The European ASEAN Business Centre in Thailand

2013 European Business Position Paper

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

This European Business Position Paper represents the views of the European ASEAN Business Centre in Thailand (EABC). Since the launch of its first edition of the European Business Position Paper, the EABC and its various organs, including forums and member companies have, through the EABC Working Groups, compiled the latest assessments, concerns and recommendations of European businesses operating in Thailand and across ASEAN. The aim is to use this EABC Position Paper to promote constructive dialogue and strengthen cooperation between Europe and Thailand, both at the political and business levels, and to contribute positively to the competitiveness of the Thai economy. We look forward to making positive contributions towards continued improvement in business cooperation to the benefit of both Europe and Thailand.

2013 European Business Position Paper

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Content

Message of the President

Bangkok, September 2013

The European ASEAN Business Centre (EABC), representing the European Business and Industry in Thailand, proudly present the second edition of its European Business Position Paper after the successful launch of the first Position Paper last year. This Position Paper has become a benchmark document on trade and investment issues in support of competitive economy in Thailand.

Since last year we have seen several new and added important developments. Following the launch of the EABC Position paper the first scoping exercise for the EU – Thailand Free Trade Agreement (FTA) was held in July last year in Brussels leading to the commencement of FTA negotiations in May 2013. An additional six rounds of negotiations are anticipated before a final FTA between EU and Thailand can hopefully be concluded.

Similarly to last year, EABC has complied recommendation in its 2013 position paper derived from the European Industry to address business concerns and highlight areas where obstacles should be overcome to achieve a level playing field for European companies investing and doing business in Thailand as well as those European companies, including small and medium sized enterprises wishing to establish a presence in Thailand and beyond in ASEAN.

The 2013 EABC Position Paper contains work coming from nine Working Groups ranging from Cross Sector issues to intellectual property rights (IPR) as well as essential economic sectors which are: Automotive, Energy & Energy Efficiency, Food & Beverage, Healthcare & Pharmaceuticals, Information Communication Technology (ICT), Insurance and Transport & Logistics.

On behalf of the European ASEAN Business ASEAN Business Centre I would like to express my gratitude towards all companies, members of the EABC Working Groups and everyone who has engaged in the useful dialogue enabling the continued development and publishing of the EABC Position Paper. Special thanks must go to the European Delegation in Bangkok who was very supportive to our operations and activities. This is also acknowledging the dedication and efforts by everyone related to EABC in the support of this essential publication from EABC.

I am convinced this publication will be an important tool for every investor and it provides a road map for Thailand to become more competitive in anticipation of the Asean Economic Community.

Yours sincerely

Rolf-Dieter Daniel
President

About EABC

The European-ASEAN Business Centre (EABC) is the established platform representing the interests of European businesses in Thailand. EABC aims to contribute to the improvement of the trade and investment climate for European companies in Thailand and to increase trade, investment and the establishment of European companies and businesses in Thailand and to contribute in a positive way to achieving a greatly strengthened Thai economy with sustainable competitiveness.

Who we are

EABC was established as a consortium with sixteen business organisations and chambers of commerce, both in Thailand and Europe[1], with a combined membership base of EABC and our Consortium partners of approximately 2,000 companies in Thailand. EABC interacts with the unified voice of European businesses in Thailand. Nine Advocacy Working Groups have already been established to facilitate constructive dialogues among interested European businesses towards further improvement on market access and fostering business cooperation between Europe and Thailand, which also serves as a potential gateway to ASEAN. These economy-wide as well as sectoral Working Groups are: Automotive, Energy & Energy Efficiency, Food & Beverages, Healthcare & Pharmaceutical, Cross Sectoral Issues, Information & Communication Technology (ICT), Intellectual Property Rights (IPR), Insurance and Transport & Logistics. These Working Groups are chaired by representatives of prominent European enterprises from their respective sectors, such as BMW, DHL, Diageo Moët Hennessy, GlaxoSmithKline, Standard Chartered Bank and BG Group.

Our mission

In the spirit of partnership and cooperation, EABC aims to enhance the economic conditions to facilitate European companies operating in Thailand and those who wish to establish their presence in both Thailand and, further afield, in ASEAN. Our main activities include carrying out policy and advocacy work, providing support to European businesses with trade-related information and organising key events to foster opportunities for European businesses in Thailand. EABC is part of a strategy of the European Union to support the internationalisation of European SMEs and other European enterprises by enhancing market access; in particular to emerging and fast growing markets such as Thailand and the other members of ASEAN.

With strong support from the European Union, as well as our partners, and extensive networks both in Thailand and Europe, EABC serves as the platform for business to interact with authorities and counterparts in Thailand in order to improve trade and investment of Europe into Thailand and to promote Thailand and ASEAN as potential markets for European companies.

EABC is committed to working closely with European businesses, the Royal Thai Government, EU institutions and chambers of commerce as well as counterparts in Thailand, in ASEAN, and in Europe. We strive towards the establishment of an enabling, result-oriented dialogue to foster closer economic relations between Thailand and Europe, especially on key trade and investment agenda.

[1] German-Thai Chamber of Commerce; Advantage Austria; British Chamber of Commerce Thailand; Belgian-Luxemburg-Thai Chamber of Commerce; Danish-Thai Chamber of Commerce; DIGITALEUROPE; EURATEX; EUROCHAMBRES; Franco-Thai Chamber of Commerce; Irish-Thai Chamber of Commerce; Netherlands-Thai Chamber of Commerce; Swiss-Thai Chamber of Commerce; Thai-Finnish Chamber of Commerce; Thai-Italian Chamber of Commerce; Thai-Norwegian Chamber of Commerce; Thai-Swedish Chamber of Commerce

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Be part of EABC
European companies are invited to join EABC and its Working Groups corresponding to their specific needs and interests. For further information, please visit www.eabc-thailand.eu. For information or queries, please contact workinggroups@eabc-thailand.eu on EABC Working Groups; or members@eabc-thailand.eu on membership.

Executive Summary

Thailand and the EU have a very extensive and broad-ranging relationship covering not only trade and investment but also other areas of cooperation. With its geographical and economic position within the Association of South-East Asian Nations (ASEAN) and the growing Asian region, Thailand's impressive development currently makes the country an attractive investment destination. The full implementation of the ASEAN Economic Community (AEC) in 2015 will also lead to greater opportunities for Thailand as a competitive economy. The AEC and the opening up of the Myanmar market brings about positive sentiment that means foreign direct investment (FDI) in the region will continue to grow. Along with this come challenges, however. There will be significant pressure on Thailand to rapidly increase its productivity in the years to come, to better equip the country to successfully take on challenging opportunities within the AEC alongside their ASEAN neighbours.

Since the EABC launched the first European Business in Thailand Position Paper in June 2012, the global economy has and will continue to undergo a long period of economic uncertainty with persisting financial difficulties and the risk of weak recovery in several advanced economies. Policymakers around the world have been struggling to find ways to cooperate and manage the current economic challenges while preparing their economies to perform well in an increasingly difficult and unpredictable global landscape. Amid the short-term crisis management, it remains critical for countries to establish the fundamentals that underpin economic growth and development in the longer term. Recognising Thailand as a valued trading partner of Europe as well as prominent home to many well-known European companies and investors, EABC representing the voice of European Business in Thailand considers itself to be direct contributors and stakeholders in Thailand's past and present. And we will continue to be so for the country's future success, and in support of strengthening a competitive economy in Thailand.

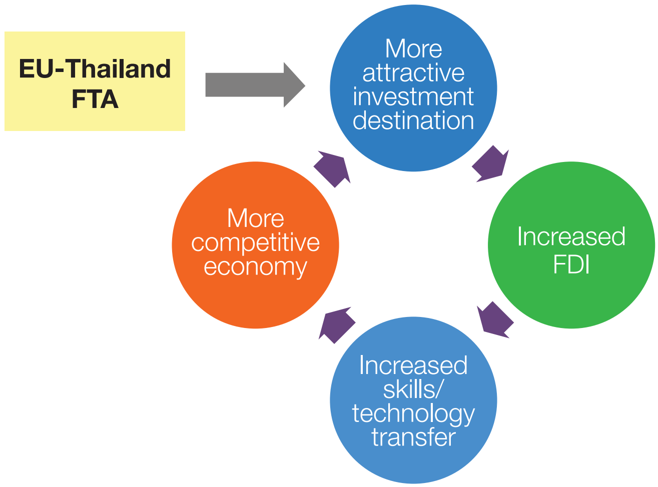
Continual deterioration of Thailand's competitiveness in recent rankings and the fact that Thailand seems to have been stuck in the **'middle income trap'** has been noted over the past few years. Recent data on the Global Competiveness Index (GCI) 2012-2013 of the World Economic Forum (WEF) surveys showed that Thailand's overall competitiveness ranking stood at 38th from 144 economies. After having fallen for six years in a row, Thailand managed to halt the negative trend and improved by one place in the GCI ranking. Yet the WEF noted that challenges around Thailand's competitiveness remain considerable, particularly in the areas of political and policy instability, excessive red tape, pervasive corruption, security concerns, and uncertainty around intellectual property rights protection, which have seriously undermined the quality of the institutional framework on which businesses rely upon heavily. These key developmental challenges need to be effectively and urgently addressed in order to maintain Thailand's attractiveness as a vibrant economy and investment destination, to strengthen its competitiveness, and to restore trust and confidence of the business community. An institutional environment characterised by openness and transparency is of central importance not only for private markets but also for the effective and efficient management of public resources.

Globally, the services sector is recognised as the most dynamic sector for economic growth and development. Although it could be argued that the resilience of Thailand's economy in the face of global economic shocks has been based on the country's three strong pillars of agriculture, manufacturing and services, Thailand's services industries – with the exception of travel and tourism – have long been lagging behind even compared to those of other ASEAN countries. While Thailand's manufacturing sector has made significant gains in productivity and agriculture has continued to be a stable contributor to the economy, services have declined. To compare the labour productivity with that of our ASEAN neighbours, it is also worrisome that Thailand's productivity in the services sector seems to be closer to those of the lesser developed members rather than the highly developed ones. This is very cumbersome for the Thai economy as we work towards strengthening the competitiveness of the Thai economy. For Thailand to overcome the middle income trap, its services sector is in dire need for an infusion of new skills and technologies to increase the productivity of workers.

The global economy might still be facing a number of significant and interrelated challenges that could still hamper a genuine upturn in its economic recovery path. It is however very pleasing that many positive developments have been taking place to further strengthen trade and investment ties between Thailand and the EU. Among these, the negotiations for an EU-Thailand Free Trade Agreement (FTA) were formally launched, marking an important step in EU-Thai relations. The EU-Thailand FTA is not an attempt to create a new trading relationship, but is rather the long-awaited natural extension of an already strong trade and investment relationship between Thailand and the EU. It is clear that Thailand's robust economy and its continuing positive trade balance with the EU ensure that Thailand is not simply a 'junior partner' in this relationship.

The EU-Thailand FTA is expected to deliver substantial economic gains to both parties. Removal of trade barriers and further trade liberalisation under the FTA should strengthen Thailand's competitiveness and investment attractiveness as compared to its ASEAN peers, while putting the EU on par with other trading partners who have already concluded FTAs with Thailand. Economic benefits calling for the negotiations of the EU-Thailand FTA have been recognised by scholars in many studies. As Foreign Direct Investment (FDI) becomes more important for the economic growth and development of many countries, particularly by bringing in capital, providing a means to pursue strategic development objectives, and allowing access to technology and expertise of the host country, attracting FDI as part of the FTA is also regarded as an important imperative from an economic development perspective. The FTA will be a key mechanism to further strengthen a true partnership among equals. In addition to the near term boost in exports and expected GDP growth from the successful conclusion of the EU-Thailand FTA, there are other additional benefits to be expected as a result of the adjustments we make to our regulatory systems and policies regarding business competition and foreign investment. The EU-Thailand FTA will be a key mechanism which will initiate a virtuous cycle that builds strength on strength for the ultimate mutual benefit of the economy and society.

Figure I: Virtuous cycle of growth



The EABC's overarching objective is to contribute to the improvement of trade and bring in more investment from Europe to Thailand to contribute to the competitiveness of the Thai economy; and to promote Thailand and ASEAN as potential markets for more European companies. Our Position Paper represents views of European businesses in Thailand and serves to communicate our key issues of interest and propose recommendations to respective Thai authorities and counterparts for the improvement of Thailand's trade and investment climate. European investors and companies are recognised as having resources and expertise in cutting-edge technology, innovation and R&D. Stronger trade and investment relations between Thailand and Europe would therefore be complementary and create mutual benefits. Striving to continue our constructive dialogue at all levels with the Thai authorities, we aim to bring to fruition our shared experiences and recommendations on various aspects of Thailand's policy development. Considered home to European investors and companies, the EABC works to making positive contributions to strengthen Thailand's competitiveness within the spirit of EU-Thailand: partnership for growth.

Continuing our themes from last year, European businesses consider that **enhanced transparency, improved efficiency, an enabling economic and regulatory environment and liberalisation of the services sector** remain key priorities on which – we believe – tangible improvement would meaningfully improve Thailand's position. These key themes have been highlighted throughout this second edition of the EABC Position Paper as the main enabling factors to strengthen Thailand's competitiveness and its potential position as a gateway to investing in ASEAN. Our recommendations herein however are not intended to be exhaustive, but rather to focus on practical aspects of raising the standard of Thailand's policy and regulatory framework and competitiveness of the Thai economy. The EABC will continue to use our Position Paper for future communication with relevant authorities and counterparts. This Position Paper is also intended to be a source of information for the European Union and European Member State Governments to assist in their engagements with Thai policymakers and authorities. We are hopeful that Thai businesses, media and academics will also find that this Position Paper provides useful information.

Below is a summary of key trade/investment issues and recommendations that the EABC strongly supports in order for Thailand to make meaningful improvements and tangible progress. The EABC is fully committed to providing constructive contributions for tangible progress and the fostering of a long term economic partnership between Thailand and Europe. We look forward to having regular dialogue – both at the policy and business levels – as well as continued improvement in business cooperation in the spirit of mutual benefit.

Summary of key recommendations

Issues	Recommendations
Macroeconomic/Policy Development	
• In the spirit of cooperation and partnership, we look forward to fostering even stronger economic relations, for the benefit of both Thailand and Europe, and successful conclusion of a balanced FTA between the EU and Thailand. • Liberalisation of the services sector is a key enabler of competitiveness, skills enhancement, productivity gains and, for strategic service sectors, a boost to overall economic growth and resilience. • Thailand is encouraged to pursue an open trade agenda towards further liberalisation and the creation of a level playing field, particularly in key economic sectors, to help boost investor confidence and strengthen Thailand's competitive position in view of globalisation and regional integration.	
Cross Sectoral Issues	
Enhanced transparency in policymaking and the application of rules and regulations	• **Customs:** Profound modification of the penalty scheme and reward system to ensure transparency and predictability, as well as to avoid 'undue penalty' or the encouragement of an 'over-incentive' effect • Eradication of **'grey market'** and unfair parallel imports to create a level playing field and protect the legitimate interests of brand owners
Ease of doing business to improve business and economic efficiency	• **Competitive tax regime and compliance:** Simplify the tax compliance methods to improve economic efficiency as well as enhance transpar ency in tax collection • **Robust investment promotion regime:** Enhance the competiveness and attractiveness of both tax and non-tax incentives under the current investment promotion scheme to effectively correspond to the needs of strategic investors • **Standards and conformity assessment:** Adopt international standards as national standards to improve efficiency and reduce unnecessary costs and hindrances to businesses • **Effective schemes of free trade zones:** Streamline the application and interpretation of relevant rules and regulations – e.g. on licences, rules of origin and calculation of local content – for consistency in order to ensure that the benefits provided to investors/business operators will not be unduly hindered by regulatory inefficiencies
An enabling economic and regulatory environment	• **Relaxation of foreign business ownership restrictions / Liberalisation of services sector** - Progressive liberalisation of Thailand's services sector through implementation of the existing review mechanism on List 3 in the FBA to duly remove restrictions and encourage foreign investment in a range of services sector industries

<table>
<tr><th>Issues</th><th>Recommendations</th></tr>
<tr><td></td><td>- A level playing field for European businesses in the services sector
- Review, with a view to relaxing, the current rules for foreign ownership of land and condominiums, and the leasing of land and buildings, in order to attract foreign investment
• Ease restrictions to facilitate free movement of people, including recruitment of foreign skilled and unskilled workers: Address the difficulty in obtaining work permits and visas due to lengthy procedures, recognition of employees’ qualifications, lack of transparency in regulations at various administrative levels in order to ease restrictions with the aim to facilitate freer movement and recruitment of expatriate skilled and unskilled workers, which duly corresponds to Thailand’s economic development and business needs.
• Improve, in terms of speed and efficiency, the processing of disputes and the issuing and enforcing of judgments and arbitration awards
• Well-functioning competition policy and regulatory authorities to en hance fair trade competition to the benefits of consumers</td></tr>
<tr><td>Strengthen the legal framework and its law enforcement to protect intellectual property rights</td><td>• European industry wishes to see Thai policy on intellectual property rights (IPR) include and highlight the mechanisms to support private ownership, creation and innovation across the spectrum of businesses and economic sectors in Thailand. To serve sustainable economic development aspirations and strengthen the country’s competitiveness, the EABC stands ready to assist Thailand through:
- Regulatory development to strengthen the national IP system; and
- Enhancement of IPR protection</td></tr>
<tr><td colspan="2">Sectoral Issues:</td></tr>
<tr><td>▪ Automotive</td><td>I. Access
1. Expedite progress on the Thai-EU Free Trade Agreement (FTA) negotiations to improve access and address market barriers
2. Alignment of automotive products with international UNECE standards
3. Eradication of ‘grey market’ and unfair parallel imports to create a level playing field and protect the legitimate interests of brand owners

II. Regulations
4. Dismantle redundant approval/homologation standards
5. CO2 emission-based taxation
6. Emission regulations and improvement of fuel quality standards
7. Harmonise the definition on local content requirements
8. Road safety</td></tr>
</table>

Issues	Recommendations
	III. Resources 9. Ensure availability of skilled and non-skilled workers 10. Address policy inconsistencies, as well as operational hindrances, in respect of Customs Free Zones 11. Provide an investment promotion scheme and tax incentives which effectively correspond to industry needs and promote industry development and innovation
▪ **Energy and Energy Efficiency**	If Thailand is to sustain its strong economic growth, it will need to address the growing gap between its energy demand and domestic energy supply resources. This is a critical challenge for the country's future development and means that energy security must be a focus for the coming years. Secure, sustainable and clean energy supplies can be ensured from a diverse set of opportunities by: - Development of significant further gas resources through both license extension in existing concessions and full development of the Gulf of Thailand resources; - Active public policy to encourage investment in, and provide appropriate incentives for, the development of alternative energy sources; - Enhanced energy efficiency to reduce energy intensity, and instil broader awareness of energy-savings behaviours, to manage demand growth. Active engagement between the Thai government and the EU business community can powerfully support these goals by providing investment, policy advice, and technology. The EABC Working Group on Energy and Energy Efficiency stands ready to facilitate and support engagement and dialogue on these issues. Taking note of development of Thailand's energy sector and steps taken by the Thai Government to strengthen the country's energy security and promote renewable energy, three key policy aspects with recommendations have been proposed in support of strengthening Thailand's energy and energy efficiency sector: A. Optimise oil and gas development through international partnership B. Promote clean and renewable energy on wide and more inclusive scale C. Focus on best practice in energy efficiency

Issues	Recommendations
▪ **Food & Beverages**	- Thailand's redundant SPS measures and audit requirements, particularly on imports of fresh meat as well as fruits and vegetables, which are not in alignment with international standards, should be dismantled. It is strongly encouraged that Thailand accepts internationally accredited certificates and testing results. - The FDA product application process is streamlined to minimise delays - Thailand should commit to eliminating all discriminatory tax and retail licencing structures by a certain date - Alcohol beverages should not be excluded from the scope of any FTA. Thailand's 60 per cent import tariff on EU spirits should be eliminated. - Rules of origin under an FTA should allow EU exporters maximum use of regional logistics hubs - Any public health measures applied to the alcohol sector should be evidence-based and proportionate - WTO TRIPS obligations regarding geographical indications should be implemented in full in Thai law and practice - The FTA should seek legal prohibition in Thai law of the removal of pro ducers' traceability information - Thailand is strongly encouraged to prioritise legislative amendments to address unauthorised use of trademarks regarding refilling practice - Reforms in Thai Customs practices and procedures should be expediently undertaken in order to remove incentives for individual Customs officers to challenge import transactions without justification - There are also competition and protectionist issues that need to be addressed. The Thai government has introduced many protectionist measures in recent years that seem aimed at protecting the dominance of this and other influential local players. It is important that EU investors and products (including exports into Thailand) are treated no less favourably than domestic products. The FTA should be a key mechanism to ensure that such objectives are achievable.
▪ **Healthcare & Pharmaceuticals**	- Effective enforcement and protection of patented pharmaceuticals - Ensuring supportive and fair market mechanisms o Regulations of the Office of the Prime Minister on Procurement B.E. 2535 (1992) o The Civil Service Medical Benefits Scheme (CSMBS) - Bolstering of clearer administrative procedures, e.g. in the process of request for listing in the National List of Essential Drugs (NLED), GMP ac creditation.

Issues	Recommendations
▪ **Information & Communication Technology (ICT)**	**Telecommunications** ***1. General and structural*** 1) The recently issued regulations pertaining to network access, domestic roaming and MVNO should be backed by the necessary political will to put in place reforms in the industry. Wholesale services include access on open access and non-discriminatory terms and conditions. Wholesale licences should be assessed independently and separately to those for retail services. Wholesale services should apply to all services using fixed, wireless and converged transport or transmission technologies and such principles must also be adhered to by the SOEs. 2) The ***evolution of the SOE*** not to pursue retail mobile but to become network operators and play a sound role in wholesale services as outlined in the national Policy and being subject to the same terms as apply to the private sector; extension of spectrum use by SOEs should be limited and only as necessary on technical grounds, and then the economic treatment should be different to the technical. 3) Dealing with ***concessions*** by supporting their being used on a wholesale basis (in the absence of being able to effect concession conversion or termination now) as envisaged in the recent access regulations from NBTC 4) Spectrum as a scarce national resource should be auctioned for all commercial uses. Only where there are non commercial deployments and subject to other conditions 5) Review of ***competition regulation*** to see that real, fair and effective (i.e. enforced) regulation results 6) Finalisation of ***interconnect*** – a common standard for termination rates; dispute resolution procedures need improving as a lengthy process impacts confidence in the system. ***2. Spectrum Management*** i) A spectrum auction for 2.6 GHz within 12 months, and a plan for 2.3GHz ii) Digital dividend spectrum choice – recommended 700 MHz band for mobile broadband iii) 850 MHz / 900 MHz review and plan with industry consultation iv) Continued use by SOEs of concession spectrum is not justified. v) All commercial allocations should be by a transparent, economically fair means; auction being the obvious choice. ***3. International Gateways*** Full liberalisation ***4. Broadband*** i) Start with a wholesale market ii) Work out the broadband targets in terms of reach, penetration and kinds of solutions, devise and implement policies to foster

Issues	Recommendations
	iii) Exploration of the right structure and solutions based on key guiding principles to achieve targets. ***5. Foreign Equity Limits / Liberalisation of Services / Foreign Dominance Notification*** i) A structured approach to lifting foreign equity limits ii) Liberalisation of the services sector with four dimensions of policy initiatives iii) Revocation of the Foreign Dominance Notification as it is not helpful to the cause of attracting foreign investment in the sector or in enhancing skills and competitiveness. ***6. Consultation*** The sector is highly interdependent and needs rules which need to be understood. Two stage consultations allow for buy-in and industry education. ***7. Independence of the National Regulatory Authority (NRA) – i.e. NBTC*** To enhance competition regulation and the overall effectiveness of the NBTC, we recommend adding a third dimension to independence and stepping up effective competition regulation. ***8. ASEAN ICT Master plan*** Make use of the aims and principles in the ASEAN ICT Master plan better to support the overall position of Thailand. In particular we encourage governments to develop broadband capabilities, to support PPP models, ICT reskilling and skilling to support a level playing field and effective competition regulation. In particular there are some specifics desired: (i) free movement of skilled workers, (ii) an understanding of real effective progress, (iii) foreign equity levels, and (iv) avoidance of inappropriate restrictions on foreign investment. ***9. IPR issues*** A multi-pronged approach to tackle software piracy is needed. For IPR infringements in the on-line world, the focus should be on on-line merchants, not on ISPs which merely provide access. Blocking orders where used should be based on law and due process. ***10. Mobile money*** Mobile banking and mobile e-services have been used in developing or emerging markets to give greater access to finance and financial services f or lower income earners, who are often below the traditional level of attractiveness to many banks. Mobile operators have also aligned with banks through a range of business models. Many operators have developed mobile banking solutions. ICT businesses should be pleased to engage with government better to appreciate the opportunities of mobile banking, mobile payments etc., and to be aware of the kind of policy and regulation changes which may be necessary to support the initiatives.

Issues	Recommendations
	IT ***11. Skills, productivity enhancements, free movement; work permit and visa issues*** ICT skills are in short supply. The nature of the industry is global. Confining source pools to national boundaries makes it harder to find the right skills and limits innovation. Education, reskilling and both administrative and legislative changes to the work permit and visa area regimes are needed. An IT Competency Framework is useful but licensing and centralised certifica tions are not necessary nor positive contributions. ***12. Data Centres*** To achieve the aims of data centre promotion, work permit and visa issue and connectivity, and IGW issues need to be addressed. Ultimately a data protection law is desirable. ***13. IT Procurement*** eAuction, Unlimited Liability, copyright protection for software; source code handover are areas needing revisions. ***14. eGovernment*** eGovernment development is lagging. Structured and phased policy recommendations are provided. ***15. Online commerce*** Impediments in legislation need to be addressed. A dialogue with the banking industry and government are needed in order to ease restrictions on payment practices and small business support generally. ***16. Creative Economy – IT focus*** Identified are a number of policy ingredients and measures designed to make this work. The creative economy, particularly the promotion and protection of innovation with a focus on IT, is new area of growth and productivity enhancement. We believe a regional focus will work best for many of these initiatives. Positive developments in IT Start Ups are done almost in spite of government policy. A glass ceiling is often hit with lack of availability of funding locally, thus sending the venture overseas. Local availability of funding needs addressing. ***17. A Data Protection Law*** The development, with industry consultation, of a law which will make Thailand an attractive location for data analytics and management and give consumers and operators full confidence in the jurisdiction. A review of a very old, proposed law is needed in order to bring it up to date with current practices.

