to be systemically important, these financial institutions are not governed by the Bank of Thailand, and hence are not subjected to the special prudential measures nor the FIDF fees imposed on commercial banks. Since the revision of FIDF fees to 45 bps, the Constitution Court has ruled in favour of a decree to allow transfer of FIDF debt by collecting 46 bps from all commercial banks and four state owned banks. The four are the Government Savings Bank, the Government Housing Bank, the Bank for Agriculture and Agricultural Cooperatives and the Islamic Bank of Thailand. The commercial banks paid the fee starting in July 2012, but the state-owned banks have not paid because of unclear enforcement.

Foreign participation in the life and non-life insurance sector remains restricted and has been further limited with the enactment of the Insurance Act of 2008, which requires existing foreign majority controlled life and non-life insurance companies to amend their voting share structures to become majority Thai controlled by 2013. As a result of the post-flood situation, Thailand has approved increases of foreign equity in insurance companies from the 25 per cent cap to re-capitalize the cash-strapped Thai insurance sector. This however has only happened on a case-by-case basis.

Nonetheless, there has been no formal notice issued that clearly states that those limits no longer apply from a certain date. To progressively liberalize trade in financial services within ASEAN, Thailand is also working towards recognition of professional qualifications (such as insurance intermediation, brokerage) with a view to facilitating their movement within the region. Unfortunately, this again has not led to concrete, measurable results of improved market access.

In an effort to increase foreign participation in the market, Thailand plans to remove the 75 per cent voting rights ('voting share sold') and management control restrictions under the existing Insurance Act of 2008, which require foreign insurance companies to restructure by 2013 to reflect Thai control. Failing to comply with such restrictions will be subject to penalty under the existing insurance laws of 2008 including prohibition of business expansion as well.

It is worth noting that the foreign equity caps in the insurance sector are much more restrictive than in other parts of the services sector and this is regarded as a key market access obstacle which needs to be addressed.

Transfer of credentials and professional qualifications, restrictions to cross-border supply (even if mode 1 and mode 2 are fully bound), lack of competition resulting in high premiums and restrictions on innovative products, i.e. medical insurance, are other industry concerns. In addition, where industry innovation has taken place and new product ranges have been approved, discriminatory tax treatment has not allowed these products to become successful. An example of this is the unit linked business from Life Insurers.

The IT and Non-IT offshore regulations, although issued, may open up the possibility of future on-shoring of services. All banks should have the freedom to choose their suppliers, whether onshore or offshore, to enable the most optimum and efficient level of service.

• **Retail and wholesale industry**

The **retail and wholesale industries**¹ are captured under the FBA List 3 businesses. In addition, license to operate these wholesale and retail businesses must be obtained per location and there is no prescribed timeframe for the awarding process. Regarded as specific issues of concern to European investors, the limitations to operate under the FBA have been hindering European businesses' ability to compete on an uneven playing field and to implement the most efficient operational models to the benefit of consumers.

A draft Retailing and Wholesaling Bill has been published on several occasions in the past but has not been proceeded

with. The last draft published a number of years ago proposed to impose an obligation to obtain a licence on such businesses, based on either the annual sales figure, the number of units or whether they were branded. Although efforts to push for the enactment of the Act seem to be put on hold, it is important to keep a close eye on potential developments to ensure that this does not lead to unfair, discriminatory practices on certain hyper-marts and superstores, discount stores, supermarkets and convenience stores, to the detriment of legitimate business interests.

• **ICT**

In telecoms services, category 1 licenses are restricted by reference to List 3 of the FBA, whereas for categories 2 and 3, the Telecom Business Act and the Foreign Dominance Notification govern foreign ownership. While there is at least one case of specific approval for majority foreign ownership in category 1, the policy of allowing it should be the norm rather than the exception. This is important for innovation and supporting end-to-end, global services better. The EABC recommends the removal of the Foreign Dominance Notification as it sends the wrong message to investors and adds to regulatory compliance costs without adding any real value. See also the ICT section of this paper.