Issues	Recommendations
▪ **Insurance**	The Thai insurance industry, although growing at a promising rate, remains rather strictly regulated compared to other markets in ASEAN and other regions. For the best interests of Thai consumers and to boost the nation's competitiveness, the EABC is strongly supportive of constructive changes to be made to both outdated laws and regulations and policy makers/regulators. Although the said changes cover multiple dimensions; such as consumer protection, market access, prices, product approval processes and internal processes of regulators, emphasis has been made on the two most critical issues as follows: 1. **Foreign ownership restrictions** of insurance companies should be liberalised. It is most crucial to amend the existing related laws and regulations to allow up to 100 per cent foreign ownership in order to successfully establish a competitive insurance industry in Thailand. Also, the Thai insurance regulatory framework needs to be revised to provide more flexibility and so that it keeps pace with the rapidly changing industry and market. 2. **Capital raising** (particularly for non-life insurance industry) has to be encouraged to fortify the industry's capital base and to be in a position to better maintain insurance risks within Thailand instead of heavily relying on foreign reinsurance companies. To achieve such a goal, the government has to create a climate that is friendly to foreign investors, especially in the ease of transferring funds into and repatriation of funds out of Thailand. Failure to make such changes would result in only a handful of incumbent insurance companies benefiting from the current restricted market conditions, while consumer protection and market competitiveness would be largely ignored. It is our belief that, eventually, longer-term growth has to be supported by the Government's intention to leverage the entire insurance industry infrastructure. The EU-Thailand FTA will unquestionably serve as an effective tool to achieve this goal and the EABC and its working groups will welcome the opportunity to assist the Government in each step towards making positive changes.

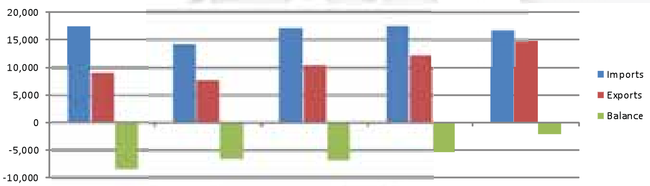
Issues	Recommendations
▪ **Transport & Logistics**	As Thailand has evolved into a regional hub for many industries, the country has moved quickly to develop its logistics and transportation systems in view of sourcing, producing and exporting, which are expected to increase with the greater integration of ASEAN. Among the Government's priorities include establishing Thailand as a logistics hub in ASEAN with its strategic location connecting Indochina and Myanmar with the rest of ASEAN to the south and China to the north. However, a number of factors hamper Thailand from fully tapping its potential as a strategic hub in the region. Despite the Government's efforts to actively promote transport industries through fiscal and financial incentives and encouraging the private sector in infrastructure development, the regulatory framework for the provision and management of infrastructure services is complex and restrictions on foreign investment apply in all transport subsectors. Among the requirements for economic integration with ASEAN, set for 2015, liberalisation of transport and logistics policies are among the key issues that will have to be addressed in the lead-up to the single market, including alleviating restrictions on foreign ownership. The EABC therefore encourages Thailand to step up its efforts towards trade facilitation, promoting healthy competition on a level playing field and easing hindrances and unnecessary restrictions in the following key aspects of the transport and logistics sector: - Market access - Customs reform and modernisation - Postal services - Air transportation - Maritime transport and ports - Domestic transport and warehousing - Cross-border transportation

Introduction

Thailand and Europe have long shared a vibrant history of friendship and cooperation, which is broad and growing. Trade between the EU and Thailand is considerable and will remain so even amid an anticipated long period of economic uncertainty. Thailand is the EU's third largest trading partner inside ASEAN and the EU is Thailand's third largest trading partner inside ASEAN.

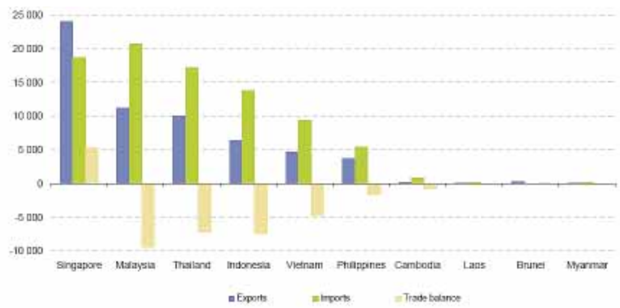
According to the latest trade in goods figures (Eurostat, May 2013), in 2012 EU exports to Thailand stood at €14.8 billion, while EU imports from Thailand were valued at over €16.9 billion, making the total value of EU-Thailand trade in goods €31.7 billion, with the EU having a trade deficit of over €2.1 billion. For many years, the balance of trade between Thailand and the EU has been in Thailand's favour. Thailand is also among the largest beneficiaries of the EU's Generalised Scheme of Preferences (GSP). A wide range of Thai exports have long benefited from preferential access to markets of the European Union, which is the largest economy in the world with a GDP of over €12.894 trillion in 2012.

Figure 1: EU trade with Thailand (unit: million euros)



Source: Eurostat, May 2013

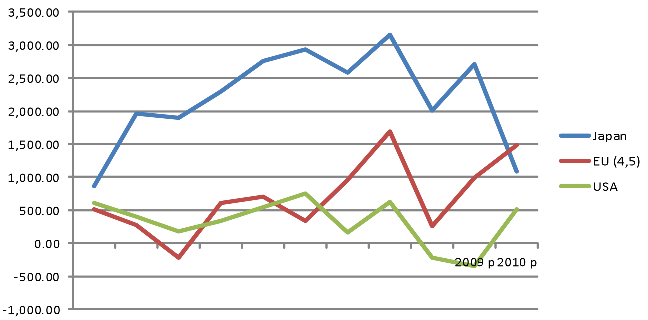
Figure 2: EU trade with ASEAN countries (unit: million euros)



Source: Eurostat (http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/ASEAN-EU_-_trade_and_investment_statistics, accessed 3 June 2013)

In addition to a very active trade relationship with Thailand, the EU has, over many years, been the source of a significant amount of FDI for Thailand. The EU is the largest investor in the ASEAN region and is also one of the largest investors in Thailand. As one of the most economically advanced ASEAN economies, Thailand is an attractive market for EU businesses in a variety of economic sectors. The EU's investments are spread across a wide range of industries and involve both major corporations and SMEs from EU member countries. With EU investment stocks in Thailand worth over €14 billion in 2011, the EU is in fact second only to Japan, and well ahead of the US in terms of total FDI in Thailand.

Figure 3: Net Flow of Foreign Direct Investment Classified by Country (unit: million US$)



Source: statistics from Bank of Thailand (updated 31 August 2012, retrieved 3 June 2013)
Remarks:

1/ The figures cover investment in non-bank sector only.
2/ Direct Investment = Equity Investment plus loans from related companies.Since 2001, 'Reinvested earnings' has been incorporated into direct investment as well.
3/ From April 2004 onwards, inputs for private financial flow data are obtained through data sets electronically.
4/ Prior to May 2004, EU comprised 15 countries: Austria, Belgium, Germany, Denmark, Spain, Finland, France,
United Kingdom, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal and Sweden.
5/ From May 2004, EU comprises 25 countries, also including Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Slovakia, Poland and Slovenia. From Jan 2007, EU comprises 27 countries, also including Bulgaria and Romania.

It is well recognised that Thailand already has a very extensive trade and investment relationship with the EU and this has been the case for many years. ASEAN's impressive growth is currently one of the few bright spots in the world economy. Thailand's geographical and economic position within ASEAN and the growing Asian region, coupled with its developed infrastructure, ensures it remains an attractive investment destination. With the full implementation of the AEC in 2015, this should represent an even bigger opportunity to Thailand, but along with it comes challenges. The AEC and the opening up of the Myanmar market bring about positive sentiments that foreign direct investment in the region will continue to grow. The reduction of the corporate income tax rate to 20 per cent from 1st January 2013 and its relatively low inflation rate should also favour the path of Thailand's economic growth in an otherwise grey worldwide economy. Given the likelihood for growth, however, there will be significant pressure on Thailand to rapidly increase its productivity in the years to come. Arguably, many Thai businesses are much more ambivalent and are not as prepared to take on challenging opportunities presented by the AEC, compared to their ASEAN neighbours.

The general view among European business communities on the outlook for Thailand remains positive despite continued slowdown in the economies of Thailand's largest trading partners. The Annual Business Confidence Survey[2] conducted by the EABC – in December 2012 – in collaboration with the Consortium of European Chambers of Commerce and Associations throughout Thailand and Europe clearly confirmed this.

In the EABC 2012 Business Confidence Survey, the overall outlook of respondents was optimistic both for the next six months and the next two years. Despite pertinent challenges in the global economy (the European crisis and the fear of slow economic performance in the US and China), respondents were confident that the business environment in Thailand and the AEC offered significant opportunities. The majority of respondents planned to expand their business in ASEAN and Thailand in the next two years to avail themselves of what they see as potential for business growth. It is very important to note, however, respondents also viewed these opportunities as highly contingent upon, and therefore called for improvement in, areas considered to be key barriers/challenges to their business operation, particularly trust in public institutions and political instability, human resource issues, corruption and lack of transparency, and poor logistical infrastructure.

[2] The survey was designed and administered in order to gather information from business executives on local and international factors. The questions regarded challenges for executives and their outlook on growth. Targeted respondents of the questionnaire were senior executives of companies within the European business communities, particularly current members of the EABC and European bilateral chambers in Thailand.

Starting on 1 November 2012 and finishing on 18 November 2012, the survey was distributed to over 2000 email addresses via established business networks of the EABC Partners and Associates. The survey – conducted using a web-based, self-administered interface – allowed anonymous participation and consisted of 29 simple questions. The feedback received from 221 respondents of various sizes/profiles of companies provided an interesting perspective on current challenges and upcoming opportunities.

Box 1: Key Messages from the EABC 2012 Business Confidence Survey

Outlook for growth of the Thai economy and business sector:

- Half of all respondents expressed positive opinions about potential growth of the Thai economy in the next two years, compared to only 6 per cent with a negative outlook for the Thai economy.
- 67 per cent of respondents are optimistic about the outlook for growth in their business sectors, while only about 8 per cent are pessimistic.

Company outlook:

- 81 per cent of respondents are considering new major investments in the next two years, the majority of which plan to invest in ASEAN, followed by investing in Thailand and the rest of the world. This is particularly the case for large companies.
- Half of all respondents expect the number of new positions for foreign employees to remain the same, while 35 per cent and 13 per cent see the number of positions increasing and decreasing, respectively.
- 80 per cent of respondents foresee improvement (both strong and moderate) in their company's growth, profitability, and sales in the next six months. Whereas less than 10 per cent envisage a decline in the company's performance in the near future. The executives' perspectives are even more positive in the longer run (i.e. next two years).
- Almost 70 per cent of respondents believe the positive outlook for their companies is related to the potential expansion of their customer base and market demand.

Business climate: opportunities and challenges:

- Potential business opportunities in the AEC ranked first with more than half of the respondents considering this as the main opportunity for Thailand in the next five years, followed closely by ASEAN trade agreements with key trading partners (e.g. India, China) and the potential Free Trade Agreement between Europe and Thailand. Service liberalisation is ranked fourth as the main opportunity for Thailand in the next five years.
- Slightly more than half of the respondents thought that external factors had been affecting their business in a negative way. The main portion of these negative respondents (60 per cent) viewed the European economic crisis as their main external challenge, whereas the US economic slowdown (30 per cent) and the slow economic performance of China (10 per cent) ranked significantly lower.
- Of the negative respondents who have problems inside Thailand, the largest portion is most concerned with the performance of public institutions and political instability. Some also regarded the issue of human resources (i.e. high costs, lack of expertise, limitation on employment of foreign workers, etc.) and lack of transparency and corruption as their principal concerns. Poor logistical infrastructure barely surfaced as a challenge for businesses operating in Thailand.

Business strategy:

- About half of the respondents evaluate the performance of the Thai Government and authorities as neutral in relation to their business operation and strategies. Interestingly however, a much higher proportion of the remaining half regarded the Government/authorities' performance as negative to their business, particularly with respect to the policy and regulatory environment, regulatory enforcement and implementation, followed by the political situation and outlook. Less than 20 per cent of the respondents regarded Thailand's support to investors as positive.
- To effectively reduce costs in the next twelve months, more than 40 per cent of respondents regard the reduction of procurement costs as the first priority.
- In an attempt to increase the company's revenue and profitability, increasing sales and acquiring new customers were indicated as top priorities.

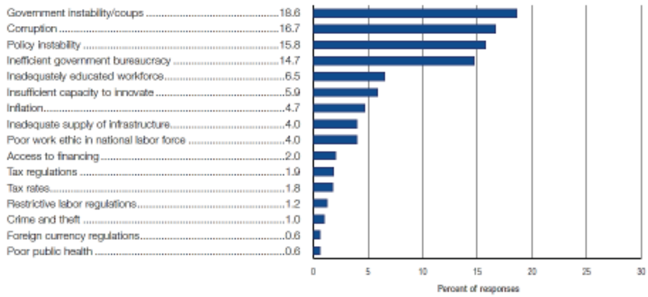
• Enhancing Thailand's Competitiveness: Strategy for Growth

Since the EABC launched the first European Business in Thailand Position Paper in June 2012, the global economy has and will continue to undergo a long period of economic uncertainty. The persisting financial difficulties in the periphery of the euro-zone have led to a long-lasting and unresolved sovereign debt crisis with potentially devastating consequences for the region and beyond. This development is coupled with the risk of a weak recovery in several other advanced economies outside Europe, notably in the United States, together with the expected slowdown in economic growth in China, India, and other emerging markets, reinforcing a potential decline in global trade and volatile capital flows. Policymakers around the world have been struggling to find ways to cooperate and manage the current economic challenges while preparing their economies to perform well in an increasingly difficult and unpredictable global landscape. Amid the short-term crisis management, it remains critical for countries to establish the fundamentals that underpin economic growth and development in the longer term.

Recognising Thailand as our valued trading partner as well as prominent home to many well-known European companies and investors, the EABC considers itself to be a direct contributor and stakeholder in Thailand's past and present. And we will continue to be so for the country's future success in support of strengthening a competitive economy in Thailand.

Recent data on the Global Competeviness Index 2012-2013 of the World Economic Forum (WEF) surveys showed that Thailand's overall competitiveness ranking stood at 38th of 144 economies. After having fallen for six years in a row, Thailand managed to halt the negative trend and improved by one place in the GCI ranking. Yet the WEF notes that challenges for Thailand's competitiveness remain considerable, particularly in the areas of political and policy instability, excessive red tape, pervasive corruption, security concerns, and uncertainty around property rights protection, which have seriously undermined the quality of the institutional framework on which businesses rely heavily.

Figure 4: Thailand's most problematic factors for doing business



Source: World Economic Forum (2013)

Thailand loses an additional 10 places in the institutions category to rank at a low 77th; while the country's infrastructure was ranked four places lower than last year. Despite certain improvement, public health and basic education standards, which are two other critical building blocks of competitiveness, remain poor and require urgent attention. Turning to look at innovation and sophistication factors, which are also regarded as very important given Thailand's stage of development, technological adoption is generally poor (84th). Sadly, the country's performance in all seven factors under the 12th pillar on innovation fell quite significantly, particularly on capacity for innovation which fell 23 places from last year. Less than a quarter of the population accesses the Internet on a regular basis, and only a small fraction has access to broadband. The protection of intellectual property also continues to fall even further to 101st place.

Table 1: Thailand's GCI in detail

Indicators	11/12 (142)	12/13 (144)	change
1st pillar: Institutions			
Property rights	108	103	+5
Intellectual property protection	92	101	-9
Diversion of public funds	67	82	-15
Public trust in politicians	91	107	-16
Irregular payments and bribes	79	80	-1
Judicial independence	55	59	-4
Favouritism in decisions of G officials	68	86	-18
Wastefulness of government spending	45	70	-25
Burden of government regulation	45	75	-30
Efficiency legal framework in settling disputes	53	65	-12
Efficiency legal framework in challenging regulations.	54	73	-19
Transparency of G policymaking	75	89	-14
G services for improved business performance	-	58	-
Business costs of terrorism	117	115	+2
Business costs of crime and violence	79	77	+2
Organised crime	73	76	-3
Reliability of police services	91	101	-10
Ethical behaviour of firms	75	68	+7
Strength of auditing, reporting standards	56	53	+3
Efficacy of corporate boards	68	68	0
Protection minority shareholders' interests	50	53	-3
Strength of investor protection	12	13	-1
2nd pillar: Infrastructure			
Quality of overall infrastructure	47	49	-2
Quality of roads	37	39	-2
Quality of railroad infrastructure	63	65	-2
Quality of port infrastructure	47	56	-9
Quality of air transport infrastructure	32	33	-1
Available airline seat kms/week	16	17	-1
Quality of electricity supply	50	44	+6
Mobile telephone subscriptions	94	57	+37
Fixed telephone lines/100 pop	70	95	-25
3rd pillar: Macroeconomic environment			
Government budget balance, per cent GDP	53	52	+1
Gross national savings, per cent GDP	28	25	+3
Inflation, annual per cent change	62	53	+9
General government debt, per cent GDP	86	77	+9
Country credit rating	47	45	+2
4th pillar: Health and primary education			
Business impact of malaria	85	84	+1
Malaria cases/100,000 pop	100	103	-3
Business impact of tuberculosis	75	73	+2
Tuberculosis cases/100,000 pop	98	103	-5
Business impact of HIV/AIDS	104	103	+1
HIV prevalence, per cent adult pop	115	114	+1

Indicators	11/12 (142)	12/13 (144)	change
Infant mortality	59	57	+2
Life expectancy	98	62	+36
Quality of primary education	85	82	+3
Primary education enrolment	95	97	-2
5th pillar: Higher education and training			
Secondary education enrolment	94	92	+2
Tertiary education enrolment	54	54	0
Quality of the educational system	77	78	-1
Quality of math and science edu.	60	61	-1
Quality of management schools	73	62	+11
Internet access in schools	54	63	-9
Availability of research, training services	74	66	+8
Extent of staff training	56	49	+7
6th pillar: Goods market efficiency			
Intensity of local competition	52	54	-2
Extent of market dominance	83	79	+4
Effectiveness of anti-monopoly policy	77	80	-3
Extent and effect of taxation	50	55	-5
Total tax rate	63	68	-5
No. procedures to start a business	65	29	+36
No. days to start a business	103	99	+4
Agricultural policy costs	108	116	-8
Prevalence of trade barriers	86	71	+15
Trade tariffs, per cent duty	77	78	-1
Prevalence of foreign ownership	70	65	+5
Business impact of rules on FDI	38	20	+18
Burden of customs procedures	82	86	-4
Imports as a per cent of GDP	26	25	+1
Degree of customer orientation	17	21	-4
Buyer sophistication	41	37	+4
7th pillar: Labour market efficiency			
Cooperation in labour-employer relations	35	41	-6
Flexibility of wage determination	95	97	-2
Hiring and firing practices	40	41	-1
Redundancy costs	92	130	-38
Pay and productivity	29	27	+2
Reliance on professional mgt.	62	71	-9
Brain drain	41	36	+5
Women in labour force, ratio to men	53	62	-9
8th pillar: Financial market development			
Availability of financial services	46	40	+6
Affordability of financial services	36	35	+1
Financing through local equity mkt	29	27	+2
Ease of access to loans	31	28	+3
Venture capital availability	50	49	+1
Soundness of banks	43	45	-2
Regulation of securities exchange	43	43	0
Legal rights index	89	89	0

Indicators	11/12 (142)	12/13 (144)	change
9th pillar: Technological readiness			
Availability of latest technologies	82	73	+9
Firm-level technology absorption	75	54	+21
FDI and technology transfer	32	47	-15
Individuals using internet, per cent	93	94	-1
Broadband internet subscriptions	77	73	+4
Int'l internet bandwidth	83	84	-1
Mobile broadband subscriptions	-	128	-
10th pillar: Market size			
Domestic market size index	23	23	0
Foreign market size index	16	16	0
11th pillar: Business sophistication			
Local supplier quantity	24	25	-1
Local supplier quality	47	39	+8
State of cluster development	36	34	+2
Nature of competitive advantage	78	63	+15
Value chain breadth	36	33	+3
Control of international distribution	42	56	-14
Production process sophistication	61	55	+6
Extent of marketing	48	54	-6
Willingness to delegate authority	77	68	+11
12th pillar: Innovation			
Capacity for innovation	56	79	-23
Quality scientific research institutions	59	60	-1
Company spending on R&D	68	74	-6
Uni-industry collaboration in R&D	39	46	-7
G procurement advanced tech products	72	98	-26
Availability of scientists and engineers	49	57	-8
PCT patents, applications	63	72	-9

Source: World Economic Forum (WEF)

The strong and statistically significant relationship between FDI and the overall level of regulation reflect more about the overall investment climate than what matters only to small and medium-size local firms. As recognised by the World Bank, an institutional environment characterised by openness and transparency is of central importance not only for private markets but also for the effective and efficient management of public resources. Lack of transparency around the decisions made by policy makers and government officials can lead to resource misallocation as funds, rather than being directed toward their most productive ends, are instead captured for private gain. Lack of transparency can also undermine the credibility of those who are perceived as being its beneficiaries and thus sharply limit their ability to gain public support for economic and other reforms.

According to the IFC and the World Bank 'Ease of Doing Business Report 2013 - Smarter Regulations for Small and Medium-Size Enterprises', Thailand continues to remain one of the world's most business-friendly regulatory environments for local entrepreneurs at the ranking of 18th out of 185 economies. It is however worrying that the country's rank – again – continues on a downward trend by falling one place from 2012. It has been positively noted that government agencies in Thailand have been collaborative in promoting a friendly business environment. Thailand has also made starting a business easier by allowing the registrar at the Department of Business Development to receive the company's work regulations reducing the number of procedures needed to register a company in Thailand. Nonetheless, Thailand has been strongly encouraged to improve the quality of education and promote innovation which will help the country attract investors and remain competitive. The World Bank also recommended that this be combined with reforms aimed at improving skills and promoting greater competition in the services sector to promote greater investment and improve business operations.

Table 2: Thailand's ranking on the World Bank Ease of Doing Business Report 2013

	DB 2012	DB 2013	Change in Rank
Thailand - Overall Ranking	17	18	**-1**
Starting a business	78	85	**-18**
Dealing with construction permits	14	16	**-2**
Getting electricity	9	10	**-1**
Registering Property	28	26	+2
Getting credit	67	70	**-3**
Protecting investors	13	13	No change
Paying taxes	100	96	+4
Trading across borders	17	20	**-3**
Enforcing contracts	24	23	**-1**
Resolving insolvency	51	58	**-7**

Source: World Bank (2013)

In terms of competitiveness as ranked by the International Institute for Management Development (IMD), Thailand is ranked at well below those regarded as 'innovation-driven' economies such as Japan, the US, Hong Kong and Singapore; and is also lower than Malaysia. However, during the past few years, foreign investors have been more concerned about political instability and unpredictability. Corruption and an inefficient government bureaucracy were also identified as being amongst the most problematic factors of doing business in Thailand. Besides political uncertainty in the past, Thailand is now faced with one of the highest rates of income disparity in the region and impeding developmental challenges.

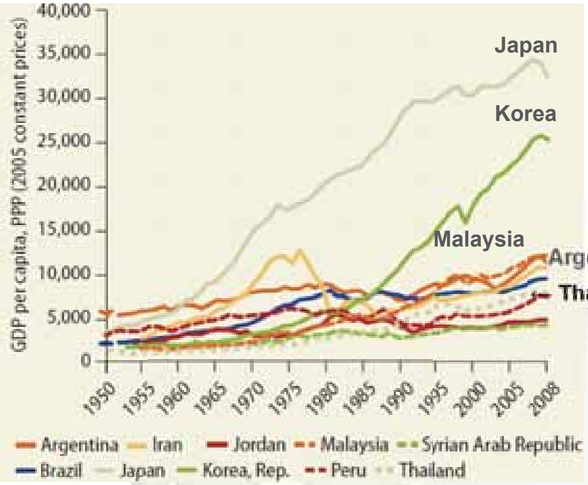
Table 3: Thailand's Competitiveness rankings by IMD 2006-2011

Thailand	2007	2008	2009	2010	2011	2012	+/-
Overall ranking	**33**	**27**	**26**	**26**	**27**	**30**	**-3**
1. Economic performance	**15**	**12**	**14**	**6**	**10**	**15**	**-5**
1.1 Domestic economy	47	48	48	35	27	47	**-20**
1.2 International trade	13	21	16	5	6	8	**-2**
1.3 International investment	45	47	46	38	34	33	+1
1.4 Employment	6	4	4	3	3	2	+1
1.4 Prices	6	4	5	4	23	28	**-5**
2. Government Efficiency	**27**	**22**	**17**	**18**	**23**	**26**	**-3**
2.1 Public finance	16	29	20	14	11	18	**-7**
2.2 Fiscal policy	6	5	8	7	7	6	+1
2.3 Institutional framework	45	40	26	32	35	32	+3
2.4 Business legislation	37	29	29	28	39	44	**-5**
2.5 Societal framework	40	36	26	33	47	50	**-3**
3. Business Efficiency	**34**	**25**	**25**	**20**	**19**	**23**	**-4**
3.1 Productivity	48	48	50	49	33	57	**-24**
3.2 Labour market	7	3	7	2	2	4	**-2**
3.3 Finance	44	31	22	18	19	15	+4
3.4 Management practice	35	19	15	13	16	19	**-3**
3.5 Attitudes and value	30	20	19	19	16	17	**-1**
4. Infrastructure	**48**	**39**	**42**	**46**	**47**	**49**	**-2**
4.1 Basic infrastructure	35	29	29	26	24	26	**-2**
4.2 Technological infrastructure	48	43	36	48	52	50	+2
4.3 Scientific infrastructure	49	37	40	40	40	40	0
4.4 Health and environment	48	47	50	51	54	52	+2
4.5 Education	46	43	47	47	51	52	**-1**

Source: IMD Yearbook 2007, 2008, 2009, 2010, 2011 and 2012

Continual deterioration of Thailand's competitiveness and the fact that Thailand seems to have been stuck in the **'middle income trap'** has been well recognised by the relevant Thai authorities. These key developmental challenges need to be effectively and urgently addressed in order to maintain Thailand's attractiveness as a vibrant economy and investment destination, to strengthen its competitiveness, and to restore trust and confidence of the business community for the longer term.

Figure 5: Thailand in the middle income trap



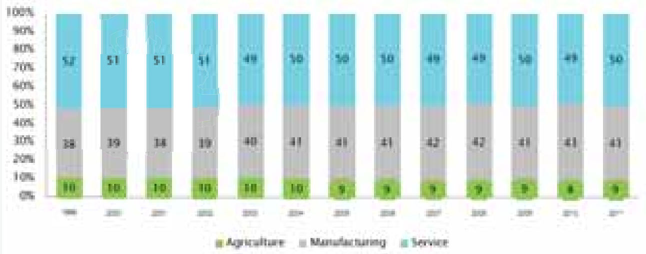
Source: World Bank (2012)

Globally, the services sector is recognised as the most dynamic sector for economic growth and development. As national economies develop they tend to move away from resource extraction and manufacturing and toward knowledge-based industries which tend to be in the service sector. Although it could be argued that the resilience of Thailand's economy in the face of global economic shocks has been based on the country's three strong pillars of agriculture, manufacturing and services, Thailand's services industries – with the exception of travel and tourism – have long been lagging behind even to those of other ASEAN countries. While Thailand's manufacturing sector has made significant gains in productivity and agriculture has continued to be a stable contributor to the economy, services have declined. The percentage of the labour force employed by three key economic sectors has been relatively constant for the last decade, with services and agriculture each accounting for around 40 per cent of the workforce while manufacturing accounting for about 15 per cent. In this regard, it is important to note that while 40 per cent of Thailand's workforce in the services sector generates about 50 per cent of the GDP, manufacturing with just 15 per cent of the workforce generates 41 per cent of the GDP. This tells us that while manufacturing in Thailand is quite efficient and workers in this sector are very productive, the country's services have significant room for improvement.

Figure 6: Comparison of Thailand's workforce composition to sector contribution to GDP

- **Composition of Thai workforce in key economic sectors**

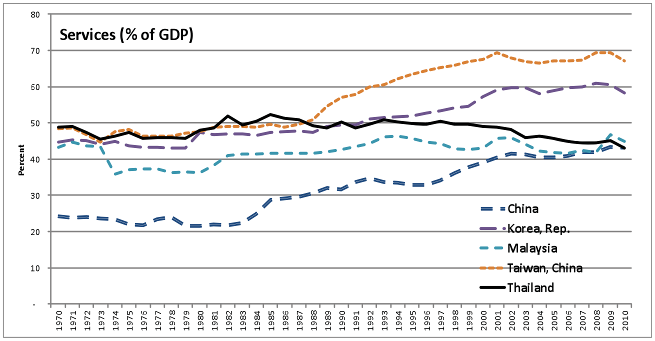
- **Sector contribution to GDP at fixed prices**



Source: data from NESDB

In ASEAN, the services sector generally account for about 40 per cent to 70 per cent of each economy's GDP. For Thailand, the GDP contribution of around 50 per cent by the services sector is therefore not at all odd. However, Thailand seems to be the only country among selected economies experiencing a stagnant or even a decline in terms of GDP contribution from the services sector. This is significant because services industries are widely considered to be the economic growth engines of the future. It is interesting to see that as countries develop and become more prosperous, the contribution from services generally become the most important part of their GDP by a significant portion (e.g. more than 70 per cent of GDP in cases of US, UK, Australia and Japan). The underlying message is that growth in the services sector has been well recognised as playing a key role in the economic advancement of the majority of developed economies.

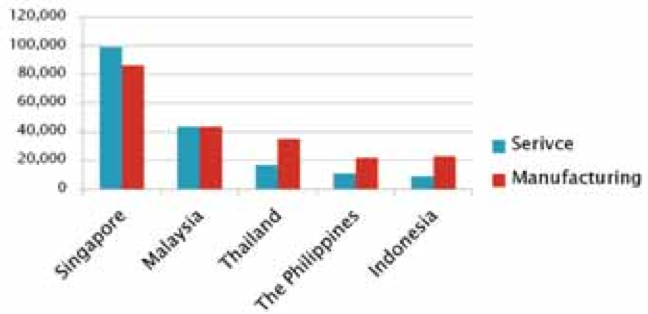
Figure 7: Comparison of services contribution to GDP of selected economies



Source: Data from IMD

The services sector has been the significant contributor to GDP growth in the ASEAN-4 group and in Vietnam. The robust growth in services in ASEAN countries has reflected strong domestic demand, but is also associated with longer term trends caused by rising incomes. Notwithstanding the recent growth in the sector, many economies in East Asia – including Thailand – have smaller services sectors than would be expected based on their income levels. This partially reflects the relative success of manufacturing among countries in the region, but may also stem from the limited adoption of high value modern services, such as information and communication technology, finance, and professional business services. To compare the labour productivity with that of our ASEAN neighbours, it is also worrisome that Thailand's productivity in the services sector seems to be closer to those of the lesser developed members rather than the more highly developed ones. This is a very dangerous trend for the Thai economy as we work towards strengthening its competitiveness. For Thailand to overcome the middle income trap, its services sector is in dire need for an infusion of new skills and technologies to increase the productivity of workers.

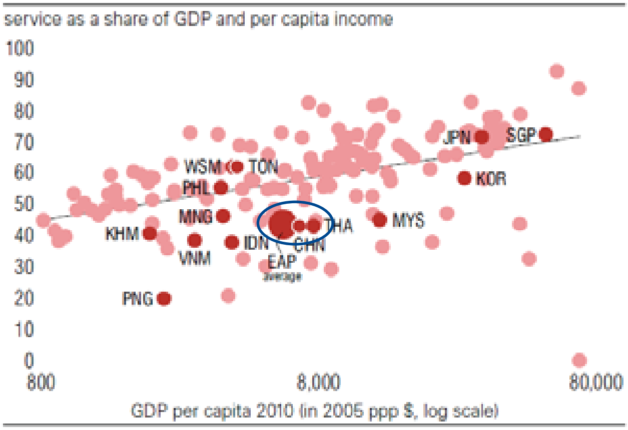
Figure 8: Services contribution to GDP in ASEAN economies



Source: Data from IMD World Competitiveness Yearbook 2012

Source: Haver Analytics and national statistical agencies in World Bank (2013)
Note: 2012 pertains to the first three quarters of the year

Figure 9: Services still lagging in many East Asia Pacific countries, including Thailand



Source: World Bank (2013)

- ## Advancing Trade Liberalisation and Economic Integration under the EU-Thailand FTA: Dynamism of Opportunities

The global economy might be facing a number of significant and interrelated challenges that could still hamper a genuine upturn in its economic recovery path. It is however very pleasing that many positive developments have taken place to further strengthen trade and investment ties between Thailand and the EU since the launch of the previous edition of the EABC Position Paper in 2012.

Among these, the negotiations for an EU-Thailand Free Trade Agreement were formally launched on 6 June 2013. This marked an important step in EU-Thai relations, already strengthened by a political deal in February 2013 on a Partnership and Cooperation Agreement. The ambition is to conclude a comprehensive Free Trade Agreement, covering tariffs, non-tariff barriers and other trade related issues, such as services, investment, procurement, intellectual property, regulatory issues, competition, and sustainable development. Thailand is the latest, but surely a very important trade partner, in a series of ASEAN countries to negotiate an FTA with the EU[3].

The EU-Thailand FTA is not, however, an attempt to create a new trading relationship, but rather is the long-awaited natural extension of an already strong trade and investment relationship between Thailand and the EU. Thailand's robust economy and its continuing positive trade balance with the EU ensure that Thailand is not simply a 'junior partner' in this relationship. The EU-Thailand FTA is expected to deliver substantial economic gains to both parties. Removal of trade barriers and further trade liberalisation under the FTA should strengthen Thailand's competitiveness and investment attractiveness as compared to its ASEAN peers, while putting the EU on par with other trade partners who have already concluded FTAs with Thailand. Economic benefits calling for the negotiations of the EU-Thailand FTA have been recognised by scholars in many studies. The FTA will be a key mechanism to further strengthen a true partnership among equals and will be based on the principal of mutual benefit.

[3] Thailand is the fourth ASEAN Member State with which the EU is holding FTA negotiations. In December 2012, the EU concluded a trade deal with Singapore, while negotiations with Malaysia and Vietnam are on-going.

Box 2: Synopsis of macroeconomic impact assessment of the EU-Thailand FTA using GTAP model

The EU-Thailand FTA impact assessment study was conducted by the Thailand Development Research Institute (TDRI) using the Global Trade Analysis Project (GTAP) which is a multi-country Computable General Equilibrium (CGE) model calibrated to cover seven market access scenarios of short and long run equilibrium to study the potential impact of the EU-Thailand FTA, as follows:

Scenario 1: *The EU has only the existing FTAs which are already in force; while Thailand does not have an FTA with the EU*
Scenario 2: *Scenario 1 + the EU also has an FTA with Malaysia and Vietnam; while Thailand does not have an FTA with the EU*
Scenario 3: *Scenario 1 + the EU and Thailand will have an FTA with sensitive products of the EU being excluded from commitment*
Scenario 4: *Scenario 1 + the EU and Thailand will have an FTA under which Thailand will reduce 100 per cent of its tariffs while reducing its barriers in services trade by 20 per cent*
Scenario 5: *Scenario 1 + the EU and Thailand will have an FTA under which Thailand will reduce 100 per cent of its tariffs while reducing its barriers in services trade by 40 per cent*
Scenario 6: *Scenario 4 + take account of expansion of capital stock to account for dynamic impact*
Scenario 7: *Scenario 5 + take account of expansion of capital stock to account for dynamic impact*

Scenarios	*1*	*2*	*3*	*4*	*5*	*6*	*7*
GDP (per cent)	**-0.36**	**-0.41**	**2.32**	**2.83**	**2.85**	**3.01**	**3.05**
Trade balance (mil US$)	405.69	513.03	-6,941.39	-6,094.87	-6,074.47	644	653
Thailand imports value (per cent)	-0.3	-0.4	5.37	5.5	5.67	6.92	7.09
Eu-27 imports value (per cent)	1.00	0.09	0.08	0.09	0.09	0.13	0.13
Terms of Trade (per cent)	-0.17	-0.2	1.40	2.17	2.34	0.87	1.08
Welfare: Equivalent variation (mil US$)	-202.15	-250.46	1,590.25	2,477.17	2,756.76	3,970	4,266
Contribution from:							
▪ Allocative efficiency (mil US$)	-15.4	-34.35	45.16	55.54	95.6	901	939
▪ Terms of trade (US$)	-229.83	-263.36	1,649.25	2,515.67	2,685.03	1,020	1,244

Source: TDRI. Full report available at: http://www.thaifta.com/thaifta/Home/%E0%B8%A3%E0%B8%B2%E0%B8%A2%E0%B8%87%E0%B8%B2%E0%B8%99%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%A8%E0%B8%81%E0%B8%A9%E0%B8%B2/tabid/55/ctl/Details/mid/435/ItemID/7848/Default.aspx

FDI has become more important for the economic growth and development of many countries, particularly by bringing in capital, providing a means to pursue strategic development objectives, and allowing access to technology and expertise of the host country. Attracting FDI is therefore regarded as an important imperative from an economic development perspective.

As mentioned earlier, companies from the EU have been a major source of FDI for Thailand for many years. While we expect this trend to continue, it is important to note other ASEAN countries over the years have become much more competitive in their ability to attract FDI. Despite many important advantages that Thailand still has, on the whole it could be argued that its attractiveness to foreign investors has relatively declined. To some extent, this can be seen in the growth of FDI in countries such as Singapore, Indonesia and Malaysia over the past several years and the relative decline in FDI coming to Thailand during the same period. It is important that this trend be reversed and that Thailand attracts its fair share of high-quality FDI, and so gain the various benefits that it entails including jobs, technology and knowledge transfer and increased export capabilities. The EU-Thailand FTA will benefit Thailand in this regard because it will make it a preferred destination for EU FDI in general and will also increase the range of industries in which European companies can invest in the country.

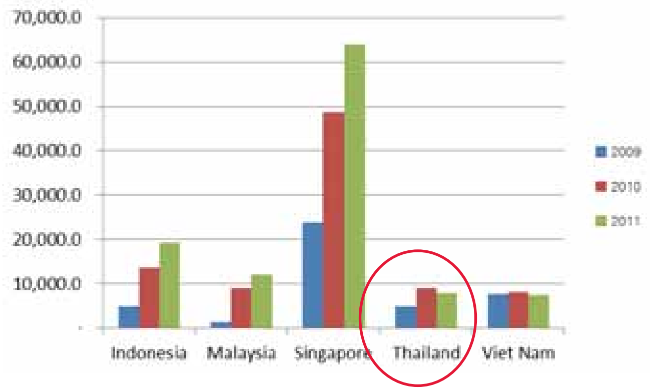
Table 4: Foreign direct investments net inflow, intra- and extra-ASEAN

Unit: Value in US$ million; share in per cent

Country	2009			2010			2011[2/]			Share to total net inflow to ASEAN, 2011		
	Intra-ASEAN	Extra-ASEAN	Total net inflow	Intra-ASEAN	Extra-ASEAN	Total net inflow	Intra-ASEAN	Extra-ASEAN	Total net inflow	Intra-ASEAN	Extra-ASEAN	Total net inflow
Brunei Darussalam	3.1	368.3	371.4	89.5	535.9	625.4	67.5	1,140.8	1,208.3	0.3	1.3	1.1
Cambodia	174.0	365.0	539.0	349.0	433.6	782.6	223.8	667.9	891.7	0.9	0.8	0.8
Indonesia	1,380.1	3,496.7	4,876.8	5,904.4	7,866.4	13,770.9	8,338.1	10,903.5	19,241.6	31.7	12.4	16.9
Lao PDR	57.3	261.3	318.6	135.4	197.2	332.6	54.0	246.8	300.7	0.2	0.3	0.3
Malaysia	(60.2)	1,465.3	1,405.1	525.6	8,630.2	9,155.9	2,664.3	9,336.6	12,000.9	10.1	10.6	10.5
Myanmar	67.8	895.5	963.3	171.7	278.5	450.2	-	-	-	-	-	-
The Philippines	(4.9)	1,967.9	1,963.0	40.2	1,257.8	1,298.0	(107.0)	1,369.0	1,262.0	-0.4	1.6	1.1
Singapore	2,791.1	21,215.0	24,006.1	4,569.0	44,182.6	48,751.6	13,213.4	50,783.8	63,997.2	50.3	57.8	56.1
Thailand	**1,463.2**	**3,390.3**	**4,853.5**	**1,236.9**	**7,874.6**	**9,111.6**	**317.1**	**7,461.0**	**7,778.1**	**1.2**	**8.5**	**6.8**
Viet Nam	428.7	7,171.3	7,600.0	1,300.9	6,699.1	8,000.0	1,499.4	5,930.6	7,430.0	5.7	6.8	6.5
Total	**6,300.2**	**40,596.5**	**46,896.7**	**14,322.7**	**77,955.9**	**92,278.6**	**26,270.6**	**87,840.0**	**114,110.6**	**100.0**	**100.0**	**100.0**
ASEAN 5[3/]	**5,569.3**	**31,535.2**	**37,104.4**	**12,276.2**	**69,811.7**	**82,087.9**	**24,426.0**	**79,853.8**	**104,279.8**	**93.0**	**90.9**	**91.4**
BLCMV[4/]	**730.9**	**9,061.4**	**9,792.3**	**2,046.5**	**8,144.3**	**10,190.7**	**1,844.6**	**7,986.2**	**9,830.8**	**7.0**	**9.1**	**8.6**

Source: ASEAN Secretariat FDI database (Table 25 as of 14 January 2013, accessed 6 June 2013)

Figure 10: Net Flow of Foreign Direct Investment in selected ASEAN countries, 2009-2011 (unit: million US$)



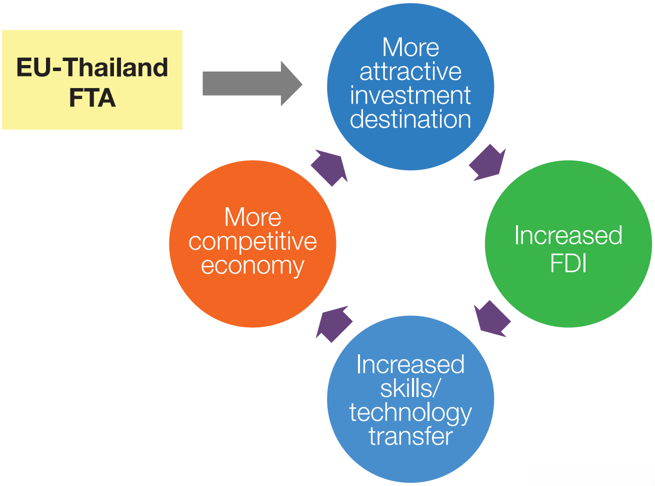
Source: ASEAN Secretariat FDI database

Considering three national economic development stages which are factor-driven, efficiency-driven, and innovation driven, Thailand is currently in the efficiency-driven stage, but so are several of our ASEAN neighbours. Arguably, this means that in some ways we will increasingly need to compete with other ASEAN countries for resources that are needed to move us to the innovation-driven stage, particularly FDI along with knowledge and skills transfer. While countries in the factor-driven stage may be seeking FDI that will develop their manufacturing and heavy industries, countries in the efficiency-driven stage will be looking to develop their services sector based on intellectual property and high value-added products. It is therefore no surprise that FTAs are popular among countries that are seeking to make the transition that Thailand wants to make, i.e. increased EU market access for our goods and increased investment to help us continue to grow and develop our economy.

It is therefore important to remember that while careful consideration is exercised on the pros and cons of any bilateral agreement, these negotiations do not happen in a vacuum. Apart from Singapore, Malaysia and Vietnam, the EU is conducting similar FTA negotiations around the world, including ones with key trading partners such as Japan and the US. In ASEAN, both Malaysia and Singapore already attract more investment than Thailand, and with the FTAs, we can assume that this gap could be widened. The loss of these resources will have a negative impact on our ability to maintain our future economic growth.

In addition to the near term boost in exports and expected GDP growth from the successful conclusion of the EU-Thailand FTA, there are other additional benefits to be expected as a result of the adjustments we make to our regulatory systems and policies regarding business competition and foreign investment. Earlier, we discussed at length the need for Thailand to reverse the deteriorating trend in its services sector which can have significant adverse impacts on short and long term growth and development of the Thai economy. The strategic importance of the services sector cannot be emphasised enough. Thailand needs to ensure that there is adequate investment in these 'industries of the future' and that the country has workers with necessary skills and expertise to fill the knowledge-based economy jobs that companies in these sectors create. The FTA with the EU can help re-ignite Thailand's services sector to regain its competitive position within ASEAN and in the global economy. By removing barriers and paving the way for Thailand to attract resources and skills, Thailand should be able to increase its economic dynamism and ability to attract and retain talents, which are very much needed given the country's current shortage of skilled labour. This will help to make Thailand a more dynamic and competitive economy that is ready to face the challenges of the next century. The EU-Thailand FTA will be a key mechanism which will initiate a virtuous cycle that builds strength on strength for the ultimate mutual benefit of the economy and society.

Figure 11: Virtuous cycle of growth



The EABC is therefore strongly supportive of a balanced FTA of which we are confident that – once finalised and implemented – will meaningfully boost trade between Thailand and the EU, which will then boost economic growth, jobs and prosperity. The amount of EU investment in Thailand will increase and expand not only in manufacturing but also into a range of high-potential industries that will be vital for Thailand's future towards sustainable development. This is where the FTA can be a key mechanism to further strengthen a true EU-Thailand partnership for growth, providing long-term as well as near-term benefits to Thailand, its economy and people.

- ## EU-Thailand: Partnership for Growth

The EABC's overarching objective is to contribute to the improvement in trade and bring in more investment from Europe to Thailand to contribute to the competitiveness of the Thai economy, and to promote Thailand and ASEAN as potential markets for more European companies. Our Position Paper represents views of European businesses in Thailand and serves to communicate our key issues of interest and propose recommendations to respective Thai authorities and counterparts for the improvement of Thailand's trade and investment climate. European investors and companies are recognised as having resources and expertise in cutting-edge technology, innovation and R&D. Stronger trade and investment relations between Thailand and Europe would therefore be complementary and create mutual benefits. Striving to continue our constructive dialogue at all levels with the Thai authorities, we aim to bring to fruition our shared experiences and recommendations on various aspects of Thailand's policy development. Considered home to European investors and companies, the EABC works to making positive contributions to strengthen Thailand's competitiveness within the spirit of EU-Thailand: partnership for growth.

Continuing our themes from last year, European businesses consider **enhanced transparency, improved efficiency, an enabling economic and regulatory environment and liberalisation of the services sector to** remain key priorities on which – we believe – tangible improvement would meaningfully enhance Thailand's position. These key themes have been highlighted throughout this second edition of the EABC Position Paper as the main enabling factors to strengthen Thailand's competitiveness and its potential position as a gateway to investing in ASEAN. Our recommendations herein however are not intended to be exhaustive, but rather to focus on practical aspects towards raising the standard of Thailand's policy and regulatory framework. The EABC will continue to use our Position Paper for future communication with relevant authorities and counterparts.

This Position Paper is also intended to be a source of information for the European Union and European Member State Governments to assist in their engagements with Thai policymakers and authorities. We are hopeful that Thai businesses, media and academics will also find that this Position Paper provides useful information.

Recognising this policy dialogue and implementation as an on-going process, the EABC noted and took stock of progress made since the last edition of our European Business Position Paper, both positive and negative. There are currently nine Advocacy Working Groups under the EABC namely on Cross Sectoral Issues, Intellectual Property Rights (IPR), Automotive, Food & Beverages, Healthcare & Pharmaceuticals, ICT, Insurance, Transport and Logistics, and Energy & Energy

Efficiency as the latest addition. Discussion on key trade/investment issues and recommendations from each of these Working Groups are then included in this Position Paper.

The EABC is fully committed to providing constructive contributions for tangible progress and the fostering of a long-term economic partnership between Thailand and Europe. We look forward to having regular dialogue – both at the policy and business levels – as well as continued improvement in business cooperation in the spirit of mutual benefit.

Progress from 2012

Issues	Recommendations	Progress since launch of 2012 Position Paper
Macroeconomic/Policy Development		
• Thailand is encouraged to pursue an open trade agenda towards further liberalisation and the creation of a level playing field, particularly in key economic sectors, to help boost investor confidence and strengthen Thailand's competitive position in view of globalisation and regional integration. • In the spirit of cooperation and partnership, we look forward to fostering even stronger economic relations, for the benefit of both Thailand and Europe, and the prompt commencement of the EU-Thailand FTA negotiations. • Liberalisation of the services sector is a key enabler for competitiveness, skills enhancement, productivity gains and, for strategic service sectors, a boost to overall economic growth and resilience. In certain sectors, some fundamental changes (eg structure of the sector) wil be needed in order to support a trade liberalisation agenda and to make the sectoral changes meaningful		**Concrete progress made with respect to EU-Thailand FTA.** The EABC welcomes the official launch of the EU-Thailand FTA negotiations. Both sides are encouraged to work together to ensure expedient conclusion of the FTA which will bring meaningful outcome in terms of dismantling of burdensome tariff and non-tariff barriers, as well as substantial improvement of market access, for mutual benefit.
Cross Sectoral Issues		
Enhanced transparency in policymaking and the application of rules and regulations	• **Customs:** Profound modification in the penalty scheme and the reward system to ensure transparency and predictability, as well as to avoid 'undue penalties' or the encouragement of an 'over-incentive' effect	• **Not resolved.** Despite the Cabinet's positive consideration to impose a cap on the reward, significant and concrete improvement is yet to be made in this regard.
	• Eradication of **'grey market'** and unfair parallel imports to create a level playing field and protect the legitimate interests of brand owners	• **On-going process, but not yet resolved.** Despite various efforts made at the policy level, it is arguable that grey market practice and unfair parallel imports are still highly visible. This has led to an uneven playing field which has caused serious harm to the legitimate interests of brand owners.

Issues	Recommendations	Progress since launch of 2012 Position Paper
Ease of doing business to improve business and economic effi-ciency	• **Competitive tax and investment promotion regime:** - Simplify the tax compliance methods to improve economic efficiency as well as enhance transparency in tax collection - Enhance the competiveness and attractiveness of both tax and non-tax incentives under the current investment promotion scheme to effectively correspond to the needs of strategic investors • **Standards and conformity assessment:** adopt international standards as national standards to improve efficiency and reduce unnecessary costs and hindrances to businesses • **Effective schemes of free trade zones:** streamline the application and interpretation of relevant rules and regulations – e.g. on licences, rules of origin and calculation of local content – for consistency in order to ensure that the benefits provided to investors/business operators will not be unduly hindered by regulatory inefficiencies	• **On-going process** Significant progress is yet to be made. • **Not yet resolved, potentially becoming worse.** • **Not yet resolved.** Significant progress is yet to be made.
An enabling economic and regulatory environment	• **Relaxation of foreign ownership restrictions / Liberalisation of services sector** - Progressive liberalisation of Thailand's services sector through implementation of the existing review mechanism on List 3 in the FBA to duly remove restrictions and encourage foreign investment in a range areas of the services sector - A level playing field for European businesses in the services sector - Review, with a view to relaxing, the current rules for foreign ownership of land and condominiums, and the leasing of land and buildings, in order to attract foreign investment • **Ease restrictions to facilitate free movement of people, including recruitment of foreign skilled and unskilled workers** • **Improve, in terms of speed and efficiency, the processing of disputes and the issuing and enforcing of judgments and arbitration awards**	• **Not yet resolved.** Significant progress is yet to be made. • **Not yet resolved.** The situation is potentially becoming more acute. • **Not yet resolved.** Significant progress is yet to be made.