The EABC appreciates the recent positive developments, and those that are still underway, with respect to the review of List 3 in the FBA to remove restrictions in certain

¹Retail sale of goods of all types with total minimum capital in the amount lower than one hundred million Baht or with minimum capital of each store in the amount lower than twenty million Baht; Wholesale of all types with minimum capital of each store in the amount lower than one hundred million Baht

²The Amendment of the Category of Business under the Foreign Business Act B.E. 2542

The Ministry of Commerce amended the category of business under the Foreign Business License Act B.E. 2542 by issuing the Royal Decree for the Amendment of list 3 (13) annexed to the Foreign Business Act B.E. 2542 as follows: "(13) Internal trade related to traditional agricultural products or produce not yet prohibited by law unless the future trading of traditional agricultural goods in Thailand's future trading market of traditional agricultural goods without the delivery or the receiving of the domestic agricultural goods." The effective date of this Royal Decree is from 23 March 2013 onwards. By this Royal Decree, foreigners can operate the future trading of traditional agricultural goods in Thailand without the delivery or the receiving of the domestic agricultural goods without the business license under the Foreign Business Act.



areas of financial services². Real liberalization will only occur however if the sector-specific laws which govern these sectors actually allow more liberalization. We welcome more progressive development in Thailand's services liberalization which aims to improve capacity, quality and competitiveness in the face of increase globalization. Further improvement of liberalization, in terms of wider sector coverage and a deeper level of commitment, is also envisaged as targeted in the AEC Blueprint. Overall, however, it is regrettable that tangible progress in this respect is not yet forthcoming and commitments seem weak.

The EABC strongly believes that rationalizing the regulatory regime and increasing competition in Thailand's services sector could help to enhance innovation and productivity, and hence increase the competitiveness of the Thai economy as a whole and also support and enable

Thai businesses to compete overseas. Progressive liberalization and healthy competition is encouraged to ensure sufficient and sustainable economic growth in the services sector. An increase in foreign participation will attract investment and transfer of technology and will be to the benefit of consumers, through cheaper and better services. Admission and temporary employment of foreign workers also introduces more flexibility into the already tight labour market in Thailand, given the country's serious shortage of skilled labour. To enable Thailand to position itself as a regional and international hub for the export of services, it is important to ensure the business community's confidence with a concrete policy roadmap towards progressive liberalization. Essentially, this should also provide a meaningful drive for long-term development in the manufacturing sector, as well as increased tax revenues for the government.

New Ministerial Regulations Prescribing Businesses which are not listed in the List 3(21) of Lists Annex to the Foreign Business Act B.E. 2542
The Ministerial Regulations determines following businesses to be service businesses which are not listed in (21) of the list 3 annex to the Foreign Business Act B.E. 2542, thereby rendering them not subject to foreign ownership restrictions under the FBA, as follows:

(1) Securities and other businesses according to the Securities and Stock Exchange Laws

- a. Securities Trading
- b. Investment Advisory Service
- c. Securities Underwriting
- d. Securities Borrowing and Lending
- e. Mutual Fund Management
- f. Venture Capital Management
- g. Credits Granting to Securities Business
- h. Financial Advisory Service
- i. Securities Registrar Service
- j. Client's Assets of Securities Companies or Client's Assets of Derivatives Entrepreneurs
- k. Private Funds Custodian
- l. Mutual Funds Supervisor
- m. Bondholders' Representative

(2) Derivative Business according to Derivatives Law - (a) Derivative Dealers (b) Derivative Advisors (c) Derivative Capital Managers

(3) Trustee Business according to Trust for Transactions in Capital Market Law.

By this Regulation, the mentioned business in (1)-(3) do not fall in the Foreign Business Act. However, they are still under the Securities and Stock Exchange Laws, the Derivatives Law and the Trust for Transactions in Capital Market Law as the case may be.