Issues	Recommendations	Progress since launch of 2012 Position Paper
	• **Strengthen the legal framework and its law enforcement to protect intellectual property rights** - Proposed regulatory reform aimed at combating counterfeiting and piracy - Strengthen IP enforcement - Enhance the IP system towards sustainability	• **On-going process.** Significant progress is yet to be made.
Sectoral Issues:		
▪ **Automotive**	- Dismantle redundant Approval/Homologation Standards - Put in place a harmonised, technologically-neutral, taxation on automobiles based on CO_2 emissions for all types of powertrains - Improve fuel quality standards and emission regulations - Harmonise automotive product standards - Address policy inconsistency, as well as operational hindrances, in respect of Customs Free Zones - Provide an investment promotion scheme and tax incentives which effectively correspond to industry needs and promote industry development and innovation - Ensure availability of skilled and non-skilled workers - Expedite progress on the EU-Thailand FTA negotiations	- Not yet resolved - On -going process - On-going process - On-going process - Not yet resolved, potentially becoming worse - On-going process - Not yet resolved. The situation is potentially becoming more acute. - On-going process
▪ **Food & Beverages**	- Streamline the FDA product application process to minimise delays - Eliminate discriminatory practices in respect of excise tax and license fees on imported vs domestically-produced alcohol beverages - Review the Alcohol Advertising and Beverages Control Act with a view to enhancing transparency in the application of relevant rules and regulations - Investigate more appropriate and targeted initiatives to reduce alcohol-related harm rather than implement the proposal to introduce pictorial warning labels on alcohol beverages - Prioritise legislative amendments to address unauthorised use of trademarks regarding refilling practice - Expedite progress on the Thai-EU Free Trade Agreement (FTA) negotiations	- Not yet resolved - Certain improvement, yet this is recognised as an on-going process - On-going process - On-going process - Certain improvement, yet this is recognised as an on-going process - On-going process

Issues	Recommendations	Progress since launch of 2012 Position Paper
▪ **Healthcare & Pharmaceuticals**	- Implementation of strong market mechanisms to address distortion and improve access - Strengthen cooperation and partnership on IPR development o Innovative Medicines Initiative (IMI) & the Seventh Framework Programme for Research and Technological Development (FP7) o Cooperation against counterfeiting	- Not yet resolved, potentially becoming worse - Significant progress is yet to be made - Not resolved, the situation is potentially becoming more acute
▪ **Information & Communication Technology (ICT)**	- Structure the industry and creation of a wholesale market - Eventual plan for Concession issue / wholesale - Foreign equity limits and foreign dominance - Liberalisation of international gateway - ASEAN ICT Master Plan - Liberalisation of services (skills, innovation, productivity) - IT Procurement issues - Creative Economy (IT focus)	Issuance of key regulations for better interworking. These need to be enforced. Issuance of technology-neutral 2.1GHz spectrum and the very late but welcome start of mobile broad-band under the '3G' banner. NBTC stated policy of moving the whole industry to a direct-licensed regime, away from reliance on spectrum. A revised foreign dominance law to replace the previous one. But it is not a materially positive aspect and should be revoked. Work developing on a third, five year ICT Masterplan but it must make some tough decisions on industry structure and evolution of SOEs No visible progress on any other matter. Potentially negative steps in prolonging use by SOEs of conces-sion spectrum and even proposals to change the law.

Issues	Recommendations	Progress since launch of 2012 Position Paper
▪ **Insurance**	- Raise capital to strengthen the industry base and real long-term investment - Review current regulations/product approvals with a view to facilitate issuance of new products and minimise delays - Build necessary pre-conditions for Thailand to become an attractive investment destination of foreign insurance investors and to bring in expertise - Relaxation of foreign shareholding limits and progressive liberalisation	- Not yet resolved, significant progress is yet to be made
▪ **Transport & Logistics**	In order to expediently meet the requirements set forth by the AEC in 2015, Thailand is encouraged to step up its efforts towards trade facilitation, promoting healthy competition on a level playing field and easing hindrances and unnecessary restrictions, particularly in the following key activities in the transport and logistics sector: - Market access - Customs and compliance o Formal customs entry in English o Raise the de minimis level - Air transportation - Maritime transport and ports - Domestic transport & warehousing - Cross-border transportation / Multi-modal transportation	- Not yet resolved, significant progress is yet to be made

Cross Sectoral Issues

This section addresses key policy and regulatory issues affecting European businesses across multiple sectors in Thailand.

From a macro-political perspective, Thailand's economic growth is still relatively impressive and its open trade policy and regional economic integration has availed some positive sentiment among European business communities. At the same time, however, increasing costs and lack of transparency have become more serious concerns affecting many foreign companies. On the administrative level, issues concerning laws, regulations and standards prevail. Many Thai standards in a wide range of sectors are not harmonised with international standards. Thailand's services sectors de facto restrict competition, while the country is in dire need to improve productivity and competitiveness of these economic sectors of the future. European investors still have to compete on an uneven playing field, particularly against other countries with certain bilateral treaties or trade/economic agreements with Thailand, in many key economic activities.

Taking account of positive developments, as the EU-Thailand FTA negotiations now materialise, constructive advice and practical recommendations from the Cross Sectoral Issues Working Group in this edition of the Position Paper will continue to highlight:

12. ***Enhancing transparency in policymaking and the application of rules and regulations, in particular on:***
    - **Customs**
    - **Grey markets**

13. ***Ease of doing business for improved business and economic efficiency***
    - **Competitive tax regime and compliance**
    - **Robust investment promotion strategy**
    - **Standards and conformity assessment**
    - **Efficient schemes of Free Trade Zones**

14. ***Greater access to market opportunities and a level playing field for European players, with particular focus on the services sector:***
    - **Relaxation of foreign business ownership restrictions and other barriers to entry**
    - **Easing of restrictions to facilitate free movement of foreign skilled and unskilled workers**

15. ***Putting in place an enabling economic and regulatory environment as well as effective engagement in regulated industries***
    - **Court system, resolution of disputes, and arbitration**
    - **Competition policy**

Our recommendations have been developed with a long term view as we see tangible improvement in these areas as key enablers towards strengthening Thailand's competitiveness and attractiveness as an investment destination.

One cannot deny that uncertainties surrounding the global economic recovery remain substantial. Major advanced economies are still grappling with structural weaknesses in their economies, particularly with respect to substantial debt-overhang. In the euro-zone area, this is mainly in the form of sovereign debt; whereas, in the US, the problem lies primarily with private sector debt. Dealing with such deep-rooted problems requires tough, unpopular, actions at the fundamental level which could lead to substantial political risks.

Despite distressing uncertainty in the global financial markets, Thailand has impressively managed to maintain its optimistic outlook reflecting its key fundamental strengths. Thailand's underlying strength places us in a position to reap the substantial benefits from such regional expansion and integration. However, realising these benefits will be a challenge and requires considerable adjustments. The key task is to ensure the necessary structural reforms, as well as vigorous change and transformation, to enhance Thailand's international competitiveness. Given so many uncertainties and global economic dynamism, it is certain that Thailand simply cannot make-do with the status quo.

Arguably current trade and investment relations between Thailand and the EU seem to be significantly below their real potential. Important concerns also remain with respect to policy and regulatory developments in many areas as Thailand further pursues its economic objectives and openness. To name a few, factors of production will need to be relocated between sectors to improve Thailand's total factor productivity and competitiveness. The issues of quality of human resources and shortage of skilled labour need to be urgently addressed with concrete policy and regulatory measures. Logistics and basic infrastructure need to be upgraded to support increased flows of goods and services. Government policies, rules, regulations and the legal framework must be improved and updated to facilitate all of this.

The EABC therefore recommends improvement in the following 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.

• Enhanced Transparency in Policymaking and the Application of Rules and Regulations

As highlighted in the 2012 edition of the EABC Position Paper, transparency and predictability in policymaking and the application of rules and regulations is regarded as essential for a stable business environment in a modern economy. The need for a robust and predictable policy framework and legal environment to serve fair market-based competition and wider societal interests becomes stronger as the Thai economy develops. Recognised as an issue of cross-cutting importance, 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.

Although efforts have been made at different levels by many stakeholders to enhance transparency and curb corruption, lack of clarity and transparency in policymaking and the application of rules and regulations in Thailand have still been identified as key concerns, including in the 2012 Business Confidence Survey conducted by the EABC. In the most recent WEF Global Competitiveness Report 2012-2013, companies still ranked corruption and an inefficient government bureaucracy among the most substantial barriers to doing business in Thailand. Arguably, the business climate in Thailand seems to be quite seriously affected by a lack of transparency.

In the latest survey conducted by the Coalition Against Corruption (CAC) among 1,066 executives in Thailand[4], corruption in the country is viewed as have risen sharply over the past two years to an alarming level with about 75 per cent of respondents saying corruption has increased rapidly and 93 per cent putting corruption at a high or very high level. Respondents who are business leaders believe Thailand's economic growth might be 50 per cent higher if not for corruption. 63 per cent of the respondents identified corruption as having had a very high impact on their businesses; and 54 per cent said it raises the cost of doing business by more than 10 per cent.

[4]http://www.bangkokpost.com/news/local/353279/businessmen-say-graft-worse-than-ever

Corruption not only hurts the country's reputation but also its competitiveness. According to the CAC survey conducted during January - April 2013, respondents said corruption happens most during the procurement process with the government, followed by registration or applying for licences, government project auctions and private sector procurement. The most popular form of corruption is cronyism, followed by graft, policy corruption by politicians and cash paid for future benefit. Potential industries believed to be susceptible to corruption include telecommunications, energy and utilities, agriculture, property development and construction materials. Despite positive signs of higher awareness in the private sector, the survey noted that government and politicians are the keys to solving corruption.

Although certain progress has been made to upgrade Thailand in the listing of Financial Action Task Force on Money Laundering (FATF), there is still an urgent call, justifying the need for the EABC to encourage Thailand to expediently work on enhancing transparency in policymaking, as well as in its laws and regulations. Corruption does not help, but ruins the economy. Anti-corruption measures are therefore very much encouraged for the benefit of Thailand and its economic development. Representing European businesses and investors bound by foreign anti-corruption legislation with extra-territorial reach (e.g. the OECD model which applies in many European economies, the more recent UK Bribery Act, and the FCPA), we are highly concerned about relative disadvantage due to the fact that others not so bound could be in a better position and are awarded contracts etc. due to corrupt practices.

Customs

The issues with respect to the Thai Customs Regime and the customs valuation process as governed by the Customs Act and relevant Ministerial Regulations issued in accordance with the Customs Act were discussed at length in our 2012 Position Paper and continue to feature in this year's edition. Despite a number of commendable efforts aimed at promoting transparency and consistency as well as facilitating trade for importers and international trade entrepreneurs to be more competitive, certain customs practices continue to cause concern for foreign businesses operating in Thailand. Emphasising our strong support, Thailand is yet to pursue successful accession of the Revised Kyoto Convention (RKC) in order to reap the full benefits of the RKC in facilitating legitimate international trade while effecting customs controls including the protection of customs revenue and society.

In a collaborative and consultative spirit, the EABC earnestly awaits and welcomes discussions to amend the Customs Act in Thailand. We regret to have not been aware of any concrete progress with respect to the proposed amendments on the penalty scheme (First Customs Act Amendment) and the reward system (Second Customs Act Amendment), and encourage that this proceed expediently. We strongly support the legislative changes to enhance transparency in the customs procedures, particularly in respect of customs valuations and taxation issues, as this should provide a meaningful contribution to facilitate trade. We hereby re-emphasise our views and recommendations as follows:

- ### Proposed Customs law amendment on the penalty scheme

The need to reform the current penalty system has already been recognised by the Thai Ministry of Finance and a draft bill was approved by the previous government's Cabinet. There is now a need to re-activate and enact this necessary reform.

While it is important to have in place effective customs investigations to prevent any offence or attempted breach of customs provisions, clear distinction should be made between certain serious offences (such as smuggling) and minor offences due to unintentional or human errors. This is well recognised under the KTC 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'*. This is of particular and longstanding concern to the business community to make certain that the proposed customs law amendment on penalty does not maintain a penalty system that is contrary to international best practice.

• Proposed Customs law amendment on reward scheme

Thai Customs has an incentive programme rewarding officials for identifying importers suspected of false declaration of origin, false product classification, or false valuation. The Customs Department expects to adopt the revised reward scheme as soon as completing a legislative process. Details of the proposed Customs Act reform on the reward scheme include bonus payment to informers for the arrest and rewards to customs officials.

As the reward is based on a percentage of the recovered revenues/penalties, the maximisation of the latter seems to be encouraged. 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 maximisation of penalties.

The EABC is pleased to learn of positive decision by the Thai Cabinet in March 2013 endorsing short- and long-term measures as proposed by Office of the National Anti-Corruption Commission with the aim to address the issues on lack of transparency and curb corruption with respect to the customs reward scheme. It has been reported that this will also include the amendment of the Customs Act with a view to reduce/cap the reward payable to customs officers for identifying importers suspected of false declaration of origin, false product classification, or false valuation. However, concrete progress has yet to be made for this initiative to materialise.

Recommendation

In principle, the EABC wishes to seek profound modification in the penalty scheme and the reward system to ensure transparency and predictability as well as to avoid 'undue penalty' or encouragement of the 'over-incentive' effect. As opposed to the current situation where there is a major disincentive for businesses to challenge Customs officers even though there may be reasonable grounds to do so, reform of the customs regime, as per the following recommendations, should meaningfully enhance transparency and predictability in customs procedures and compliance. In this regard, EABC wishes to recall our support for the position put forward by the American Chamber of Commerce in Thailand (AMCHAM) on the Customs Act Amendment – dated January 2011 – in recommending:

- **The removal of the obligation for the judge to assess a fixed penalty of four times the value of the goods if the defendant loses the case against the Customs Department.** In accordance with modern concepts, best practices and procedures of customs administrations, there should be room for judicial discretion in assessing the penalty based on intent and gravity.

- **A phased approach to eventually eliminate the reward sharing system in order to bring Thailand up to international standards and achieve the objective of a world class customs service.** The current reward system may not promote company employees to ensure that company policies and practices are enforced as the employee may benefit from infringements that may later be considered customs offenses.

- **Implementation of a fair and transparent system which clearly distinguishes civil vs criminal offenses.** The current law does not differentiate inadvertent underpayment of duties from more serious offenses such as smuggling. Most developed countries have implemented systems which support informed compliance and reasonable care best practices. Many countries have decriminalised inadvertent underpayments of duty, and made it a civil offence with appropriate penalties. This option is considered the most effective way to differentiate the nature of each offence.

- For offenses which would normally be considered civil offenses in other countries, such as the inadvertent underpayment of duty, **a reasonable cap on the customs rewards received by customs officials and other parties** should be adopted by the government. Along this line, the envisaged cap on rewards is considered positive. Although most countries do not have a reward sharing system directly connected to the actual amounts collected from the offender, the reasonable cap would help address issues of transparency and conflicts of interests.

- A strong policy of **not auditing a company within one year of the conclusion of an audit or investigation is implemented,** and that **any company being audited or investigated within such a one year period has the right of appeal against the audit or investigation**. This would avoid the situation where new audits are reinitiated each time the capped reward amount has been reached.

- A **five year statute of limitations on customs offences**, which would be in line with Thailand's current document retention laws. This is despite the fact that in many countries the statute of limitations is less than five years.

- **The regulation that allows for advance duty classifications and valuation rulings on imports should be made law**, in order to have the power and applicability of a statute.

- Thailand is encouraged to **undertake an overall review and further amendments to the Customs Law to ensure that its customs regime is in compliance with the Revised Kyoto Convention and International best practices** to support the growth of trade and investments.

The EABC regards customs reform as a high priority. Thailand is encouraged to keep the business community involved in the consultation in a timely and efficient manner.

Grey Market

Parallel imports into Thailand, particularly in respect to European luxury cars, have grown significantly over the years. Wrong-doing, in terms of undervalued invoicing, is consistently reported. The situation has deteriorated due to a lack of transparency, weakened regulatory enforcement, or even widely reported corrupt practices causing serious concern within the industry. The media frenzy involving a fire which destroyed six luxury cars in late May 2013 was among the latest exposé of a massive and growing tax avoidance operation among thousands of parallel imported cars declared as parts.

Illegal practices of the so-called 'grey market' have a negative impact on the legitimate interests of the local automotive industry in terms of unjustified 'free-riding' practices on brand owners' investments and reputation, as well as potential trademark infringements. The Government and consumers could also be affected as a result of significant loss of tax revenue due to undervalued import prices and the uncontrollable availability of sub-standard products in the market. Worse still, 'grey market' practices could be linked to illegal business transactions, money-laundering or corrupt practices which deprive Thailand of strong economic growth. This directly affects not only the confidence of legitimate investors, but also Thailand's reputation as a competitive investment destination.

Recommendation

The EABC applauds the progress made recently by the authorities, especially the Department of Special Investigation (DSI), and would encourage this to continue. Nevertheless, as emphasised in the 2012 edition of the EABC Position Paper, the Government is encouraged to apply stricter law enforcement on import procedures and standard testing requirements, with the aim of eradicating the 'grey market' and unfair parallel imports. Consistent with the overarching objective to enhance transparency, strengthen good governance and improve the business investment climate, this will ensure due protection of legitimate business interests, particularly those of European brand owners, and create a level playing field for all.

To ensure effective enforcement going forward, efforts should be geared towards ensuring seamless cooperation, both among relevant government agencies, and between the authorities and brand owners. We wish to encourage the Customs Department 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 licences and to provide warranty and maintenance services in order to eradicate illegal importing and to ensure safety standards for consumers. Stricter vehicle registration processes should also help alleviate the problem.

▪ Ease of Doing Business for Improved Business and Economic Efficiency

Competitive tax regime and compliance

The IFC and the World Bank 'Ease of Doing Business Report 2013 - Smarter Regulations for Small and Medium-Size Enterprises' referred to Thailand as one of the world's most business-friendly regulatory environments for local entrepreneurs, ranking 18th out of 185 economies[5]. Noting that government agencies in Thailand have been collaborative in promoting a business-friendly environment, making starting a business easier and reducing the corporate income tax rate have been identified as key contributors towards Thailand's positive role in enhancing ease of doing business.

The impact that tax systems have on companies is important; therefore governments should develop tax systems which foster business investment and economic growth. As the private sector can then play an essential role in contributing to economic growth and prosperity; including paying and generating taxes, and keeping tax rates at a reasonable level. Efficient tax administration can encourage the development of the private sector and the formalisation of 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.

With the full implementation of the AEC in 2015 – and the free or freer movement of goods, services, investment, capital and skilled workers that it will bring – the Government is right to be pushing for graduated reforms now, rather than waiting for potentially disruptive changes to emerge once the AEC springs to life. Freer flows of capital and investment within the AEC raise the potential for capital to migrate across borders in order to seek the most profitable returns. Variations in national income tax systems and income tax rates create corresponding tax arbitrage opportunities. Countries with higher rates of taxation could see significant outflows of capital and investment to neighbouring states with lower rates. The EABC therefore welcomes the reduction of the corporate income tax to 20 per cent in 2013, as arguably the historical 30 per cent rate is no longer competitive with the tax rates of other ASEAN Member States.

Equally important as a competitive tax rate is the efficiency of tax administration and tax compliance costs. Although the overall rankings of Thailand in terms of ease of doing business have stayed in the range of 13-18 over the past few years, the country's scores in the area of paying tax rank significantly below those of other areas and are still on a downward trend. Thailand's rank on paying tax in 2013 stood at 96, which is very low compared with other aspects. This suggests a need to expediently address the issue of efficiency in tax administration and compliance, in order to make Thailand more competitive.

Recommendation

The EABC positively notes Thailand's efforts on tax reform aimed at strengthening the country's competitiveness. Further concrete actions should be geared towards 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.

[5] This is despite the fact that the country's rank again fell one place from 2012.

Robust Investment Promotion Strategy

In response to the changing global and regional economic situation, Thailand's Board of Investment is contemplating a revision of its Investment Promotion Privileges and Strategies. According to the information made available, the new BOI strategy will aim to promote competitiveness development and value creation of the industrial sector and to promote green industry to create balanced and sustainable growth aiming to contribute towards restructuring the Thai economy for sustainable development and to overcome the 'middle income trap'. The strategy will also promote new industrial clusters in different regions of Thailand to create new investment concentration and to promote Thai outbound investment to increase the competitiveness of Thai businesses.

In the new strategy, BOI will grant investment promotion privileges by prioritizing the importance of the proposed activities and providing additional incentives based on the merits of the project such as environmental protection standards, location of the factory in the industrial zone or estate, and research and development program. BOI will also abolish the current investment promotion based on a zoning system and replace the current system with new regional clusters. It was reported that clear guidelines on key performance indicators, outcome of the project and cost-effectiveness of the investment will be used in evaluating the new applications, rather than evaluation of the value of the investment.

Under this new investment promotion direction, the BOI has classified target industries into 10 categories for granting investment promotion which are: basic infrastructure and logistics; basic industry (i.e. steel, petrochemicals, pulp and paper, etc.); medical devices and scientific equipment; alternative energy and environmental services; services that support the industrial sector (i.e. research and development, human resources development, engineering design, software development, etc.); food and agricultural processing industries; hospitality and wellness; advanced core technologies (i.e. biotechnology, nanotechnology, and others); and industries in which Thailand can be developed into a global manufacturing base such as automotive and transportation equipment, and electric and electrical appliances.

At the same time, however, the BOI planned to remove a number of activities from the current list of activities eligible for investment promotion privileges. Rationale for delisting of these activities have been low technology, low value-added output, less complex production processes, low linkage with other industries, and labour intensive production involved in the activities. Also included in the remove list are activities that have high energy consumption and create environmental problems, have concessions or monopoly activities under state protection, and activities that are in conflict with laws and regulations. Assurance has been made that the revised strategy will not have an impact on currently promoted companies.

The EABC took part in the consultations with the BOI and submitted written comments. The proposed investment promotion strategy had been expected to be finalised by July 2013. Later, it was reported that the laws governing the Board of Investment are set to be revised in response to the agency's new investment promotion strategies (2013-2017) that will be finalised and submitted to the BOI committee by December 2013 after some limited consultation expected by September 2013 and come into effect from January 2015[6]. The legislative amendment is expected to be completed by 2015, subject to Parliament's approval. According to the reported news, the amendment of the Investment Promotion Act should allow more flexibility and strengthen Thailand's competitiveness against neighbouring countries which also want to attract foreign investments for high-technology and high-value products. Further discussions will be held on granting appropriate privileges.

Noticeably, however, what is still absent is a wholesome approach to promotion of services with services being promotable only where they support or are related to the goods or manufacturing activity. This focus may in part be attributable to where BOI is administratively positioned in the Ministry of Industry. Thailand does not have a high level policy and administrative responsibility for services.

[6] http://www.nationmultimedia.com/business/New-strategy-calls-for-BOI-laws-revision-30206399.html

Recommendation

Recognising the key role of the investment promotion scheme offered by the BOI in attracting FDI and the establishment of a number of prominent businesses in the country, Thailand is encouraged to ensure that both tax and non-tax incentives of the country remain robust and attractive to the much-needed high-value investment from abroad. In view of benchmarking with incentives provided by competing economies, Thailand should ensure that its investment incentives are competitive and effectively correspond to the need of strategic investors. The EABC also recommends enhancing of the BOI's role so that for example it is able to promote services effectively and have other policy instruments at its disposal, as well as a key interlocutor for effective coordination with other Thai authorities in order to support investors throughout the investment period.

In this connection, the EABC wishes to re-emphasise its position/ recommendation – notably those submitted in February 2013 and the EABC/JFCCT submission with extensive section on ICT – with respect to the proposed revision of the investment promotion strategy (latest information available as of January 2013 and with some updates by June 2013).

The EABC also expresses its keen readiness to closely work with the Government, the BOI and relevant authorities, towards addressing hindrances and improving the country's investment promotion strategy and scheme.

Overall comments on the proposed strategy

1. The overall direction of the proposed changes is welcomed given the dynamics in the global economic landscape and Thailand's development imperatives. In particular, the EABC is strongly supportive of the new investment promotion strategy to strengthen competitiveness development, support for innovation and value creation, as well as research and development activities. This however will require an ambitious and meaningful policy initiative to improve the investment climate and effectively facilitate investment in key priority sectors, not only the industrial and manufacturing sectors but also the services sector.

   The World Bank – along with various think-tanks and organisations – has highlighted services as key in Thailand's economic restructuring to overcome the middle income trap. It is therefore important that conditions be enhanced, while tax and non-tax incentives are made available, to attract more investment in strategic services sector. The critical role of the services sector goes far beyond merely supporting the industrial sector. Leaving a large part of services sector out of the key sectors to be promoted under the new investment promotion strategy could make the BOI far less effective in delivering the expected policy objectives.

2. Recognising the key role that high value-added inbound investment can play to the Thai economy, the BOI is encouraged to ensure that its tax and non-tax incentives are competitive and correspond to the need of strategic investors. Efforts should be made to strengthen effective coordination among relevant agencies – both at the policy and operational levels – with a view to efficiently facilitate and integrate support for investors. The EABC encourages the BOI to play an enhanced role as a key interlocutor in the coordination with various government agencies.

Comments on specific measures

1. Although the suggested new role of the BOI in promoting Thai overseas investment is welcomed, promoting high value-added inbound investment will require different sets of policy measures than promoting outbound investment of Thai businesses. This should be done with focused endeavours and clear objectives. Impartial measurement should also be put in place to evaluate the benefits and cost effectiveness of the investment promotion.

2. Machinery upgrade / automation for increased productivity

   Through its regulation #3/2554, BOI had encouraged manufacturers to upgrade their machinery to improve production efficiency. In June 2012, the BOI had announced through a press release that the Board of Directors had approved the extension of this regulation until 31st December 2012 with a view of enhancing the country's competitiveness.

Unfortunately this last decision was never put in practice and investors have not been able to enjoy the associated benefits in 2012.

The new BOI proposed scheme clearly wants to support Thailand's move from labour-intensive to more modern and efficient production industries. The BOI also acknowledges the tensions on the Thai labour force market and the need therefore to promote automation technologies and efficient machinery.

⇨ **The EABC recommends the renewal of regulations aimed at encouraging machinery upgrades for higher productivity (with the previous associated benefits: CIT exemption for three years at up to 70 per cent of the investment amount)**

3. Capacity addition investment (on existing production lines)

   In the BOI's new proposed scheme, incentives for expansion projects have been drastically reduced to 1-year of CIT exemption. Given that the tax benefit will now be limited, the BOI should consider expanding the scope of eligible projects for this measure. In particular, the BOI should support capacity addition projects on existing production lines (which the current scheme does not allow for). In many cases, manufacturers could increase the output of their existing lines by removing bottle-necks in the production process; this requires investing in additional machinery/capacity in the concerned constrained production workshops. This would increase Thailand's production capacity and reinforce its manufacturing position on the global scene, in particular in industries where it can aim for a worldwide leading position.

   ⇨ **The EABC recommends that the scope of BOI eligible expansion projects includes projects aimed at removing production bottle necks and increasing capacity/output on existing production lines (with benefits associated to expansion projects as defined in the BOI new scheme).**

4. R&D-related investments

   The merit-based incentive related to R&D shown in the new proposed scheme seems to mirror what the BOI was offering in the present scheme under the 'Skill, Technology and Innovation' (STI). However the current STI shows a strong limitation in the sense that it can only be used in the context of a new project and not associated to existing factories/production lines. This is restrictive and does not seem to support the BOI goal to promote more value-creating and innovative activities such as R&D. Indeed R&D activities are more often developed by manufacturers as a second step, after having proof-tested the country's capabilities and competencies through a first step manufacturing investment.

   ⇨ **The EABC recommends the enlargement of the R&D merit-based incentive eligibility by opening it to existing promoted companies without the need to submit a new manufacturing project. The R&D incentive scheme should also include engineering design activities.**

   ⇨ **R&D investment incentives could also be formulated like those offered to energy/water savings projects (see regulation 2/2553 and extension), with a CIT exemption proportional to the dedicated invested amount, with a cap fixed at 70 per cent or 100 per cent.**

5. Machinery transfer flexibility between related production sites

   The BOI restricts the use of locally-purchased used machines, which is understandable as it wants to prevent 'used machinery recycling' from one BOI project to another and to encourage investment in additional capacity in the country. However major investors who have built multiple manufacturing sites in Thailand need to permanently balance and optimise their production; they may also have to address situations where a production issue in one of their sites needs to be resolved by leveraging other sites assets. In these instances it would be very useful to allow, under certain conditions (e.g. machinery should not come from a project where BOI promotion on this machinery has already been used-up; local used machinery should not make up more than 5-10 per cent of the projects total machinery investment), the purchase/transfer of machinery from one site to another. The BOI regulation should encourage an investor to build multiple plants in Thailand rather than in neighbouring countries; the current restrictions on local used machinery are however currently making it easier to move used machinery from a foreign site than from a domestic site.

⇨ **The EABC recommends the BOI to review its restrictions on used local machinery and take into account the situation of multi-site investors to consider granting conditional and limited allowances.**

6. Certain specific activities in the ICT sectors

⇨ With respect to E Commerce, for example, enhanced promotion of software parks and data centre are areas well deserving promotion or enhanced promotion. *[BOI advised the EABC/JFCCT ICT group in June that we were successful in getting these accepted]*. Attracting new technology and know-how brings innovation and enhanced productivity.

Standards and Conformity Assessment

It is widely recognised that harmonisation of regulations and standards as applied to a wide variety of products/sectors offers savings in technical resources which can better be applied elsewhere. While still achieving the same goal of ensuring product quality and consumer protection/safety, the possibility of reducing production and/or compliance complexity from harmonisation of standards will result in lower costs and prices and a wider choice of products available to all consumers. Harmonisation does not always mean having identical requirements, because the needs of different countries can often vary – but it does mean at least eliminating unnecessary differences and bringing regulations closer together. With a view to enhance ease of doing business for improved business and economic efficiency, the call for removal of redundant standards and conformity assessment as well as encouragement for Thailand to adopt international standards rather than applying unique national standards where possible were highlighted as a key priority in the last edition of the EABC Position Paper and again feature in this version.

In Thailand, several bodies are responsible for different aspects of technical regulations and standards. Among the key authorities is the Thai Industrial Standards Institute (TISI), under the Ministry of Industry, which is responsible for developing national standards, certification, monitoring the quality of products and services, international cooperation, and establishing a national single network on standardisation. The National Bureau of Agricultural Commodity and Food Standards (ACFS), under the Ministry of Agriculture and Cooperatives, is responsible for developing food standards to protect consumers against health hazards from food, accreditation of certification bodies, international cooperation and food standards control. The Ministry of Commerce is responsible for policy and legislation on metrology, while the National Institute of Metrology (Thailand) in the Ministry of Science and Technology is responsible for the implementation. The Office of the National Accreditation Council of Thailand, the Department of Medical Service, the Department of Science Service, and the ACFS are responsible for accreditation of organisations for conformity assessment. The Ministry of ICT and the telecoms regulator (NBTC) are responsible for type approvals of equipment to be connected to networks.

In developing standards and technical regulations, TISI works with other government agencies and private-sector organisations. A technical committee, made up of responsible national standards bodies and other interested parties, develops a draft standard, which is then circulated for comment, with final approval by the Industrial Products Standards Council. The import and sale of all products subject to compulsory standards in Thailand need to have prior approval or licences from TISI.

Responsibility for sanitary and phytosanitary measures (SPS) are divided between agencies. ACFS is responsible for setting standards for agricultural systems, commodity and food items and food safety; for accreditation of certification bodies; for food standard controls; and for promoting compliance with standards on farms and in food establishments. Animal health and imports of some animal products are the responsibility of the Department of Livestock Development and the Department of Fisheries in the Ministry of Agriculture and Cooperatives. Plant health is the responsibility of the Department of Agriculture in the Ministry of Agriculture and Cooperatives. Food safety is the responsibility of the Food and Drug Administration (FDA) of the Ministry of Public Health.

Thailand's current system of competing and conflicting standards poses concerns to business operators. Foreign manufactured products must be shipped for testing in Thailand, except when there is a special international agreement, as TISI does not recognise foreign testing laboratories. The approval of technical standards or 'type approval' continues to hinder exports of products to Thailand, e.g. automotive and automotive parts, electronic products and telecommunications equipment among others, due to the need to undergo mandatory testing and inspection of production facilities in Europe although the facilities have already been certified in accordance with internationally accepted standards. Certification procedures for some industrial products are lengthy or even redundant. In the telecoms area, global standards tend to be widely used, and equipment is usually tested in global labs. But there is a duplicative process in the administration of type approvals.

There are similar concerns relating to agriculture and food products, particularly with regard to SPS issues and import procedures. The Thai process for accreditation of foreign meat establishments is unnecessarily burdensome, lengthy and not very transparent. It is being considered one of the main obstacles for EU meat exporters, as – at present – Thailand does not systematically carry out system audits and each and every foreign establishment needs to be visited by Thai inspectors before it can be accredited. In practice, audit requests are not always followed up in a swift manner or planned audits to EU Member States are not carried out or are postponed and reporting of audits is slow or does not follow. It is also noted that audit costs have to be paid by the foreign establishments which is not in line with the CODEX Standard (CAC CAC/GL 26-1997); whereas, the EU audits carried out in Thailand for its exports to the EU are paid by the EU. In addition, several questionnaires are to be completed by the exporting country as part of the import application for animals and animal products into Thailand. The questionnaires require many details which are not considered in all instances relevant to ensure the safety of the commodities. It is also not clear whether these questionnaires are available on the relevant Thai authority's website.

In addition, the Thai import system with regard to Pest Risk Assessment (PRA) is not transparent Unclear priority countries, absence of host countries for quarantined pests, lack of resources for inspection and discriminatory treatment (i.e. bilateral protocol with China), is overly burdensome (heavy on-site inspection costs and lengthy procedure). European businesses do not consider this to be in line with Thailand's obligations under the WTO SPS Agreement which clearly states that import conditions should be based on scientific evidence and not be applied in a manner which would constitute a disguised restriction to international trade.

Recommendation

Thailand is strongly encouraged to remove redundant standards and conformity assessment requirements as well as to adopt international standards rather than applying unique national standards where possible to minimise any disguised obstacles and facilitate trade. In addition, redundant or duplicative processes can in many cases be safely removed to enhanced business efficiency and allow faster access to technology. More detailed discussion on specific standards and conformity assessment as applicable to particular products/sectors can be found in the respective sections of relevant EABC Working Groups, i.e. Automotive, Food & Beverages, ICT, Healthcare & Pharmaceuticals and Transport & Logistics.

As one of the founding members of the International Standardisation Organisation (ISO), Thailand is encouraged to adopt international standards as national standards. Improvement in this respect would strengthen efficiency and reduce unnecessary costs and hindrances to businesses.

Effective schemes of Free Trade Zones

In light of the full implementation of the AEC in 2015 and the increasing linkages within greater Asia, Thailand intends to become a value-adding logistics hub and a regional exporting platform. With a consistently strong, market-oriented economy and strategic location at the centre of Asia, Thailand should continue being a preferred destination for foreign direct investment in various key economic sectors given adequately-developed infrastructure, government supporting policies, and continued efforts to further its regional integration with Asian emerging economies.

The EABC is strongly supportive of the country's aspiration to avail of the benefits of AEC and its regional trade integration with rising Asia. To reach that goal, EABC has and will continue to call for the promotion of effective Free Zones and efficient import/re-export processes, which is considered key.

Recommendation

To support companies that import products/components into Free Trade Zones in Thailand for further processing/value-added work before re-exporting finished goods abroad, Thai domestic market standards and regulatory requirements should be alleviated. Section 49 of the IEAT Act B.E. 2550 introduces this concept; implementation regulations are however needed to ensure that the scope is sufficiently comprehensive and that the principle is practically applicable, in relation to other governmental agencies defining the domestic standards and import licencing requirements.

On the above topic as well as from a general standpoint, companies also look for consistency in the governing framework and the facilities offered both by IEAT Free Zones and Customs Free Zones.

Finally, for entities selling part of their Free Zone production to the Thai domestic market, companies expect from Thai Customs a definition and validation process regarding rules of origin, local content calculation and customs duty reduction, consistent with what they experience when selling the same product to a foreign export market (party to an FTA with Thailand). This point is particularly important in the framework of already existing and upcoming 'ASEAN+' FTAs, to support Thailand with its regional manufacturing/logistic hub objective.

▪ Creating an Enabling Economic and Regulatory Environment

Relaxation of Foreign Ownership Restrictions / Liberalisation of Services Sector

In spite of calls from many distinguished national and international scholars, the overall liberalisation of Thailand's services sector has not materialised and is still an on-going agenda. Although Thailand's FDI framework is generally open in the manufacturing sector, significant restrictions and burdensome regulatory requirements remain on market entry and foreign equity participation in several sectors.

According to the **Foreign Business Act B.E. 2542 (1999)**, foreign participation in services businesses on 'List 3' (Businesses that Thai nationals are deemed not ready to compete with foreigners) is limited to 49 per cent and above that is restricted and controlled by the Ministry of Commerce. Foreign investors are required to obtain necessary permissions from relevant ministries to be able to operate. For instance, current inter-co shared services (such as accounting, loans, HR management services, ITM, etc.) require approval from the Ministry of Commerce, which generally takes time and involves costs to obtain such permission[7]. A foreign business entity who wishes to enter into this business is required to obtain a business license for specific financing, with a 7:1 debt to equity requirement, which is not required for a local entity. Investors seeking protection under Bilateral Investment Treaties to which Thailand is a party are required to apply for approval for protection in accordance with the terms of the treaties, usually in the form of a Certificate of Approval for Protection from the Committee on the Approval for the Protection of Investments between Thailand and other countries. This highlights the complex regulatory framework governing Thailand's services sector.

[7] Interpretation of the Act issued since 1999 by the Ministry of Commerce has extended its scope to renting of immovable and movable property and the provision of guarantees or other security to support group borrowing. Arguably, such wide interpretation of the Act was not envisaged when the Act was drafted. Whilst manufacturing is generally open to 100 per cent foreign ownership, after sales, repair and maintenance, or supplying a guarantee are deemed as services. The 49 per cent ownership therefore is only permitted for those activities.

In the past few years, Thailand has attempted to tighten the law in some industries, e.g. telecommunications – which sets out a maximum of 49 per cent limitation on foreign ownership in all service businesses (subject to a licencing procedure for majority ownership) – by adding new criteria used to qualify companies as foreign referring not only to ownership limitations but also to the majority of voting rights and management controls. In addition, various administrative procedures (aimed at tracking and tracing suspicious behaviours) were put in place, like the obligation for companies with foreign shareholding of 40 per cent and above to disclose the source of funding of their Thai shareholders. Similar procedures are aimed at addressing the specific problem of the acquisition of land by foreigners. Concerns have been raised about the new regulations, which appear to impose criteria that could restrict foreign participation in the telecommunications, insurance and logistics sectors. A case in point is the Foreign Dominance Notification which applies to most of the telecoms sector [see more in ICT section].

At present, European investors are at a disadvantage vis-à-vis U.S. nationals and companies who still benefit from national treatment provisions in the US-Thailand Treaty of Amity and Economic Relations 1968 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 sectors[6]. Given the expiration of the WTO derogation from Article II GATS (MFN-clause) at the end of 2004 (after 10 years), Thailand is urged to consider these legitimate concerns in its policy formulations and ensure a more investor-friendly environment, duly aligned with its WTO obligations. It also seems difficult to reconcile the justification, under the FBA, that Thai enterprises are not ready to compete with foreigners and thereby restricts foreign control of Thai companies, with the fact that Thai companies have been successfully competing with US investors for many decades.

The EABC supports liberalisation of Thailand's services sectors and implementation of the existing review mechanism on List 3 in the FBA to duly remove restrictions and encourage foreign investment in the services sector.

▪ *Financial services: banking and insurance*

Due to the Foreign Business Act, 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. As a result of the 1997 crisis, foreign banks were permitted to own majority shareholdings in selected troubled local banks for a period of 10 years. After 10 years, the foreign ownership will have to be diluted to 49 per cent before any foreign capital increases are allowed. This amounts to a forced asset sale.

In addition, as Thailand has Special Financial Institutions (SFIs) who are governed by a special Act under the Ministry of Finance. These financial institutions – currently eight banks – account for 22 per cent of banking assets and 25 per cent 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.

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

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-capitalise the cash-strapped Thai insurance sector. This however has only happened on a case-by-case basis.

At the same time, Thailand is contemplating relaxation of foreign investment in the insurance sector to up to 49 per cent foreign equity, paving the way towards preparing for intense competition under the AEC in 2015. Nonetheless, there has been no formal notice issued that clearly states that those limits no longer apply from a certain date. To progressively liberalise 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 result 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 are 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**[9] are captured under the FBA List 3 businesses. In addition, licence 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 of 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 benefits of consumers.

In the past, the Government was trying to prepare a Retail Act to regulate the retail and wholesale industry in order to give the administration discretionary power to oversee the licencing regime and issue criteria to define 'fair' business practices and locations of store expansion and new openings. Among fair business practices, the draft law aims to regulate the relationship between suppliers and distributors and impose a so-called 'fair margin'. Arguably, the genuine purpose of the Act appears to be to give the administration in the Ministry of Commerce the means to react on developments in the distribution sector on a case-by-case basis without transparent and open scrutiny, while giving room for potentially discriminatory actions. 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.

[9] *Retail* sale of goods of all types with the total minimum capital in the amount lower than one hundred million Baht or with the minimum capital of each store in the amount lower than twenty million Baht; Wholesale of all types with the minimum capital of each store in the amount lower than one hundred million Baht

▪ *ICT*

In telecoms services, category 1 licences 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 welcomes the recent positive development in March 2013 with respect to the review of List 3 in the FBA to remove restrictions in certain areas of financial services10. It is also pleasing to learn that Thailand has been developing a long term strategy for the services sector via AEC participation, which aims to improve capacity, quality and competitiveness in the face of increase globalisation. Thailand has been undertaking preparatory steps in liberalising trade in services under the ASEAN Framework Agreement on Services (AFAS)[11] and the AEC Blueprint. All of the main elements of the services sector, namely business services, communication services, construction and related engineering services, distribution services, education services, environmental services, health related and social services, tourism and travel related services, recreation, cultural and sporting services and transport services, are included under the schedule of commitment. Further improvement of liberalisation, in terms

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[10] *The 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 the 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.

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) are 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.

[11] Recognising the growing importance of trade in services, ASEAN countries officially launched their joint effort to work towards free flow of trade in services within the region through the signing of ASEAN Framework Agreement on Services (AFAS) aiming at substantially eliminating restrictions to trade in services among ASEAN countries in order to improve the efficiency and competitiveness of ASEAN services suppliers. AFAS provides guidelines for ASEAN Members to progressively improve Market Access and ensure National Treatment for services suppliers among ASEAN countries. AFAS rules are consistent with the General Agreement on Trade in Services (GATS) of the WTO, and shall be directed towards achieving commitments beyond Member Countries' commitments under GATS - known as the GATS-Plus principle. (Source: ASEAN Secretariat, http://www.aseansec.org/6626.htm)

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 rationalising 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. Progressive liberalisation 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 would be important to ensure the business community's confidence with a concrete policy roadmap towards progressive liberalisation. 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.

Recommendation

Progressive liberalisation of Thailand's services sector is strongly encouraged and the EABC will continue pushing for this policy agenda as part of the on-going EU-Thailand FTA negotiations. 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 liberalisation**. Liberalisation and development of Thailand's services sector is considered vital to build economic strength and enhance the country's competitiveness - so Thailand is not left behind when competing economies are moving ahead in keen expectation of the AEC.

Given global dynamics, there clearly is competition for skills and capital. Those economies which have a head start in liberalised services will have an early-mover advantage in terms of building centres of competence (which form part of gateways or hubs). Thailand is yet to put in place the necessary changes to support the AFAS target of 51 per cent foreign equity allowance in all service sectors since December 2010.

Foreign equity limits are only one part of the key elements of liberalisation of services, but an important one. We again emphasise five key elements we see for the meaningful liberalisation of services:

1) Relaxation of foreign equity limits
2) Facilitation of free movement by changes to work permit and visa rules
3) Sector-specific changes and mandates by way of relaxation of restrictions on permits, licences and other barriers to entry, and to mandate access to facilities
4) Other sector-specific reforms or mandates (e.g. structural changes in a sector to make it competitive)
5) Improvement and greater efficiency in the licencing procedures to obtain majority foreign ownership

Any attempt to tighten the law, such as the use of additional criteria (e.g. an extension of the existing definition of 'foreigner' to include management control and 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.

From the perspective of facilitating and encouraging greater foreign investment in Thailand, a review should also be undertaken of the current rules for foreign ownership of land and condominiums, and the leasing of land and buildings.

- ***Ownership of commercial land:*** Whilst the Board of Investment and the IEAT have powers to grant permission for ownership of land to majority foreign owned Thai companies, not all companies are eligible for such privileges or wish to have BOI promotion. But there should still be a mechanism for such companies to own land for commercial purposes.
- ***Leasing of land and buildings:*** The current maximum lease lengths of 30 and 50 years respectively for residential and commercial leases do not provide enough flexibility. To provide openness and flexibility in commercial negotiations between landlords and tenants, a longer lease term would be preferable. There are technical rules regarding the enforceability of options, and assignment of leases, that should be clarified in the interests of certainty.
- ***Foreign ownership of condominiums:*** The current foreign ownership cap of 49 per cent of usable space in a condo minium building should be reviewed, together with technical rules requiring the purchase monies to be brought into Thailand rather than earned locally.

Thailand is also encouraged to involve the foreign business community in the consultation process to achieve a mutually beneficial outcome on these issues.

Ease of restrictions 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. These metrics are not appropriate for SMEs, especially in the service sector and when critical skills are needed. SMEs, many of which provide important services to much larger organisations, 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 Labour 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. To limit the number of aliens employed in roles other than as craftsmen or experts, the Minister of Labour, with the approval of the Council of Ministers, may impose a fee on employers employing such aliens.

Work permits may be issued for up to two years (or in the case of work permits issued in connection with the Law Governing Investment Promotion or other similar laws, for the period of time the alien is permitted to work under such laws). Work permits may be renewed for additional two year periods, but the period of time an alien is permitted to work is not to exceed four consecutive years unless otherwise permitted by the Council of Ministers. Work permits have no effect on the duration of stay permitted under the immigration laws. An alien with a work permit is required to carry or keep the work permit at the place of employment during working hours, and may only work in accordance with the limitations and conditions set forth in the work permit.

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 mean 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 – on the contrary facilitate – 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 recognised 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.

In late 2012, the EABC had the opportunity to meet with H.E. Mr Padermchai Sasomsap, the Minister of Labour, to discuss key issues and difficulties on labour and employment faced by European businesses in Thailand. The dialogue has led to an open door for future cooperation between the Ministry and the EABC representing the interests of European businesses in Thailand. To drive towards addressing key challenges on labour and employment faced by businesses in Thailand, the EABC conducted the HR and Labour Planning Survey 2013 during late March - early April 2013, which aimed to systematically collect information about the outlook on key labour market trends and recruitment challenges in Thailand based on business executives' perceptions about a series of socioeconomic factors. Businesses with a diverse mix of profiles actively took part in the survey providing responses with interesting perspectives and highlighting priorities both in terms of main challenges/challenges in the HR and employment planning of businesses, as well as what could be done to enable/make positive change. Unsurprisingly, shortage of skilled labour was identified as the biggest challenge in HR and employment planning by 67 per cent of respondents.

Box 3: Key messages from the EABC 2013 HR and Labour Planning Survey

Employment Planning and Outlook

Headcount and Incentives:

- With more than three quarters (76 per cent) of respondents having an *optimistic* view on Thailand's business outlook over the next two years, more than half of the respondents expected a *moderate* (43 per cent) or *significant* (9 per cent) *increase* in their companies' head count over the next twelve months. About 24 per cent of respondents foresaw *no change* in their number of employees; whereas approximately 24 per cent believe that their head count might *decrease*. Among these expected changes, however, the majority (67 per cent) replied that the *number of their permanent positions of skilled expatriates* should not be affected. Half of the remaining respondents (about 16 per cent) presumed that the number will increase; while the other half (about 16 per cent) expected the number to decrease. Similarly, a slightly lesser majority of respondents (64 per cent) foresaw no change in the *number of their unskilled foreign workers* over the next 12 months.
- 65 per cent of respondents projected that the level of compensation and benefits their companies would offer to employees would *somewhat increase* over the next two years. When asked to rate the significance of various factors which drive the change of the compensation/benefits, the first four factors identified as *very important* driving forces are (a) to *retain their experienced employees*, (b) *to attract new employees,* (c) *to award/provide incentives to current employees.*

Attracting and Retaining Employees:

- With respect to levels of vacancies that companies have experienced most difficulties trying to fill, *professionals/experts* ranked first (73 per cent of respondents) followed by *management* (58 per cent) and *semi-skilled/para-professional* (58 per cent).
- *Sales & marketing* was highlighted as the area of skills/expertise which companies find it hardest area to attract/retain (rated by 50 per cent of respondents). Other key areas of skills/expertise which were identified as difficult to attract or retain employees included *engineering* (37 per cent), *accounting, finance & administration* (27 per cent), *R&D* (24 per cent), *customer relations/service* (24 per cent), *IT and HR* (each at 18 per cent).

Factors Impacting HR and Employment Planning

- When asked to identify main challenges/constraints in HR and employment planning, four key factors were prioritised as a major threat, namely (a) *availability of skilled workers* (rated by 67 per cent of respondents), (b) *employees' English literary* (59 per cent), (c) *uncompetitive* performance of employees compared to pay packages (49 per cent), and (d) *difficulties in obtaining visa & work permits for foreign employees* (44 per cent). Interestingly, the *rising minimum wage* was considered a lesser degree of threat in HR and employment planning.
- Considering the relevance of Thai Government policies on how businesses manage their HR and employment planning, over half of respondents (67 per cent) viewed the policies over the past two years as *neither favourable nor unfavourable;* whereas more of the remaining respondents rated the policies as *unfavourable* (23 per cent) and *favourable* (10 per cent) respectively. Looking ahead to the next two years, a similar majority (69 per cent) still maintained the opinion that the Thai Government policies would be *neither favourable nor unfavourable* to their HR and employment planning, while more of the remaining respondents also rated the policies as *unfavourable* (18 per cent) and *favourable* (13 per cent) respectively.
- Looking ahead, respondents identified the following key enablers – in terms of priority – that would make a positive change to their HR and employment planning:

Very important:

- *Implementation of Thailand's commitments under international trade agreements* (rated by 64 per cent of respondents)
- *Stable political situation* (64 per cent)
- *Further liberalisation of the service sector* (60 per cent)
- *Improved business prospects / increase in customer base* (56 per cent)
- *Less cumbersome visa & work permit regulations for skilled expatriates* (54 per cent)
- *Stronger macroeconomic performance* (47 per cent)

Somewhat important:

- *Economic stimulus package* (rated by 51 per cent of respondents)
- *Improved regulatory requirements on employment and welfare* (41 per cent)
- *Greater availability of unskilled foreign workers* (39 per cent)

Recommendation

Thailand is encouraged 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.

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

- **Issuance of a business visa that would eliminate the need for a work permit for temporary work.** The current process of having to apply for a temporary work permit is cumbersome and in most cases ignored by those entering Thailand for business purposes for short periods of time. The work permit and visa approval process should be streamlined and expedited and all visa and work permit re quirements should be publicly and readily available. Visa on Arrival would thus be an essential element for business visas also.
- **Issuance of visas and work permits for longer than one year, particularly for BOI and regional operating headquarters.**
- **Elimination of the 90 day notification of stay.** Customary practice in other countries is to require contacting the Immigration Office only when changing addresses.
- **Cancellation of the requirement for foreigners to work only in the permitted province or area.** Work permit locations should be expanded to cover all of Thailand, not just the location where the person maintains an office. This is not the only place where people perform work. They attend meetings in hotels, customer locations, etc. The current 'place of work' is not practical. As an immediate step, the restoration of the province level restriction could be reinstated.
- **Elimination of registered capital and staff ratio as a metric for work permit issuance.**
- **Eliminate the need for a work permit for foreigners who have already obtained a permanent residence visa.**
- **Eliminate Thailand's list of approved jobs for work permits, starting by reducing the list.**
- **Ease rules governing the employment of foreign labour, particularly in respect of lower skilled labour.** Duly recognising the need to control the flow of foreign workers into Thailand, the EABC is keen to share lessons learnt from the free circulation of labour that has long been implemented in the EU. The EABC is also willing to work closely with the relevant authorities in introducing productivity improvement programmes that will ease the labour shortage situation and further enhance Thailand's competitiveness.

Some specific implementation suggestions are changes to ministerial regulations or Labour/ Immigration guidelines and effective co-ordination between Labour and Immigration, which could be done more easily than legislative changes. The EABC is ready to engage in the consultation process to achieve a mutually beneficial outcome on these issues.

Court system, resolution of disputes, litigation and arbitration

When foreign companies are considering whether or not to invest in a particular country, one area of concern will be to consider the court system of that country, its speed and efficiency in processing disputes, and issuing and enforcing judgments and arbitration awards.

Recommendation

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 as 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 defence 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 defence 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 e.g. the defendant has failed to file a defence 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 defence 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 defence 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 limit 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.

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. This become acutely relevant in the new PPP Law (passed in April 2013 and with regulations and master plan expected to be in force by October 2013).

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 an 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.

Competition Policy

Thailand's main legislation regulating anti-competitive 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 interact[13], the Trade Competition Act is implemented by the Office of the Trade Competition Commission in the Department of Internal Trade in the Ministry of Commerce. The Commission is chaired by the Minister of Commerce and includes representatives of the Ministries of Commerce and Finance along with other members appointed by the Council of Ministers. In general, the Act covers all types of business operations. I t is however important to note that the Act does not apply to central, provincial or local administration, state 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 anti-competitive 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.

[13]Such 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 infringe ments 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.

The Trade Competition Commission has received a number of complaints and decisions has been made, including on some notable cases such as alleged excessive pricing by a cable television monopoly; an alleged tie-in of sales of beer with a liquor made by the same producer; allegations by domestic suppliers and retail outlets that foreign retail companies engaged in unfair business practices; and alleged exclusive dealing in the motorcycle market, where a foreign manufacturer that held a market share of 80% in Thailand, prohibited retail outlets from selling or displaying other brands in the same outlet.