Annex III: Restrictive Regulatory Constraints Pertaining to the Importation of Hazardous Substances

• Department of Industrial Works' existing regulations for hazardous substance imports

a) Requirement for information that may be confidential business information, in obtaining classification ruling, registration and import permit application

Requirement	Legal Reference	Difficulties for Business
<p>Name and location of manufacturer</p> <p>This information must be disclosed in obtaining a classification ruling, registration and import permit application.</p>	<p>❑ MoI Notification re Registration, Issuance of Certificate and Renewal of Certificate for Registration of Hazardous Substances under Department of Industrial Works' Responsibility B.E.2552</p> <p>❑ DIW Notification re Classification Ruling for Chemicals/Products that may be Hazardous Substances per the Hazardous Substances Act B.E.2535, under Department of Industrial Works' Responsibility B.E.2551</p>	<p>❑ Manufacturer information is not required to be disclosed according to the international guideline from the Globally Harmonized System of Classification and Labeling of Chemicals (GHS), under the United Nations' auspices</p> <p>❑ The GHS guideline directs, however, that the name of Supplier be disclosed in the safety data sheet. In today's supply chains, the Supplier may not be the same as the Manufacturer, in which case the Supplier will normally hesitate to disclose to its customer from which Manufacturer the substance is sourced, as the customer may decide to purchase directly from the Manufacturer.</p> <p>❑ Such deviation from international practice causes difficulties for importers in obtaining the Manufacturer information for use in getting a Classification Ruling, registration or import permit application.</p>

Requirement	Legal Reference	Difficulties for Business
Full chemical composition This information must be disclosed in obtaining a classification ruling	<input type="checkbox"/> DIW Notification re Classification Ruling for Chemicals/Products that may be Hazardous Substances per the Hazardous Substances Act B.E.2535, under Department of Industrial Works’ Responsibility B.E.2551	<input type="checkbox"/> Full chemical composition is normally the Manufacturer’s confidential business information, and in many cases the Supplier may not have access to such information. <input type="checkbox"/> The GHS guideline only directs that the safety data sheet show only the hazardous components <input type="checkbox"/> Such deviation from international practice (e.g. EU REACH framework focused on substances rather than mixtures, with possibility of Only Representative intermediaries) causes difficulties for the importers in getting a Classification Ruling from the competent authority in order to be able to fully comply with all relevant rules, because the importers cannot obtain full chemical compositions information and lack internal expertise to make proper classification by themselves.

b) Lack of Procedure Specific to Importation of Samples

Businesses may need to import samples of chemicals that may be hazardous substances, for use in test or trial before deciding to make further purchase in big quantity or for use in research and development activities. Although the quantity may be small, business still want to fully comply with all relevant rules. However, they are faced with the problem of complex and lengthy procedures for getting a Classification Ruling, registration and import permit application (particularly where disclosure of confidential business information is necessary and in cases of lab-test samples which may be completely new substances not yet registered anywhere), although it is uncertain whether there will be future purchases or orders.

Such problems hinder the importation of new chemicals for use in test, trial, or research and development activities to improve productivity and production technology, which will in turn enhance the local business’ competitiveness. If

Thailand truly strives to promote technological development, it is crucial that the country’s regulations are made conducive to the undertaking of relevant activities by the private sector.