Various literatures have however suggested that the performance of Thailand's competition law has not been very satisfactory to ensure the existence of market contestability and to prohibit anti-competitive behaviour. It could be argued that in certain industries are prone to existence of anti-competitive behaviour, particularly those where Thai conglomerates possess prominent position or where producer concentration is high. Despite the increasing importance of public utilities to keep pace with economic dynamism, privatisation and reform to further enhance efficiency in the sectors are yet to take place. Despite its existence for more than a decade, pragmatic shortcomings in the competition law enforcement still exist, such as capacity constraints and deficiencies in the legal infrastructure and provisions (e.g. structure of the Trade Competition Commission, penalty system, etc.) Sector-specific competition regulation (e.g. in the telecoms industry) suffers from lack of enforcement.

Recommendation

Trade competition is regarded as a core policy measure to promote economic efficiency and prohibit anti-competitive behaviours for the end benefits to consumers. The EABC is strongly supportive of reform to ensure effective functioning of Thailand's competition policy to address unfair trade practices. Further the enforcement of completion 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.

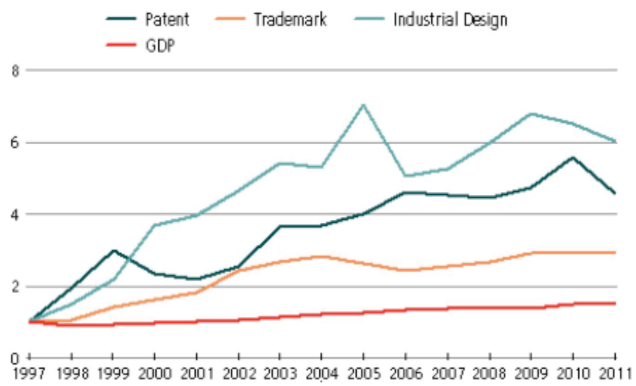
Intellectual Property Rights (IPR)

Intellectual Property Rights (IPRs) have proven to be one of the most significant factors in driving creative and knowledge-based economies. Secure protection and enforcement of IPRs provide a stable basis for both Foreign Direct Investment and internal organic growth. It is worth noting that IPRs are integral to every type of industry from manufacturing to services, such as the know-how or formula behind a successful product, the innovative mechanism of a production line or the design and branding of services provided as an end result.

Investors, whether local or foreign, wish to see Thai IPR policy incorporating and improving mechanisms to support creation and innovation for both Thai industry and across a spectrum of European and other foreign businesses in Thailand. Such a policy must create real incentives to innovate through an effective intellectual property system. It is also recommended for Thai authorities purposefully pursue its international interests in IP in order to maintain and strengthen its economic competiveness, particularly when compared to neighbouring ASEAN countries. The EABC stands ready to assist Thailand in boosting its economic growth through innovation by means of cooperation, open dialogue and capacity building.

It is a common exercise in economic analysis to link a country's economic growth with an increase in the volume of intellectual property filings. Since the 1990s, many studies demonstrate that a healthy IP system is a key factor in encouraging FDI. The World Intellectual Property Office (WIPO) statistics database shows that from 1997 to 2011 application of all types of IPR in the Thai IP office has been increasing on average by 9.3 per cent per year[14], as per the chart below.

Figure 12: IP filings and economic growth



Source: WIPO statistics database, last updated 05/2013

[14] WIPO, WIPO Economics & Statistics Series "2012 World Intellectual Property Indicators", p. 26

Another recent comparative study by WIPO in 2007 on the economic impact of IP systems in six Asian countries[15] has indicated a positive correlation between the strengthening of the IP system and subsequent economic growth. It should also be recognised that the 'system' includes, of course, the Department of Intellectual Property (DIP), but also educational institutions, Thai companies, Thai individuals and other government agencies such as the Food and Drug Administration, Ministry of Agriculture, Ministry of Public Health, Ministry of Industry etc.

Enhancement of IPR protection

The OECD[16] published an extensive report in 2008 that the value of counterfeited and pirated goods moving through international trade alone equalled $200 billion annually, a number they updated in 2009 to $250 billion. Counterfeiting and piracy is a key contributing factor to the loss of FDI, as well as technology transfer and incoming sharing of know-how. Loss of FDI also manifests itself in a loss of foreign income, which ultimately affects a country's balance of payments. The cycle continues in ways that hurt a country's long-term prospects. Local creators, inventors, and SMEs are discouraged by the risk that their products will be illegally copied and sold, denying them a return on investment and restricting future growth, as well as dampening the very spirit and energy that are an integral part of the creativity process[17]. Generally once illegal products take market share, and pose risks to health and safety; and when recouping an investment is prevented by intervening criminal activity, enforcement mechanisms are called into play to protect vital interests, not only of the right holders involved, but also of the public.

To summarise the position, the Department of Intellectual Property ("DIP") and Thailand's related authorities such as the Customs Department and the Royal Thai Police are faced with a huge and burdensome task to combat infringement of IP in Thailand. It has, over the last few years, brought in amendments to existing laws and introduced new legislation in an effort to strengthen the legal regime in Thailand (e.g. allowing pro-active seizure of goods by Customs and providing more effective prosecution mechanisms, introducing proposed draft measures to combat illegal refilling practices in the trade mark laws, and tackling the issues of online piracy and infringements). The EABC praises the effort of the Thai government in setting up the National Intellectual Property Centre of Enforcement (NICE) in early 2013. NICE is a new body including all relevant government agencies in the field of IPR enforcement and will be responsible for cases which require high-levels of interagency cooperation and concern large scale offenders and organised crimes. However, the introduction of amended legislative provisions and enforcement of existing laws have not been supported by effective and strong implementation by the relevant enforcement agencies of the government, including the police and the IP & IT court. Evidence of counterfeiting continues to be visibly widespread in most of Thailand and is far too easily accessible by both Thai nationals and foreign tourists.

There is an extremely worrying lack of action in relation to potentially dangerous and hazardous goods such as pharmaceuticals, chemicals (e.g. pesticides and other agricultural products), food and beverages, automotive products and cosmetics, to name a few. The EABC commends the efforts of the Director General of the DIP and hopes that the momentum that she has built up is passed on and maintained by her successor as she retires at the end of 2013.

There must be improvements in all aspects of the system, which includes all persons, whether individuals, government bodies, police, companies, contributors to innovation and infringers. Therefore to truly and effectively tackle the problem of counterfeiting in Thailand, there must be education of all parties involved starting at a young age at school and importantly at universities and throughout a person's career.

[15] WIPO - UNU Joint Research Project "Impact of the Intellectual Property System on Economic Growth" in the Asian Region namely Japan, Korea, China, Vietnam, Malaysia and India, 2007
[16] The Organisation for Economic Co-operation and Development (OECD)
[17] WIPO Brief "Intellectual property a power tool for economic growth", 2003

Deficiencies in the enforcement regime do not just arise from a lack of proactive effort on the part of the police (e.g. simply turning a blind eye to the night markets of Patpong selling fake goods and the associated corruption issues), but the lack of effort also demonstrates a deep seated lack of understanding about IP among the Thai community in general. Exacerbated by a lack of assistance from landlords and online merchants, counterfeiting is far too easily accepted in Thailand.

The police and the courts are the two main players when it comes to enforcement of IP in Thailand. There is a distinct lack of pro-activity on behalf of the police. Compare this situation to the more helpful and productive Customs authorities and it should be recommended to implement a similar system within the police to that that has been introduced in the last few years to the Customs department. Continued support for Customs must be maintained to ensure that it is able to seize infringing goods in the anticipated increase of trade in ASEAN, as a result of the free movement of goods directive.

Thailand has a good and efficient dedicated IP court. The judges are sound and relatively well trained. However, when it comes to imposing fines and sentences against convicted infringers, the levels of fines are far too low. This is for two reasons. The first is simply that the court imposes far too low a fine, when it could, within the scale of fines provided for by law, impose much heavier fines. The second is that the minimum fines and maximum fines as per the IP laws, are too low. There is a distinct lack of effective disincentive among counterfeit actors as a result.

Following the EABC meeting with the Thai Central Intellectual Property and International Trade Court (CIPITC) in November 2012, it is noted that the Court faces a certain 'fatigue' in dealing with an increased number of small IP criminal cases linked mainly to copyright infringements and targeting small retailers. The EABC believes that it is necessary to introduce provisions in the Thai IP Legislation that provide mechanisms to deal with landlords and how they deal with IP infringements on their property. IP infringements are a crime in Thailand and must be treated in the same way as other crimes. Overall, immediate action would be recommended in relation to:

- Adapting law and practice to modern sales channels through the internet and online market places;
- Combatting infringement by targeting notorious shopping areas that, with seemingly total impunity, sell counterfeit/pirated products on a large scale.

The emphasis on the advantages of a strong legal framework to include landlord liability and protection provisions would allow for a better ability to tackle the 'big fish' as well as new sales channels. Such enforcement provision would demonstrate to rights-holders and the general public the commitment of Thai authorities in tackling widespread IP infringements. The EABC understands that landlord liability and cooperation provisions are currently being researched by the DIP for assessing further inclusion into the law.

Software Piracy: Rates of use of unauthorised or illegal versions (either purporting to be full applications or systems, or part of them) is very high in Thailand. EABC has recommendations to change this situation; these are found in the ICT section of this Position Paper.

The improvement of the legal framework should also be the opportunity to reassess the ***deterrence effect of penalties,*** which are often seen as trivial and generally not able to outweigh the profits made by counterfeiters. Jail sentences for repeat infringers or large scale infringers could also be considered, at present only suspended sentences are imposed with some exceptions.
For measures relevant to enforcement of IPR infringement through ***customs procedures,*** the IP rights holders indubitably have to enforce their IPR by way of border measures enforcement which serve to prevent and discourage the counterfeiting of trademarks and piracy. However, currently in Thailand such measures are not as effective as they could be given the current procedures are available merely against counterfeit and pirated trademarks and copyrighted goods, not for infringement of other rights of IP. It is imperative that Customs are empowered to seize, in particular, goods that infringe patents, for example, to prevent the import of dangerous agri-chemicals being exported out of China.

Within the ambit of Customs regulations pursuant to Section

5 of the Export and Import Act 1979, an IP owner is permitted to lodge a petition with the Customs authorities to prevent the release of the suspect goods that allegedly infringe trademarks and copyrights from the control of Customs. Current requirements for documentary evidence to support a petitioner to halt any of the transhipment have proved to be difficult and burdensome to the IP rights owners.

With AEC promoting the free movement of goods and the introduction of a ‘Single Window’ for importation of goods into the AEC, it is recommended that Thailand Customs, as one of the most pro-active Customs bodies in ASEAN, could provide much learning for the training and implementation measures for ASEAN nations to ensure that there is not an exploitation of weak customs points by which goods from China will enter ASEAN and circulate.

The recent amendment to the ***Anti-money Laundering Act*** on 1 February 2013 has provided a welcome additional tool for combatting IP infringements through associated illegal activity. As IP crimes are now a predicate offence under this legislation, it should be possible to seize assets of such infringers. However, it currently remains to be seen how such measures will be adopted practically.

In connection with the ***enforcement of GI Protection***, the division of responsibilities between various enforcement agencies and what procedures are undertaken by enforcement agencies when investigating and taking action is unclear. Whilst responsibility for taking action against misuse of the registered GI lies with the DIP, it is unclear if action against the fraudulent use of indirect indications of origin, which indicate or suggest the GI, will be taken by the DIP. Whilst the Office of the Consumer Protection Board (OCPB) has responsibility for taking action against misleading statements on food and drink products, a complaint submitted by an EABC member to the OCPB concerning the misleading labelling of three alcohol beverages was passed to the Alcohol Beverages Control Committee, which also declined to consider the issue.

It is understood that some labelling responsibilities are also held by the Department of Health, the Excise Department and the Food and Drug Administration.

Recommendation

IP is vital for the development of a modern society and should be the cornerstone of Thailand’s ‘Creative Economy’ policy targeted at helping Thailand change the economic paradigm from a labour intensive industry location to an added-value hub for industries in the ASEAN region. In the longer term this will enable Thailand to become an innovative economy.

It is not only essential for the pursuit of trading activities, it is essential for the growth of foreign businesses and local businesses, beyond mere manufacturing or consumption activities. The guarantee that a certain IP right can be registered, protected and enforced, is often a key factor when decided whether a company invests in a country. For those companies that have done so, in certain technological fields, it is essential that locally generated IP (such as new ideas from a production line) are effectively protected. The EABC, thus, strongly urges the DIP and relevant enforcement authorities to consider the following suggestions:

- Reassessment of the level of penalties (increased fines and firm jail sentences) should be conducted to allow for a better deterrence;
- Training of court execution officers to ensure effective implementation of court awarded injunctions, such as the Anton Piller order;
- Introducing better criminal patent infringement laws such as in customs laws and regulations;
- Introduction of an award scheme for enforcement officers to pro-actively combat counterfeiting;
- Considering the introduction of unfair competition laws and/or updating the current passing off provisions of existing laws. Noting that presently there is an inadequate protection for unregistered IP rights in Thailand;
- Inclusion of a provision on landlord liability to penalise repeated defenders, landlords and online merchants who practice illegal sales of counterfeited or pirated goods. As an interim measure, we recommend the enforcement authorities implement a cooperation scheme with the landlords or on-line merchants as long as the landlord was not itself participating in the infringement. For ISPs (which merely provide access)

the only real remedy is to block access to the site. Blocking orders which are validly obtained through a court process or are validly issued by a government agency may apply.;

- On customs enforcement procedures, the EABC urges the expedition of the amended Custom Act B.E. 2469 to empower customs officers to inspect goods in transit and transhipments and to broaden scope of border enforcement to protect additional IP rights such as design and patents.
- In enhancing the protection of GI in Thailand, a clearer understanding of the division of responsibilities and lines of communication between all agencies would be very helpful.

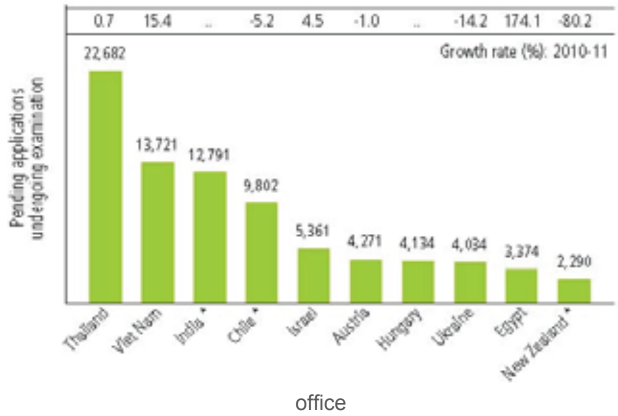
Regulatory Development to Strengthen National IP System

Gains to innovation from an efficient IP system require an efficient regulatory framework to maximise the contribution that IP can make to the economy[18]. Notwithstanding Thailand's long-time efforts in improving its IP legal framework, the Thai economy is still classified as an efficiency driven economy, as opposed to an innovation driven economy. At a time when Thailand needs to ensure that it is competitive with its ASEAN neighbours, it is crucial that it plans and implements beneficial competitive advantages such as a strong IP system. The following are examples of regulatory developments that would be needed to help achieve the aforesaid results:

Resolving Patent Registration Pendency and Adjusting Patent Term Restoration

The present average period of time for Thai patent approval (from application to grant) is 12.6 years. Data collected by WIPO affirms similar high figures of patent backlog compared to other countries, as demonstrated below:

Figure 13: patent application backlog



Source: WIPO Statistics Database, October 2012

The Thai Department of Intellectual Property (DIP) is aware that it must eliminate the backlog and has, as a work in progress, drafted patent examination guidelines on chemical and pharmaceutical patents and has tried to increase human resources within the Patent Office[19]. However, such measures are yet to show signs of short to mid-term recovery for applicants affected by the examination bottleneck at both formality checking stage (i.e. patent applications/design patent applications are not published on time) and the substantive examination phase. A large patent application backlog delays the delivery of patented innovations to market. A long patent pendency negatively affects private patent value and increases uncertainty for both patent-seeking inventors and other technology innovators interested in understanding the competitive environment. This overall situation of unacceptable patent pendency results in uncertainty of security of investment for rights holders and an increased possibility of infringement during the pending approval periods - damaging for both local businesses and innovators. Importantly, it also prevents Thai companies

[18] UK Intellectual Property Office Supporting Document on Economic Impact of Recommendation "Review of Intellectual Property and Growth", 2012
[19] Noting that the DIP has attempted to increase the number of patent examiners up from the present number of 41 to 62, referring to the presentation prepared and presented by the Thai Department of Intellectual Property (DIP) at the third EU-Thailand IPR Dialogue in Phuket, 27 February 2013.

from being able to contribute to incremental innovation over 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.

Delay in granting patents has also created uncertainty for third parties wishing to exploit a product or process in Thailand as they would not be able to know whether the related patent will be granted and with what scope. Despite the filing of a submission showing conformance with a granted patent or raising some other relevant issues against the issue of the patent in question or of its scope of protection, the process has not become quicker (if anything, slower) with the position still being that no action at all appears to have been taken by the Examiner for several years on many patent application files.

Under unpredictable circumstances as such, the suggested remedy of patent term restoration or adjustment has never been established in the Thai legal framework, 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 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[20]. 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 monopolisation, in which *de facto* is prejudiced to those investing and working in research and development. The term 'restoration' better illustrates the concept.

Recommendation

The introduction of patent examination guidelines, currently anticipated to commence sometime in 2013, should not be seen as a magic wand to solve the issue of patent pendency. Indeed, great care must be taken when assessing whether the guidelines will improve the overall position in terms of ensuring important incremental innovation is protected in Thailand – especially as there are issues surrounding the requirement of efficacy or vague requirements involving surprising effect to qualify for patent protection. The EABC wishes to see the end-result of the patent examination guidelines aligned with international standard and practice.

The EABC underlines the need for Thailand to improve the patent examination process to bring it within a reasonable timeframe. In resolving the severe backlog problem, it is recommended that the DIP increases the number of qualified patent examiners and commits to the training of these 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. The DIP may also consider further outsourcing options to improve efficiency. This is a capacity building project in which the EABC would also suggest that the EU is actively involved in terms of contribution to practical on-the-job training, planning, implementation and strategy. Emphasis is placed on the importance of a functional, reliable and easy to use database (for all types of IP). It is suggested that DIP and the EABC/EU open a dialogue on possible collaboration and capacity building strategies to strengthen the DIP's IT capacity. By upgrading the IT system, providing public and applicants access to a centralized patent database, the DIP would effectively reduce the delay in the filing and registration procedures.
Within the spirit of TRIPS, pharmaceutical inventions should not be discriminated from other inventions. The EABC encourages the DIP to consider and establish patent term restoration as a solution to create fair practice to compensate

[20] According to ECJ cases C-195/09 and C-427/09

rights holders considering the current patent backlog in Thailand as well as the delay of regulatory marketing authorisation. Patent term restoration will 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.

Ensuring Fair Commercial Practices through Regulatory Data Protection

In accordance with the Thai Trade Secrets Act (2002), undisclosed information is only protected if it is not generally known or readily accessible within the business, if its secrecy makes it valuable, and if it is under the control of the information owners who have taken steps to keep it secret.

Implementing Ministerial Regulations of the Thai Trade Secrets Act of 2002 were rolled out for pharmaceutical and agricultural regulatory areas. Unfortunately, none of these two regulations are ‘working’ in practice. It does not give data ‘exclusivity’ that guarantees protection of confidentiality for originator pharmaceutical and agricultural products by preventing authorities from accepting applications for generic products which rely on the originator’s regulatory data during the period of exclusivity. The current measures aim only to protect the ‘physical disclosure’ of confidential information.

According to Article 39.3 of TRIPS[21] as stipulated “Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilise new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use.” Thus, Regulatory Data Protection (RDP) should not be labelled as ‘TRIPS plus’. The general objective of this TRIPS article is to ensure effective protection against unfair competition. Not only does it refer to research and development data, it indicates moreover that such information should be protected both from unfair competition and disclosure.

In the absence of RDP, such anticipated uncertainty in regulatory disclosures leave the innovative industry open to extensive IPR challenges. It would assist IP rights holders to have a stronger system in place in relation to data protection when applying for Marketing Approval for certain controlled products e.g. pharmaceuticals. The Thai authorities have emphasised their compliance with commitments under the TRIPS Agreement, which requires Members to protect undisclosed test and data submitted in the process of marketing approval against unfair commercial use. However, as reiterated by industry representatives, piecemeal reliance through referrals by generic manufacturers to scientific data generated for the regulatory approval of originator products is neither conducive to rigorous quality assurance nor provides due regards to the research investment and intellectual property rights of the innovative pharmaceutical industry.

Recommendation

Under current practice, real protection of trade secrecy cannot be currently achieved, so the EABC encourages the implementation of effective regulatory data protection exclusivity for new chemical entities with a specific limited duration of time in order to prevent unauthorised and unfair use of confidential data.

Data exclusivity provisions do not prevent the introduction of generic versions of the originator products during the data exclusivity period, as long as the marketing approval of the generic version does not use or rely upon the original product’s test data. This is in line with fair commercial practice. Data exclusivity for pharmaceuticals can also assist in preventing unintentional patent infringement through launch by a generic company during the exclusivity period (noting that the patent in issue is likely to still be pending examination). Patents and data exclusivity are different concepts, protect different subject matter, arise from different efforts, and have different legal effects over different time periods but they must be equally protected in practice by Thai authorities.

[21] World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994

Amendments of the Thai Trademark Act and Accession to Madrid Protocol

The EABC congratulates the Thai DIP for its attempt to enhance the regulatory frameworks in relation to the protection of trademarks with the submission of two draft amendments to the Trademark Act pertinent to extend protection to scent and sound marks and to resolve the illegal refilling practice in support of future accession of Thailand to the Madrid Protocol[22]. Progress of both draft amendments has been expeditious when compared to other pieces of legislation in the past. The draft amendments on protection of scent and sound marks and on the protection of illegal refilling purportedly remain under consideration by the Senate and the Council of State respectively.

The EABC has underlined through its dialogue with the Thai authorities the urgency to prevent illegal refilling activities which affect various industries i.e. food and beverages, perfumes and cosmetics, automotive lubricants, etc., in order to protect consumers from potentially dangerous products and prevent IP infringements.

Recommendation

It is essential that the amendments to the Trademark Act are made as soon as possible and that enforcement in relation to the refilling provisions is handled by the relevant authorities in an efficient and effective manner. It is also important for the Thai authorities to subsequently monitor the implementation of this provision in cooperation with the private sector and identify loopholes and needs for training (and possible materials) with enforcement agencies.

To effectively implement the future amended legislative provisions, it is imperative for the DIP and related agencies to create strong guidelines and training, so as to build on their existing capacity. One example would be in relation to the current draft amendments to the Trademark Act extending protection to scent and sound marks. Application guidelines and examination procedures should be practicable and available to the public and potential trademark applicants. The EABC encourages the DIP to initiate the capacity building of its personnel to readily handle new types of trademark examinations in a timely fashion.

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[23], 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[24] 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.

Recommendation

Amendment of the Act is necessary to comply with all the requirements of Articles 22 and 23 of the TRIPS Agreement.

[22] Also known as Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted in 1989.
[23] World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), "Article 22 (2) In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:
(a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;
(b) any use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention (1967)."

Sectoral Issues: Automotive

The automotive industry has long been one of the key economic sectors in Thailand, contributing significantly to the country's economic growth and development. Recognised strengths and accomplishments of the industry are the result of collaboration between, and complementary efforts of, both the public and private sectors.

It is important to point out that the automotive industry in Thailand consists of automotive manufacturing i.e. passenger car, pick-up truck, van, bus, truck and motorcycle, and the automobile and motorcycle parts manufacturing industry, both Origin Equipment Manufacturers (OEM) and Replacement Equipment Manufacturers (REM).

Thailand's impressive track record as a major production base of one-tonne pick-up trucks, passenger cars and motorcycles was demonstrated as recently as 2012. Future challenges, however, are apparent. Global and regional dynamics stand ready to test the viability of the sector, while fierce competition could threaten further growth of the Thai automotive industry. To enhance the position and strengthen the long-term competitiveness of Thailand's automotive industry, the EABC encourages the Thai Government to pursue the following policy priorities:

I. *Market Access*

1. **Expedite progress on the Thai-EU Free Trade Agreement (FTA) negotiations to improve access and address market barriers**
2. **Alignment of automotive products with international UNECE standards**
3. **Eradication of 'grey market' and unfair parallel imports to create a level playing field and protect the legitimate interests of brand owners**

II. *Regulations and Standards*

4. **Dismantle redundant approval/homologation standards**
5. **CO2 emission-based taxation**
6. **Emission regulations and improvement of fuel quality standards**
7. **Harmonise the definition on local content requirements**
8. **Road safety**

III. *Resources and Practices*

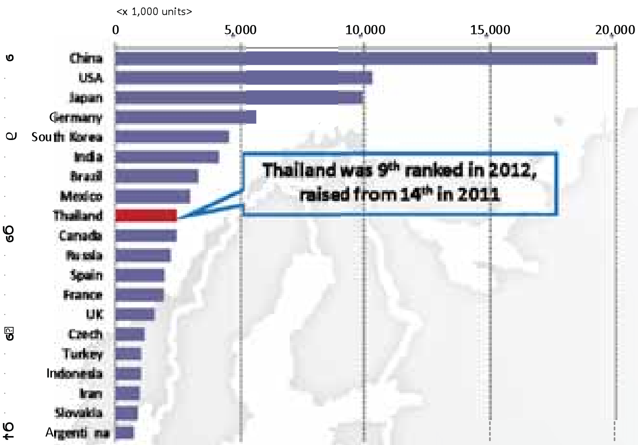
9. **Ensure availability of skilled and non-skilled workers**
10. **Address policy inconsistencies, as well as operational hindrances, in respect of Customs Free Zones**
11. **Provide an investment promotion scheme and tax incentives which effectively correspond to industry needs and promote industry development and innovation**

Representatives of the EABC Automotive Working Group have strong interest in both inward investment as well as outward trade with Thailand as a regional automotive production hub. It is therefore important to note that the policy priorities highlighted above are grouped into three main areas only for ease of reference. These policy priorities are closely interlinked and the EABC has no intention to rigidly advocate them purely from either access, regulations or resources perspectives.

The automotive industry is one of Thailand's leading industries, and makes a significant contribution to the economy, employment, value-added market, technology and innovation, as well as development of supply chain related industries. Recognised as a leading regional and global automotive manufacturer with strong opportunities for growth and expansion, Thailand was ranked at the 9th place in the world in 2012.

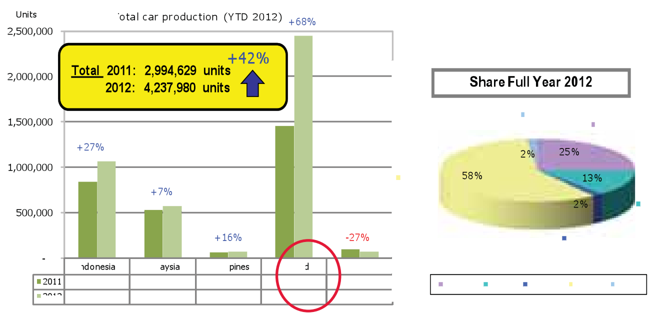
Thailand is also the biggest car manufacturer among ASEAN countries possessing 58 per cent of the total car production in ASEAN, as well as a major regional production base for motorcycle and automotive parts. The production capacity of Thailand's automotive industry in 2012 was 2.45 million cars and 2.61 million motorcycles.

Figure 14: World ranking of top automotive manufacturers, 2012



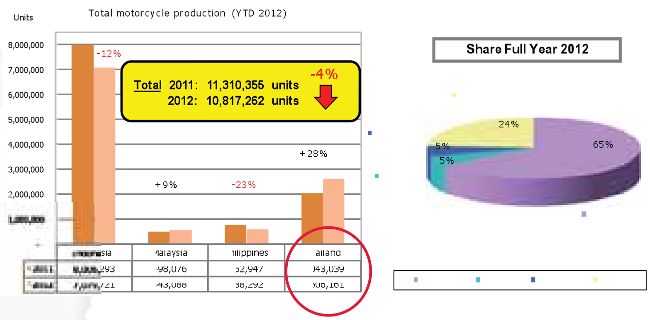
Source: The Thai Automotive Industry Association (TAIA)

Figure 15: ASEAN car production and share, 2012



Source: ASEAN Automotive Federation

Figure 16: ASEAN motorcycle production and share, 2012



Source: ASEAN Automotive Federation

[14] World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), "Article 23 Additional Protection for Geographical Indications for Wines and Spirits
1. Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.
2. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, ex officio if a Member's legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin.
3. In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.
4. In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system."

2012 proved to be a golden year for the Thai automotive industry, which achieved record sales and production figures that put it in the world's top ten auto-manufacturing countries. Despite serious disruption of Thailand's automotive supply chain caused by severe flooding in late 2011, domestic sales and overall production quickly picked up in 2012 with another important boost – the government's first-car-buyer programme. Another year of brisk sales is again expected in 2013, and these accomplishments represent collaborative efforts and dedication of both the public and private sectors to enhance Thailand's position as one of the world's leading automotive production bases. However, future challenges must be carefully considered when formulating development strategies for sustainable growth of the industry, especially the global trends focusing on environment and safety. Thailand's automotive industry is required to develop technology and competencies to meet these requirements.

Apart from fulfilling the needs of the domestic market, manufacturers have to anticipate consumer preferences in the international market. As Thailand's automotive industry is closely interlinked with international automotive manufacturers, global, regional and domestic trends have to be taken into consideration as the country formulates its industry development strategy. The global economic centre is shifting from West to East as vehicle manufacturers are expanding and investing in new factories to be closer to the markets while having better access to raw materials (and parts) to ensure competitive production and logistics costs. With Asia playing an increasingly important role as a potential market and a major global production base, the face of global and regional competition is changing. Free trade agreements have also broadened the competitive arena and will enhance the competitive edge of Thailand's automotive industry. It is therefore very important that future development of Thailand's automotive industry strives to comply with international standards and meets global 'green and safe' industrial trends and consumer preferences.

Representing the European automotive industry, the EABC is very keen to make constructive contributions and work with all relevant authorities and counterparts towards strengthening the position and competitive advantages of Thailand's automotive industry in the dynamic global market.

International challenges and domestic realities call for the Government to reassess the attractiveness of Thailand for investments in the automotive sector, with a view to staying ahead of the curve and being sustainable.

In the spirit of partnership and to underline our long-term commitment to Thailand, the EABC has – since the last edition of our Position Paper – identified **three key areas** we recommend the Government to focus on, namely **Market Access, Regulations and Standards**, and **Resources and Practices**. With the objective of enhancing investment attractiveness and sustaining the long-term competitiveness of the Thai automotive industry, we welcome positive developments in certain areas and encourage Thailand to keep up the positive momentum. In this Position Paper, the EABC highlights the following priority areas for improvement with recommendations:

I. Market Access

1. EU-Thailand FTA negotiations

Thailand ranks as the biggest auto-manufacturer in ASEAN and the second largest automotive market in ASEAN after Indonesia. With a consistently strong, market-oriented economy and strategic location at the centre of Asia, Thailand should continue being a preferred destination for foreign direct investment in the automotive sector given adequately-developed infrastructure, supportive government policies, and continued efforts to further its regional integration with emerging Asian economies.

However, there remain concerns as to weakness in the operating environment which include labour availability, language barriers, redundant regulatory measures on standards and customs procedures, and certain policy uncertainty (e.g. revision of the BOI's investment promotion strategy and graduation of automotive products from the EU's GSP scheme), the existence of which continue to impair further growth potential of Thailand as the automotive hub in Southeast Asia.

- **Reduction/elimination of import tariffs**

The negotiation process of the EU-Thailand FTA is underway, while the Japan Thailand Economic Partnership Agreement (JTEPA), in place since 2007, has already put Japanese automotive manufacturers at a significant advantage by providing for tariff reduction for the Completely Built Up (CBU) exceeding 3,000 cc to 60 per cent, and possible elimination of tariffs to 0 per cent subject to a conclusion to be reached by both parties. For auto parts, the tariff rate was reduced to 0 per cent from 1 April 2012 (except for those on the Sensitive List); and engine and five items of engine parts will be 0 per cent in April 2014. In this view, the JTEPA is regarded as providing Japanese automobile manufacturers significant tariff advantages over European automotive manufacturers. This privilege has led to market distortion and an uneven playing field since Japanese cars of over 3,000 cc could be sold at prices that are very competitive with European cars with 1,800 to 2,500 cc engines.

Recommendation

The EABC supports the negotiation of the EU-Thailand FTA to foster and promote opportunities for the automotive and parts industry. Elimination – or progressive reduction with a view to elimination – of import duties would meaningfully reduce barriers and further strengthen trade ties between Thailand and the EU. Thailand is encouraged to immediately reduce import duties for automotive products to at least a similar level to the JTEPA framework agreement, as well as to set up a mutual recognition agreement towards acceptance of standards and test report/certificate, especially on safety and technical regulations. This is to facilitate and improve market access for CBU and certain safety parts.

In order to ensure continued exports from Thailand for many manufacturers, we would also ask for an early harvest agreement between the two parties to be put in place upon cessation of the current GSP scheme if the EU-Thailand FTA is not completed and fully ratified.

2. Alignment of automotive products with international UNECE standards

The application of domestic automotive standards, different from international standards, can potentially act as non-tariff barriers (NTBs) on trade and exports. Global Technical Regulations based on United Nations Economic Commission for Europe (UNECE) for the automotive industry in ASEAN, is implemented by local members of the Automotive Product Working Group (APWG) under the ASEAN Consultative Committee on Standards & Quality (ACCSQ). APWG was formed specifically to eliminate trade barriers through harmonisation of standards, technical requirements and regulations.

The harmonisation of automotive product standards is essential as a basis for a single manufacturing base. As work has begun within ASEAN on the alignment of technical requirements, 50 UNECE regulations have been identified, of which 19 have been prioritised and will form part of the Mutual Recognition Arrangement (MRA) for automotive products in ASEAN, to be implemented by 2015. The MRA in ASEAN needs to be established based on a type approval system covering parts, systems and components. ASEAN member states should recognise test reports and certificates based on UNECE standards. Current progress however remains unclear as ASEAN member states are not working in parallel towards the same UNECE standards. Identical methodology is essential in implementing UNECE standards in ASEAN, as this will be fundamental in achieving consistent standards.

It could be argued that ASEAN is lacking the fundamental principle of understanding of UNECE regulations, benefits and sustainability. Moreover, there are various versions of UNECE regulations, and ASEAN should select the appropriate version to be implemented by all countries. SMEs in ASEAN are also lacking knowledge of UNECE and how it will help increase their global competitiveness in the long term. Without UNECE, ASEAN SMEs will suffer from the domination of imports of below standard automotive products. Accession to the 1958 Agreement and ASEAN presence of WP29 also remains to be developed. While Thailand and Malaysia signed the UNECE 1958 agreement but still have to ratify it, other member countries are still observing. Having all ASEAN members on board with the Agreement would significantly benefit trade and development of the ASEAN automotive industry.

Alignment with Global Technical Regulations (GTRs) will help to increase the competitiveness of ASEAN. This will also enable the export of automotive technologies to countries following UNECE standards, and should protect local consumers from lower quality imports. In addition, the alignment with international standards will ensure industry competiveness globally, as these standards not only serve local demand but also fulfil more stringent global requirements for road safety, energy efficiency and environmental protection.

Recommendation

Harmonisation and acceptance of harmonised product standards should meaningfully facilitate regional trade in the automotive industry. For Thailand to stay ahead of the curve in the ASEAN automotive industry, the EABC supports Thailand's bid to encourage ASEAN to adopt UNECE regulations based on the same version, and to work closely with ASEAN member states to align the 19 priority UNECE standards to achieve a single regulatory regime in ASEAN by 2015. We would also welcome implementation in ASEAN of identical testing procedures using the same metrology methods or standards.

3. Grey Market

Parallel imports into Thailand, particularly in respect to European luxury cars, have grown significantly over the years. Wrong-doing, in terms of undervalued invoicing, is consistently reported. The situation has deteriorated due to a lack of transparency, weakened regulatory enforcement, or even widely reported corrupt practices causing serious concern within the industry. The media frenzy involving a fire which destroyed six luxury cars in late May 2013 was among the latest exposé of a massive and growing tax avoidance operation among thousands of parallel imported cars declared as parts.

Illegal practices of the so-called 'grey market' have a negative impact on the legitimate interests of the local automotive industry in terms of unjustified 'free-riding' practices on brand owners' investments and reputation, as well as potential trademark infringements. The Government and consumers could also be affected as a result of significant loss of tax revenue due to undervalued import prices and the uncontrollable availability of sub-standard products in the market. Worse still, 'grey market' practices could be linked to illegal business transactions, money-laundering or corrupt practices which deprive Thailand of strong economic growth. This directly affects not only the confidence of legitimate investors, but also Thailand's reputation as a competitive investment destination.

Recommendation

The EABC applauds the progress made recently by the authorities, especially the Department of Special Investigation (DSI), and would encourage this to continue. Nevertheless, as emphasised in the last edition of the EABC Position Paper, the Government is encouraged to apply stricter law enforcement on import procedures and standard testing requirements, with the aim of eradicating the 'grey market' and unfair parallel imports. Consistent with the overarching objective to enhance transparency, strengthen good governance and improve the business investment climate, this will ensure due protection of legitimate business interests, particularly those of European brand owners, and create a level playing field for all.

To ensure effective enforcement going forward, efforts should be geared towards ensuring seamless cooperation, both among relevant government agencies, and between the authorities and brand owners. We wish to encourage the Customs Department 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 licences and to provide warranty and maintenance services in order to eradicate illegal importing and to ensure safety standards for consumers. Stricter vehicle registration processes should also help alleviate the problem.

II. Regulations and Standards

4. Dismantling redundant approval/ homologation standards

It is widely recognised that harmonisation of vehicle regulations and standards plays a key role in the development of the automotive industry. As automakers operate globally, they are faced with a wide variety of different regulations in different countries, often aimed at achieving the same purpose, but differing for historical reasons. Harmonising these regulations world-wide offers savings in technical resources, which can better be applied elsewhere, to produce better, cleaner, safer vehicles. It also offers the possibility of reducing production complexity, resulting in lower costs and prices and a wider choice of vehicles available to all consumers.

Harmonisation does not always mean having identical requirements because the needs of different countries can often vary. It does mean – at least – an elimination of unnecessary differences and bringing regulations closer together. In this way, where possible and practical, a single vehicle specification can be built to satisfy all requirements.

Despite consistent calls for improvement by the industry and certain efforts being made in this regard, Thailand's approval/ homologation standards as implemented by the Thai Industrial Standards Institute (TISI) are still regarded as onerous for the automotive industry. Manufacturers are required to comply with local mandatory certification standards on top of international standards, which also need to be adhered to. This redundancy has a substantial impact on the cost and time spent due to unnecessary duplication of processes. In particular, imported vehicles and certain components have to be re-tested in TISI certified/accredited laboratories even if they have already been type-approved in accordance with UNECE-derived EU Directives. Certified manufacturing plants in Europe also need to undergo separate quality audits by Thai inspectors, making the procedures repetitive, costly and time-consuming.

Currently, TISI is trying to apply domestic standards in line with the international standards, i.e. UNECE. However, this has not alleviated problems for products being imported into Thailand given that they will still have to undergo redundant re-testing processes which hinder trade and harm businesses. These for instance occur in cases of cars, emission from engines, safety belts and safety glass.

The auto industry has attempted for a long time without success to convince TISI to accept the international certificate - such as ECE, ISO - instead of running new tests and repetitive plant audits. We believe that our proposal would not require any change to the system or legislative framework, as this practice has been adopted in the past.

Recommendation

To improve efficiency and avoid unnecessary duplication of processes, the EABC strongly encourages the relevant Thai authorities – particularly TISI – to recognise and accept overseas test reports and plant audits. We also call upon Thailand to adhere to the UNECE 1958 Geneva Agreement, or better still become a contracting party under that agreement, and dismantle redundant approval/homologation standards as has already been done in some ASEAN countries.

In our view, the certification of automotive products should be considered priority to improve market access. More cooperation in future ECE safety regulations and an international certification system should be offered and integrated in the EU-Thailand FTA so as to increase the competence of officials and eliminate unnecessary barriers for the industry and trade.

5. CO_2 emission-based excise taxation

Thailand's government has approved a future restructuring of the country's vehicle excise tax, away from rates based on engine size to those dependent on the quantity of carbon dioxide emissions. The new tax structure is due to take effect on 1 January 2016. The new excise duties are designed to align Thailand's automotive industry towards producing vehicles that meet global standards.

The new excise tax structure is divided into seven types according to the vehicle types, and could be summarised in the following table:

Table 5: New CO_2 emission-based excise taxation

Vehicle types	Current excise tax structure				New CO_2 emission-based excise taxation			
	Engine size (cc, HP)	Tax rates			CO_2 emission	Tax rates		
		E10	E20	E85		E10, E20	E85, NGV	Hybrid
Passenger cars (PC) ▪ sedans and vehicles of no more than 10 seats)	≤2,000 cc 2,001-2,500 cc 2,501-3,000 cc >3,000 cc	30 35 40 50	25 30 35 50	22[1] 27 33 50	≤ 100 g/km 101-150 g/km 151-200 g/km >200 g/km >3,000 cc	} 30* 35 40 50	} 25 30 35 50	10[2] 20 25 30 50
PPV/ DC/ Space Cab/ Pick Up	≤3,250 cc >3,250 cc	20/12/-/3,18 50			≤ 200 g/km >200 g/km >3,250 cc	25*/12/5/3,18 30/15/7/5,18 50		
Eco car (Benzene/Diesel) / E85	1,300/1,400 cc	17			≤ 100 g/km 101-200 g/km	14*/12 17/17		
Electric Vehicle/ Fuel Cell/ Hybrid	≤3,000 cc >3,000 cc	10 10 50			>3,000 cc	10 ** 50		
NGV-OEM	≤3,000 cc >3,000 cc	20 50			>3,000 cc	** 50		

Note: 1. with cc engine from 1,780 – 2,000
* the active safety standard is required for PC with less than 10 seats with CO2 ≤ 150 g/km , PPV with CO2 ≤200g/km, ECO car with CO2 ≤ 100g/km
** Under PC structure based on CO2 emission
2. Passenger cars with less than 10 seats

Source: Summarised by The Thai Automotive Industry Association (TAIA)

While it was reported that most motor manufacturers were not against the principle of the vehicle tax reforms, there appears to be concerns that the three-year period until the reforms take effect could be too short for industry production plans to be adjusted.

The EABC has advocated for a vehicle taxation scheme based on the CO2 emission levels of vehicles, with technology-neutral regulations. We are able to accept the new conditions as we view that the CO2 emission based excise tax should encourage the use of low CO2 emission vehicles. This positive development should stimulate both the production and use of clean and efficient vehicles – consistent with current trends in the global automotive industry. With a clear focus on the emission levels of vehicles, the best (cleanest) vehicle technologies will be incentivized. This will thereby enhance competitiveness and productivity between all market players and give the end-consumer a wide range of options. It is also more likely that consumers will choose environmentally-friendly vehicles, which would thereby lead to a gradual decrease in the use of old, high-pollution vehicles – a shift towards clean, green vehicles, and a reduction in overall fuel consumption and fuel subsidies (where applicable).

However, further details will need to be seen in order to ensure effective implementation, and minimise possible business disruption, of this new CO2 based excise tax.

Recommendation

To promote the production and use of clean fuel and energy-efficient vehicles, the EABC re-emphasises its call for Thailand to put in place a harmonised, technologically-neutral taxation based system regardless of engine capacity and fuel type based upon CO2 emission only. This should also be promoted at the ASEAN level to encourage the use of greener vehicles throughout ASEAN.

To ensure policy effectiveness of the taxation scheme to reduce CO2 emission, every gram of emitted CO2 should be treated equally. In our view, the proposed stepwise approach would not be able to incentivise the improvement of CO2 emission within the bandwidth (e.g. to reduce the CO2 emission from 150 to 100 gram given that both levels still fall within the same group for taxation purposes) A linear system might be considered a more effective approach from this perspective. In addition, the EABC would welcome a review of the current excise tax on motorcycles towards progressive implementation of CO2 emission based taxation aligned with those applicable to cars. This should further encourage technology development to improve CO2 emission and fuel efficiency.

Development of regulatory applications on CO2 measurement for the Thai automotive excise tax also needs to ensure effective implementation of this new CO2 based excise tax with minimum possible business disruption. In view of the current backlogs with respect to testing in Thailand, the Excise Department is encouraged to accept the test result or certificate conducted in accordance with the UNECE regulations.

6. Emission regulations and improvement of fuel quality standards

The introduction of more stringent emission regulations and higher fuel quality standards would help in lowering emissions and promoting more efficient fuel consumption in the country. A high fuel quality with low sulphur content for both petrol and diesel fuel is considered essential for the introduction of modern low emission injection technologies. This should also help to lessen Thailand's reliance on crude oil imports and the impact of fluctuating world crude prices.

Table 6: Emission standards planned for ASEAN countries

Country		2009	2010	2011	2012	2013	2014	2015	2016	2017
THAILAND		Euro3			Euro4					
INDONESIA		Euro2							Euro 4 (Tentative)	
MALAYSIA	Gasoline	Euro2		Euro 3 (Tentative)				Euro 4 (Tentative)		
	Diesel	Euro1		Euro 2 (Tentative)						
PHILIPPINES		Euro2							Euro 4 (Tentative)	
VIETNAM		Euro2			Euro4 (Under Study)					
SINGAPORE	Gasoline	Euro2			Euro 4 (Tentative)					
	Diesel	Euro4			Euro 5 (Tentative)					

Source: Clean Air Initiative for Asian Cities (CAI-Asia)

Recommendation

We would encourage Thailand to put in place a sustainable emission regulation implementation plan. To see this taking effect as a long-term, continuous and sustainable development, Thailand is encouraged to improve the country's fuel quality standards to be more closely aligned with those adopted by the European Union. We would also encourage effective implementation of a sustainable energy roadmap to provide the business community with predictable and consistent policy implementation for further development. This will be considered as meaningful progress towards the introduction of modern low emission technologies.

7. Harmonisation of the definition of local content requirements

Rules of Origin and local content are differently defined across ASEAN, despite promoting local content requirements (40 per cent). Without harmonised rules, local OEMs encounter higher production costs. As such, cheaper imported parts are preferred as compared to those produced locally, and this adversely impacts local manufacturers and hence local employment.

In addition, different certification processes by different local authorities have resulted in complexity in applying the Rules of Origin. This impedes the integration of ASEAN to become a single manufacturing hub and market.

Recommendation

The Automotive sector recommends a harmonisation of related implementing procedures for local content and Rules of Origin application as part of the approval and homologation processes in order to become a single manufacturing hub by 2015.

8. Road Safety

Road accidents in Thailand are a major social and economic problem, which causes many fatalities and severe injury cases every year. The increase in demand for transport service due to the country's strong economic growth has resulted in increasing number of vehicles and, hence, road traffic accidents.

Whilst road safety is a complex issue and involves a multi-disciplinary approach to reduce such problems, there are several measures that can help achieve such goals including basic roadway design, construction, signposts and lighting systems.

In addition, a compulsory motor vehicle inspection should test for vehicle roadworthiness starting from 3-years old rather than 7-years old. The testing centres must be regulated to ensure of accurate testing results and the issue of certificates would be mandatory. This would also have the additional benefit of removing the badly maintained and highest polluting vehicles off the road.

The fitting of advanced safety technology for crash avoidance as proposed by European car manufacturers is being hampered by burdensome requirements and lengthy process for law amendment and licencing under National Broadcast and Telecommunication Commission (NBTC). This has prohibited opportunity to launch such initiative, for example, 24.25-26.65 GHz frequency range required for new radar based safety devices.

Further, alignment of automotive product standards should be put in place to ensure that consumers are protected from importation of sub-quality standard products that may jeopardise road safety.

Recommendation

The EABC encourages Thailand to mitigate road accidents by the implementation of a regular automotive testing regime along with utilising existing and proposed automotive technologies that assist in increasing public road safety. At the same time automotive products standards should be aligned to the international standards, including accurate testing and inspection methods, to help increase the safety levels to consumers and third parties.

III. Resources and Practices

9. Shortage of labour and skilled workforce

Despite an increase in the number of graduates and qualified engineers, ASEAN – including Thailand – continues to experience labour shortages, as the requirement for higher skilled staff due to technologically-intensive manufacturing increases. The success of Thailand in attracting major automobile and parts manufacturers, as well as other key industrial players, has now come under a challenging test to recruit both skilled and unskilled labour to fulfil the need of growing business prospect.

Recommendation

Thailand is strongly encouraged to take appropriate measures to expediently ensure the availability of both skilled and unskilled workers to support the continuous development of various industries in the country, including the automotive industry. Thailand should improve the quality of education and skill levels of the country's labour force by encouraging public-private partnerships in engineering and technical training, in addition to government incentives for education, and facilitate the free movement of people so that skills are located in Thailand.

Recalling our meetings with Ministry of Labour and Ministry of Industry, the EABC looks forward to continuing to work more closely with relevant authorities with the objective of building the supply- side by promoting vocational training, seeking support from the Government and education sector. In building the supply of skilled workers, efforts should be made not only by undertaking short term measures, but also medium and long term measures. It is recommended that Thailand sets up incentive schemes and encourages higher education programmes to incorporate industrial training. It is also important to ensure due availability of both skilled and unskilled workers close to the location of industry production sites.

In alignment with calls from the Thai industries, notably the Federation of the Thai Industries, the Thai Government is encouraged to take a holistic approach to identify concrete measures to effectively solve the problem of shortage of unskilled labour.

10. Customs Free Zone (CFZ)

By removing certain disincentives associated with manufacturing in Thailand, a Customs Free Zone (CFZ) offers benefits and provides viable opportunities for businesses to operate in Thailand as a competitive production base for the ASEAN market. A CFZ is not only intended to support export activities, but also to provide business operators – who import goods for manufacturing in a CFZ and then sell to the domestic market – with a reduction of the generally applicable most-favoured-nation (MFN) duty rate in case of goods imported from abroad. Automotive manufacturers have applied to operate in a CFZ in order to increase competitiveness in the current global trading situation and to increase local content to support local auto parts suppliers. Certain problems nevertheless exist.

European automakers have long encouraged enhancement of transparency and policy consistency in respect of rules and regulations on a CFZ. Consistent with the last edition of our Position Paper, the EABC proposes the following recommendation with the aim to improve the effectiveness of the CFZ scheme in order to facilitate business operations:

- **Proposed amendment to the Excise Tariff Act B.E. 2527 (1984)**

  Recognising the need to have in place policies, laws and tax collection methods which are responsive to changes and the impact of globalization and regionalism, the Excise Department has planned to revise the excise law based on results of research conducted by Thammasat University. A key issue of concern, in respect of the proposed amendment, relates to vehicles produced in the CFZ being treated in a similar way to the ones produced outside of the CFZ[25].

[25] In particular, Section 2 of the proposed amendment defines "importation" as "bringing the goods into the kingdom in accordance with the Customs law except that brought out of CFZ if not for export purpose", whereas Section 15 empowers the Director General of Excise with discretionary power to determine the tax base. The proposed amendment is silent on recognising the difference between vehicles produced in the CFZ vs. ones produced outside the CFZ as there is no specific provision on tax collection method for the goods produced in the CFZ in the proposed amendments.

The proposed amendment would result in changes in the current excise tax calculation method and potentially lead to inconsistent treatment of goods produced in the CFZ between the Excise Tariff Act and Customs legislation. This could directly affect the trust and confidence of foreign investors and business operators in the CFZ in respect of proposed changes and policy uncertainty.

Recommendation

The proposed change confuses and undermines the aim of businesses operating in the free zone – whose decision was based on established Customs rules and regulations and relevant Excise law – by creating inconsistency in tax calculation between tax authorities. The EABC therefore recommends no change to the current Excise Legislation and the calculation and collection of the excise tax on automobiles being in line with Customs legislation. To promote Thailand as a regional production hub for automotive products, it is important that the Government's policies are not only supportive to foster industry growth, but also provide for a consistent, transparent and accountable regulatory framework.

- **Operational complexity faced by CFZ operators in respect to rules and procedures**

  The CFZ encourages Thailand-based operations by removing certain disincentives associated with manufacturing in Thailand. By treating products made in the zone as if they were manufactured abroad for tax assessment purposes, the CFZ scheme offers advantages to CFZ manufacturers and processors in terms of relief from import and internal taxes/duties. This however comes at the expense of strict rules and numerous regulatory procedures to which the CFZ operators have to duly comply.
  Although the customs notification no. 63/2555 specifies clear timeframes for the customs inspection/approval, the customs officer in charge generally takes a longer time for the approval, in particular when there is a change of officers. In addition, practices such as inconsistent interpretation by the relevant customs officers in respect of the applicable free zone regulations, especially in the context of local content issues, are often recognised. Any unclear regulations and inconsistent interpretation/discretion of relevant customs officers could lead to uncertainty and a negative impact on business operators as well as investors' confidence in the future. These could also be reasons which would hinder further investment in Thailand.