- Department of Industrial Works’ new regulations for hazardous substance imports

DIW January 2015 notification on protection against dangerous goods introduces a new regulatory layer for “group of substances classified by characteristics” that were until then considered as non-dangerous since they were not appearing on Thailand’s List of Hazardous Substances. These substances, if exhibiting one of the 10 listed characteristics will, after the enforcement of the new regulation, be considered at least as DG1 substances and will require a specific report to DIW when imported in quantities over 1 metric ton per year, for further evaluation by DIW. Although business operators are not unfamiliar with the concept introduced by this new regulation - which

seems to have common grounds with the REACH-like framework - they are concerned by the fact that this regulatory layer is superimposed on top of an existing control mechanism which they are already struggling to comply with, because of the trade secrets disclosure issues that it creates in practice. The business community, eager to comply with Thai regulations, urges the Ministry of Industry and the Department of Industrial Works to take the opportunity to achieve Thailand's objective of introducing a REACH-like regulatory framework, to reform the current laws and introduce pragmatic mechanisms, in line with international practices, that operators will be able to comply with.

If and when the funding chapter of the current regulation is reformed (including the current standard "100% mixture composition disclosure requirement by the manufacturer"), then an additional layer, as suggested by the new regulation draft, can be contemplated, including the reporting on non-regulated substances exhibiting some characteristics considered as hazardous, in order to feed a national chemical database and bring Thailand along the path of creating a REACH-like regulatory framework.



Annex IV: WTO - The Agreement on Trade-Related Aspects of Intellectual Property Rights

The relevant provisions of the TRIPS Agreement in respect of Thailand's labelling regulation are the following:

Article 15.1 providing that Members shall allow "any distinctive sign" to be capable of constituting a "trademark," i.e. a mark used or to be used on products to distinguish products. Trademarks are functional and relational rights. A distinctive sign that cannot be used on a product to perform its principal function is no longer protected as a trademark in violation of Article 15.1.

Article 15.4 prohibiting trademark "discrimination" based on the nature of the product. If the nature of the product rather than the nature of the trademark is the basis for refusing protection as a trademark, a violation exists.

Articles 16.1 and 16.3 affording registered trademark owners a minimum guaranteed level of protection that is directly related to the strength of the mark. Given that the strength of the mark and thus the scope of protection is determined by the use that can be made of the mark, a measure that prohibits the use of the trademark on the product reduces the scope of protection below the minimum agreed level; and

Article 20 providing that the use of trademarks shall not be unjustifiably encumbered by special requirements. A measure that prevents the use of a trademark imposes the ultimate encumbrance on the use of the mark and impairs the very substance of the trademark which is designed to distinguish products. Such a measure is per se unjustifiable unless it can be shown that the mark is misleading, deceptive or contrary to public morals.

Article 24.3 requiring each Member not to lower the protection for GIs that existed prior to 1 January 1995, which is the date of entry into force of the WTO Agreement. A measure that prohibits the use of a GI on the product when such use was permitted in 1995 violates this obligation.

Annex V: The regulations of the Office of the Prime Minister on Procurement B.E. 2535 (1992)

The Prime Minister's Office Procurement Regulation B.E. 2535 (1992) stipulates in Sections 60, 61, 62, which address the remit of pharmaceutical and medical product spend by governmental agencies, grant most favoured treatment to the GPO.

- Section 60 requires that hospitals affiliated to the Ministry of Public Health must spend 80 per cent of their allocated health budget on medicines listed in the National List of Essential medicine (NLEM) while other government hospitals must spend 60 per cent of their budget on the same.
- Section 61 requires that products produced by or supplied by the GPO must be selected for procurement by funds drawn from the state coffer over other choices at prices which may be three per cent higher than the next candidate.
- Section 62 indicates that in the event the GPO does not produce but can supply, first right of refusal to supply must be given to the GPO at prices which may be equivalent to other suppliers; the same privileges are accorded to suppliers sub-contracted by the GPO.

In addition, the ***Thai Drug Act (1967)*** also provides additional operating privileges to the GPO with respect to regulatory requirements. Section 13 of the aforesaid Act exempts the GPO from regulatory approval to produce, sell and import pharmaceutical products for both commercial and non-commercial gains. In the commercial context, the circumvention reduces the time to market and reduces oversight in comparison to other suppliers thereby providing competitive trade advantages. The decision to register for marketing approval or not is voluntary for the GPO and not a mandatory requirement from the regulators. Concerns

were raised when this privilege was retained in the Draft Drug Act which is presently under development by the Thai FDA.

Recently, as an instrument for cost containment, the GPO has acquired additional privileges even as a for-profit state enterprise. Since August 2012, the Ministry of Public Health had called for several rounds of price cuts with suppliers of single source products which are not listed in the National List of Essential Medicine (NLEM). The requests for submissions of substantial price reductions in an abbreviated timeline of many innovative products, still under patent protection with much uncertainty in criteria and scope, were further augmented by the appointment of the GPO as the negotiator for the government. The resulting conflict of interest in the disclosure of commercial details to a for-profit state enterprise reduced cooperation and the required price cuts were not achieved. As a consequence, the Ministry of Public Health further empowered the GPO to:

- Be an exclusive importer, sourcing and importing generic drugs of selected items, some of which may remain under patent protection
- Facilitate the importation with fast track drug registration for selected items, even for non-essential or non-life-saving medicines as required by the normal fast track criteria
- Be the exclusive supplier of the selected generic items.



Annex VI: Proposal to amend Patent Act

1. Amend Patent Act on the parts relevant to Patent and Petty Patent for Inventions registration in order to facilitate accelerated registration process:

1.1 Justification of Novelty of Inventions

- (1) Prior arts according to Section 6, paragraph 2, (1) as "(1) an invention which was widely known or used by others in the country before the date of application for the patent"; should be revised to cover an invention which was widely known or used outside the country
- (2) Prior arts according to Section 6, paragraph 2, (3) as "(3) an invention for which a patent or petty patent was granted in this or a foreign country before the date of application"; should be revised to align with texts the Claim Priority in Section 19 bis
- (3) The Exception of disclosure which will not affect novelty in Section 6, last paragraph, should be revised
- (4) The public exhibition of inventions according to Section 19 should be revised.

1.2 Examination of Patent for Inventions

- (1) Section 28, 30 should be revised; formalities examination should be examine on format and completeness of documentation.
- (2) Section 31,32,33 should be revised; Pre-Grant Opposition should be changed to Post-Grant Opposition
- (3) Observation by third party should be established in addition
- (4) Section 29 should be revised; the gap time between publication till the applicant request to perform Substantive Examination should be reduced from 5 years
- (5) The Applicants should submit a search report with the patent registration application

- (6) Section 29 paragraph 2 should be revised; the Director General can grant the private organization as the body to perform Substantive Examination
- (7) Section 26 should be revised; the applicants can separate applications of invention if it appears that the application relates to several distinct inventions which are not so linked as to form a single inventive concept.
- (8) Section 27 should be revised; In the course of examination of an application, the clear guideline should be established to instruct the applicant to appropriately respond to the competent officer's comments from examination.

1.3 Substantive Examination of Petty Patent for Inventions

- (1) Section 65bis should be revised; the conditions for granting a petty patent should be extended to cover "solving technical problems"
- (2) Formalities examination should be examine on format and completeness of documentation.
- (3) Post Grant Opposition should be added
- (4) The Petty Patent Owner shall request for novelty examination

1.4 Power and duties of Patent Board

The section should be revised to allow the Patent Board to revoke patents and petty patents if the owners did not pay annual fees

1.5 Fee

- (1) Add fee in the case of patent/petty patent applicants request to extend the timeline to respond to competent officer's comment during examination
- (2) Add fee of application according to the numbers of claims
- (3) Add search fee

1.6 Miscellaneous

Section 77 should be revised; Presumption in civil case in respect of the infringement of rights that defendant use the process to obtain the products of the rights owners of patent or petty patent.

- 2. Amend the Patent Act for Hague Agreement concerning the International Registration of Industrial Designs**
- 3. Amend the Patent Act for Protocol amending the TRIPS Agreement, Doha Declaration Paragraph 6**