Recommendation

The EABC calls for the clear and consistent application of rules and regulations in respect of the CFZ. The Rule of Origin should comply and align with internationally-accepted standards; for example, the cost calculation method should follow the generally accepted accounting principles in accordance with international trade practice.

11. Tax incentives for innovation and new technologies

The automotive policies and investment promotion schemes as implemented by the Government have long been an important driving force in the development of Thailand's automotive industry. As the industry is increasing its needs to develop its technological capabilities and enhance its competitiveness amidst a changing global and regional competitive landscape, applicable policies and regulations will need to be constantly assessed and improved with the aim to ensure their relevance and effectiveness towards the industry's strong development. Recognising the key role that high value-added inbound investment can play to the Thai economy, the BOI is encouraged to ensure that both its tax and non-tax incentives are at least competitive among regional peers and correspond to the needs of strategic investors.

Tax incentives and investment promotion are recognised as crucial to encouraging both new and existing investors to invest in new technologies for long term development, marketing and innovation in the competitive automotive industry and related industries. Although the BOI has been a great supporter of strengthening the automotive industry in Thailand, many other countries and regions have also been striving to attract foreign direct investment by broadening the range and level of incentives of their investment promotion schemes over the years. This arguably impacts industry decision-making as industry players benchmark the investment incentives. Additionally, it is important to ensure that the investment that Thailand aims to attract in order to bring in innovation and new technologies will not be unduly impaired or hindered by other policy change. A recent increase in excise tax on large motorcycles from 3 to 20 per cent with immediate effect is an example of the negative impact that European business has faced, without being consulted prior to the change.

Recommendation

Thailand is encouraged to improve the current investment promotion schemes and incentives to effectively correspond to industry needs and enhance the development and innovation capability of the automotive industry. Tax incentives should encourage the use, as well as the development, of new technologies and R&D activities in the automotive industry. Key priority areas include improvement of fuel efficiency, which should lead to new or improved powertrain technology.

Any new schemes that are implemented should not affect previously approved projects and equally clear guidelines of projects being currently considered should be issued.

Energy and Energy Efficiency

If Thailand is to sustain its strong economic growth, it will need to address the growing gap between its energy demand and domestic energy supply resources. This is a critical challenge for the country's future development and means that energy security must be a focus for the coming years.

Secure, sustainable and clean energy supplies can be secured from a diverse set of opportunities by:

- **Development of significant further gas resources through both license extension in existing concessions and full development of the Gulf of Thailand resources;**
- **Active public policy to encourage investment in, and provide appropriate incentives for, the development of alternative energy sources;**
- **Enhanced energy efficiency to reduce energy intensity, and instil broader awareness of energy-savings behaviours, to manage demand growth.**
- **A long-term vision for the build-out of smart energy infrastructure, including what is needed to import resources from abroad**

Active engagement between the Thai government and the EU business community can powerfully support these goals by providing investment, policy advice, and technology. The EABC Working Group on Energy and Energy Efficiency stands ready to facilitate and support engagement and dialogue on these issues.

The Energy and Energy Efficiency Working Group of the EABC has been established to serve as a forum to discuss critical issues in this field, and to enhance the role that European businesses can play in solving Thailand's key energy sector challenges. These challenges are a priority for the Royal Thai Government's policy agenda of enhancing competitiveness and achieving sustainable development.

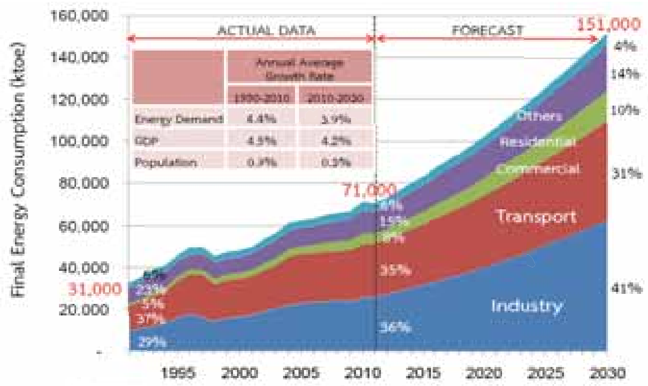
If Thailand is to maintain strong economic growth, and grasp the opportunities arising from deepening regional integration, it will need to address three major energy challenges: 1) securing sustainable, affordable and clean energy supplies; 2) enhancing energy efficiency to manage demand effectively; (3) building smart infrastructure to ensure wide, equitable and efficient access to energy. Future prosperity in every sector will depend critically on the country meeting its growing energy needs.

1. Securing future energy supply

Thailand's strong economic development and emergence as an upper middle income country has been impressive. This success has required growing amounts of energy. From 1990-2010, energy consumption grew at an annual average rate of 4.4%, increasing by over 2.3 times during this period.

Further growth will require significant additional sources of energy. In the next 20 years, if there is no energy conservation or energy efficiency improvement measures or no significant reform of the industrial structure and transportation system, the Ministry of Energy expects Thailand's energy demand under the business-as-usual (BAU) scenario to increase from 71,000 ktoe/year in 2010 to 151,000 ktoe/year or about 2.1 times in 2030, accounting for an annual average growth rate of 3.9%, under the assumption that the GDP will grow at an annual average rate of 4.2%. Industrial and commercial demand will increase at a higher rate than other sectors. Greenhouse gas emissions will increase accordingly. Active planning to maintain a balanced, diverse portfolio of secure energy supplies will be needed to meet this growing energy demand.

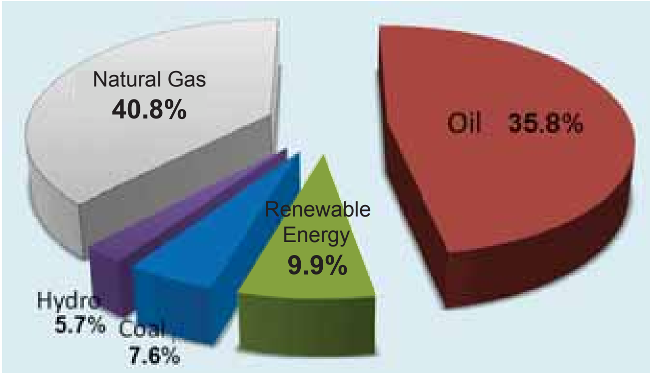
Figure 17: Thailand's energy consumption in the past and projected future demand under BAU case



Source: Ministry of Energy, Thailand's 20-year Energy Efficiency Development Plan (2011-2030)

Natural gas and oil are the primary sources of Thailand's energy supply, comprising 40.8% and 35.8% of total energy consumption respectively in 2012. Renewable energy, coal and hydropower followed quite significantly behind as Thailand's sources of energy supply at 9.9%, 7.6% and 5.7% respectively.

Figure 18: Thailand's energy supply by source, 2012



Source: Energy Policy and Planning Office, Ministry of Energy

Imports account for over 60% of Thailand's primary energy demand. Dependence on external sources is especially marked in the case of oil, where 80% of domestic supplies are imported.

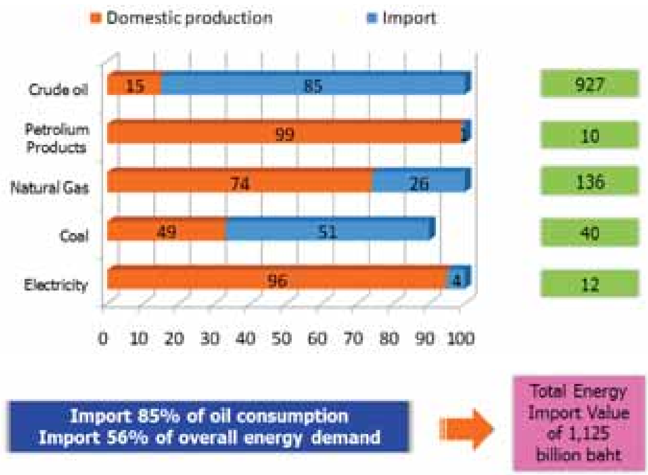
A focus on economic development of the remaining resources in the Gulf of Thailand and other prospective areas will provide opportunities to enhance future oil and gas production production. Even in the best case, however, Thailand is likely to be significantly dependent on oil and gas imports. To maximise security of future energy supply, Thailand should also aim to develop its gas and renewables industries. Energy efficiency and the development of alternative energies can help strengthen the robustness of the National Economy for this scenario.

Thailand's gas supplies are particularly important for the economy, providing the feedstock for two-thirds of power generation. Domestic sources currently account for 80% of total gas supply. It is however expected that production of local gas supplies has already peaked, and will decline unless full development of additional and significant remaining potential of the Gulf of Thailand, including in the Overlapping Claims Area, effectively takes place. Without continued high levels of investment, gas supplies will fall sharply from 2017 with a forecast decline from 2017-24 of 49%. Assuming a GDP growth rate of 3.7%, the total projected gap between gas demand and supply by 2024 will be 3,950 mmscfd. Thailand has significant additional domestic gas resources whose development can reduce the looming supply gap. This will require significant further continuous investment in current major projects. Thailand can deepen its close and productive economic relationship with the EU by addressing the issue of licence extension for these projects in a timely way. An early resolution of this issue, in line with international best practice, would enable Thailand to meet up to 35% of the projected gas supply gap from its own supplies. In due course, full development of the additional and significant remaining potential of the Gulf of Thailand, including in the Overlapping Claims Area, can provide important further gas resources to the Thai economy.

EU energy companies have made a significant contribution to the development of Thailand's gas industry. This has been one of the major successes in Thai-EU economic relations. As the cleanest hydrocarbon fuel (producing less than half the emissions of coal), gas has an important role to play in environmental management. Securing further gas supplies will ensure cheap and reliable feedstock for Thailand's power, petrochemicals, industrial and residential sectors. It would further protect the international competitiveness of key exports. Thailand is strongly encouraged to develop other alternative sources of power to meet rising energy consumption, at a competitive price compared to neighbouring countries.

Active development of alternative energy sources can also play an important role in securing clean and sustainable future energy supplies. Renewable energy should be a priority area for investment, especially solar energy, wind energy, micro hydro, biomass, biogas and waste/garbage.

Figure 19: Thailand's domestic production and import of energy in 2012



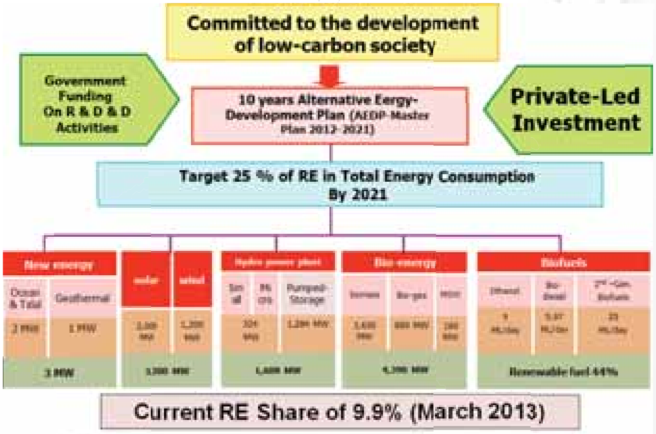
Source: Ministry of Energy

In its Power Development Plan (PDP 2011-2030) and Renewable Energy and Alternative Energy Development Plan (AEDP 2012-2021), the Thai government set a target of increasing the renewable energy share from 7,413 ktoe in 2012 to 25,000 ktoe in 2021, or 25 percent increase of total energy consumption. Key objectives under the AEDP include: strengthening the country's energy security; to promoting renewable energy projects at the community level as part of integrated green community; encouraging domestic production of renewable energy technology/industry; and strengthening competitive capability of Thailand's renewable energy technology in the international markets.

As the world's leading renewable energy and technology providers, European business can play a significant role in helping Thailand to achieve these targets. With the growing energy demand volatile prices and occasional interruptions to energy supply, as well as the need to address climate change, coherent energy policy has been placed at the heart of the EU. The EU has a long history working to forge effective cooperation and partnership on energy security and new energy development in order to diversify energy sources and enhance energy access taking account of issues and challenges of sustainable economic development.

Public policy has an important part to play in promoting renewable energy on a much wider scale and improving its accessibility. State support is needed to drive demand and reduce the cost of clean energy. Given Thailand's climate, solar power and other alternative energies should become an important source of Thailand's energy mix. The choices made by the government, businesses, and individuals in the next few years will have a major impact on the way the future unfolds. This highlights the need for businesses and governments to find new ways to collaborate and foster policies that promote the development and use of cleaner energy.

Figure 20: Thailand's Alternative Energy Development Plan (AEDP)



Source: Ministry of Energy

The formation of the ASEAN Economic Community (AEC) will intensify both competition and opportunity from the ASEAN region. It is therefore especially important that Thailand maintain a balanced portfolio of energy sources to meet rising demand. Given its strategic location in the region, Thailand also has the opportunity to become a hub for energy trade in a number of different sectors, including gas, electricity and biofuels. Central to achieving this will be the expansion of Thailand's energy infrastructure, such as its gas pipeline network, as well as its connections with its neighbours, as through the Trans-Asean gas pipeline. For Thailand to overcome all these energy challenges will requires a robust strategy and strong leadership to striking the optimal balance between economic growth, environmental sustainability and energy security.

2. Enhancing energy efficiency

Trends in demography globalisation, rapid urbanisation, climate change, and energy security create unprecedented challenges for business. The efficiency of the entire energy chain needs to be improved to shape a sustainable future. The Energy and Energy Efficiency working group is ready to bring European expertise to engage local business, policy-makers and the public to work together to meet targets to lower carbon emissions and prepare companies to deal with rising energy requirements and energy costs.

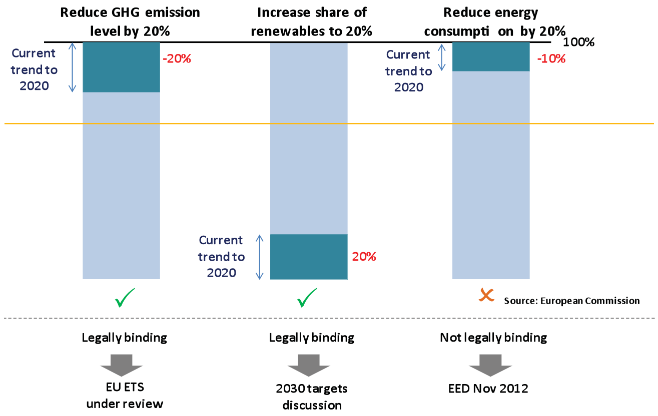
To ensure the country's energy security, Thailand not only needs to pursue a sound policy of energy diversification but also to reduce of its energy intensity. Meeting its targets for a new energy mix under the PDP and AEDP requires taking an inclusive, collaborative approach, in which policies are shaped taking into account relevant interests and concerns of all stakeholder groups and local communities. Promoting behavioural change through improved energy literacy to improve the country's energy efficiency will also be central to achieving this. It is important that the public understand the true costs and challenges of achieving energy security, and the implications of government targets for their everyday lives.

Lessons and success stories may be learnt from other countries. The EU has long been working on establishing an energy policy that would boost energy security and competitiveness while also tackling climate change, with a strong emphasis on cooperation and partnerships as well as strengthening of energy efficiency. This challenge is one of the biggest issues facing Europe today. To enhance energy efficiency and security, and to combat climate change, the EU has agreed to an ambitious set of '20X20X20' targets (as per details in the diagram below). Progress to date shows that significant progress can be made to reduce energy consumption and greenhouse gas emissions, and to increase the share of renewables in the energy mix.

Three main targets have been clearly set so the EU works to achieve by 2020:

- Reduce greenhouse gas emissions by 20 per cent;
- Increase share of renewable energy to 20 per cent;
- Reduce energy consumption by 20 percent.

Figure 21: The EU's 20X20X20 energy and climate targets



Source: Mr Nicolas Brizard and Prof. Christophe Ménézo in the presentation for Regional EU-ASEAN Dialogue Instrument (READI) Seminar on Energy Efficiency and Conservation in Buildings and Power Production in the EU and ASEAN Member States, 20-22 June 2013, BITEC - Bangkok, Thailand

Note: According to the European Commission, the EU aims to get 20% of its energy from renewable sources by 2020. Renewables include wind, solar, hydro-electric and tidal power as well as geothermal energy and biomass. More renewable energy will enable the EU to cut greenhouse emissions and make it less dependent on imported energy. Boosting the renewables industry will also encourage technological innovation and employment in Europe.

Finally, and importantly, the efficient allocation and use of resources in the energy sector can best be achieved by an open, flexible, competitive market-based system across all parts of the energy value chain, including a level playing-field for downstream activity.

Recommendation

The EABC Working Group on Energy and Energy Efficiency stands ready to engage with Thai and European officials and counterparts on policies and regulations in the field of energy, renewable energy and energy efficiency. We believe that EU investment, policy expertise, business experience and world-class technologies can make a significant contribution to meeting Thailand's ambitious energy supply and energy efficiency goals. On this basis, the Working Group proposes the following summary recommendations:

A. Optimise oil and gas development through international partnership

Ensure continuity of investment and production in oil and gas, especially in the Gulf of Thailand, through effective policy and deepening of co-operation with foreign investors.

B. Promote clean and renewable energy on a wider and more inclusive scale

Lower investment cost by implementing incentive schemes. Simplify the requirements and licences for returning surplus energy to the public grid. Facilitate financing solutions for clean energy solutions not only in the industrial heartland but also in tambons.

C. Focus on best practice in energy efficiency

Raise awareness of energy efficiency, and adopt international best practice, to realise energy saving potentials in industries like waste water treatment plants, PET bottling plants, car industries, Industrial Estates and many others. Also highlight investments in energy recovering solutions in manufacturing plants, using latest technology and energy saving solutions.

D. Develop a long-term vision for the build-out of smart energy infrastructure, including what is needed to import resources from abroad

Build smart energy infrastructure to ensure wide, equitable and efficient access to energy. An optimal mix of local and import sources will be required to create a portfolio of supplies with different modes of transport at the overall lowest average cost through scale and operational excellence.

The Energy and Energy Efficiency working group can help move local initiatives forward and match them with European experience and strategies to the mutual benefit of the Royal Thai government, its European partners, and the people of Thailand. This can be achieved through seminars and conferences for sharing views and information, facilitating dialogue, and promoting and implementing best practice.

Food & Beverages

Food and Beverages is regarded as a key industry for both Thailand and Europe. Global dynamism and regional integration bring about market opportunities; however, certain challenges remain as to applicable measures and regulations affecting the European Food & Beverage industry in Thailand.

To strengthen the competitive prospects of the industry, the EABC Food & Beverages Working Group advocates the following:

- **Thailand's redundant SPS measures and audit requirements, particularly on imports of fresh meat as well as fruits and vegetables, which are not in alignment with international standards should be dismantled. Thailand is strongly encouraged to accept internationally accredited certificates and testing results.**
- **The FDA product application process is streamlined to minimise delays.**
- **Thailand should commit to eliminating all discriminatory tax and retail licencing structures by a certain date.**
- **Alcohol beverages should not be excluded from the scope of any FTA. Thailand's 60 per cent import tariff on EU spirits should be eliminated.**
- **Rules of origin under an FTA should allow EU exporters maximum use of regional logistics hubs.**
- **Any public health measures applied to the alcohol sector should be evidence-based and proportionate.**
- **WTO TRIPS obligations regarding geographical indications should be implemented in full in Thai law and practice.**
- **The EU-Thailand FTA should seek legal prohibition in Thai law of the removal of producers' traceability information.**
- **Thailand is strongly encouraged to prioritise legislative amendments to address unauthorised use of trademarks regarding refilling practices.**
- **Reforms in Thai Customs practices and procedures should be expediently undertaken in order to remove incentives on individual Customs officers to challenge import transactions without justification.**

There are also competition and protectionist issues that need to be addressed. The Thai government has introduced many protectionist measures in recent years that seem aimed at protecting the dominance of this and other influential local players. It is important that EU investors and products (including exports into Thailand) are treated no less favourably than domestic products. The EU-Thailand FTA should be a key mechanism to ensure that such objectives are achievable.

The European Union has been playing a key role in world trade in agricultural products, food and beverages, as the world's largest exporter and importer of food and beverages. The Food & Beverages industry is the single largest manufacturing sector in the EU, with a total turnover of EUR 954 billion (accounting for 12.9 per cent of manufacturing overall). Comprised of over 310,000 companies (99.1 per cent of which are medium and small-sized enterprises: SMEs), it is also the leading employer in the EU with approximately 13.5 per cent employment of the EU workforce. The largest exported foodstuff out of the EU is distilled spirits with a total value of EUR 8.5 billion, followed by wine at EUR 8.1 billion in 2011. The EU is also a significant market for Thai food and agriculture products.

Thailand is one of the most important European investment destinations within South East Asia. The sole net food exporter in Asia, it ranks as a major food producer, not just locally, but worldwide. It dominates a number of food export sectors, ranking first in the world in 2010 for rice, cassava and tapioca, canned pineapples and seafood products. An abundance of natural resources, combined with relative technological sophistication, make this an investment destination of huge potential.

Even though the overall trade volume (including trade in agriculture, food and beverages) between Thailand and the EU has been increasing satisfactorily, there are a number of restrictions on the Food & Beverages industry faced by European businesses in Thailand.

Trade restrictive sanitary and phytosanitary (SPS) measures on the importation of food and agricultural products

- ***System audit and pre-listing of foreign meat establishments***

The Thai process for accreditation of foreign meat establishments is unnecessarily burdensome, lengthy and not very transparent. It is considered one of the main obstacles for EU meat exporters. In close consultation with the work done by the EU Delegation in Thailand, European businesses would like to see a more trade-friendly approach and an audit system, which is fully in line with the relevant international standard of CODEX Alimentarius (CAC CAC/GL 26-1997). This means for Thailand to carry out a systems-based approach to audits and/or inspections in the assessment of exporting partners' control systems with a process which is transparent and predictable.

This approach is built on recognition of the ability of exporting countries to provide sufficient guarantees to demonstrate that their exports meet the Thai level of sanitary protection. The system promotes the idea that establishments in exporting countries can be listed as being eligible for export to Thailand on the basis of these guarantees, with a view to facilitate trade flows and to avoid undue delays or overly burdensome costs. The competent authority of the exporting country proposes the establishments which could meet the Thai import conditions, which are then accredited and thus allowed to export to Thailand.

It is important to note that the EU follows this international standard strictly and applies it to its trading partners, including Thailand, which also benefits from this trade-friendly and transparent approach for its exports of animal and animal products to the EU. The EU puts trust in the Thai authorities by carrying out system audits to assess the performance of the competent authorities and does not carry out an audit on each and every establishment. When the competent authority system of control is assessed as satisfactory, the Thai authority can propose establishments which are able to meet EU import requirements and these are then listed, being authorised to export to the EU (the so-called 'prelisting system').

Thailand however does not systematically carry out system audits and each and every foreign establishment needs to be visited by Thai inspectors before it can be accredited. In practice, audit requests are not always followed up in a swift manner or planned audits to EU Member States are not carried out or are postponed, and reporting of audits is slow or does not follow. This means that trade is unnecessarily hampered and has meant that several EU exporters cannot start trading. Thailand requires, at present, an audit frequency of every two years (validity) when the frequencies should be based on risk analysis (i.e. findings of a certain number of non-compliant cases), not on a fixed cycle.

It is also noted that audit costs have to be paid by the foreign establishments. This is not in line with the CODEX Standard (CAC CAC/GL 26-1997). It is worth noting that EU audits carried out in Thailand for its exports to the EU are paid for by the EU.

In addition, several questionnaires are to be completed by the exporting country as part of the import application for animals and animal products into Thailand. The questionnaires require many details which are not considered in all instances relevant to ensure the safety of the commodities. It is also unknown whether these questionnaires are available on the web site of the relevant Thai authority.

- ***Pest risk assessment***

The Thai import system with regard to Pest Risk Assessment (PRA) is not transparent. This is due to unclear priority countries, absence of host countries for quarantined pests, lack of resources for inspection and discriminatory treatment (i.e. bilateral protocol with China), and being overly burdensome (heavy on-site inspection costs and lengthy procedures). In close consultation and working with the EU Delegation in Thailand, European businesses do not consider this to be in line with Thailand's obligations under WTO. Indeed the WTO SPS Agreement clearly states that import conditions should be based on scientific evidence and not be applied in a manner which would constitute a disguised restriction to international trade.

Since the implementation of the new Thai legislation in 2007, only a few PRAs have been carried out, which means that it would take several decades to follow up on all applications, while in the meantime import suspensions are applied for the countries who have submitted their application, yet which have not agreed to the treatment measure. In addition, Thailand also requires on-site inspections for each of the applications, which is considered unnecessarily burdensome.

The Thai import regime for plant and plant products is therefore considered not to be in line with the WTO SPS Agreement, as it is not set with the aim to minimise negative trade effects. With respect to a list of prohibited pests, however, Thailand has not been able to demonstrate a risk assessment for each of the prohibited pests, which includes surveillance and monitoring programmes carried out on the Thai domestic market. It is also believed that the audit requirement for establishing each and every PRA is not in line with the international standards of the International Plant Protection Convention (IPPC).

It is also our understanding that Thailand has conducted discriminatory treatment with the import of certain fruits from China under the "Protocol on inspection and quarantine conditions of fruits to be exported from China to Thailand". Under this bilateral protocol, certain fruits from China (namely oranges, apples, grapes, pears and jujubes) are not subject to the PRA process as required for imports from other third countries.

Recommendation

Thailand is encouraged to expediently address the trade restrictive nature of the aforementioned measures as applied to the importation of food and agricultural products.

Product registration and certification

Before being marketed in Thailand, a wide variety of products must be registered at the Thai Food and Drug Administration (FDA). These products range from food, food supplements, beverages and medical devices to animal health products, cosmetics, hazardous substances and all types of pharmaceuticals. Due to the large number of product applications filed at the FDA, and stringent registration requirements, registration timelines can be lengthy. In addition, there have been reports of concerns in respect of competing or potentially conflicting standards relating to imports of agricultural products, particularly those involving SPS issues and import procedures.

The EABC duly acknowledges the need to exercise caution and due care in the registration of food and beverages, as this concerns the legitimate protection of public health. Given the fact that Thailand is a very competitive world-class food and agricultural exporter, and positive market prospects of the AEC, improving predictability and consistency in the areas of technical standards will promote trade in food and beverages and significantly lessen companies' delays and additional costs. This undoubtedly will further promote trade development between Thailand and the EU.

Recommendation

The EABC wishes to see FDA product registration and certification being streamlined to minimise delays and food standards being comprehensively reviewed to ensure full compliance with Thailand's international trade obligations. The EABC appreciatively notes the constructive high level discussion with the Secretary General of the Food and Drug Administration (FDA) on 10 June 2013, and keenly expects to have continued dialogue and consultation between businesses and authorities to ensure better understanding and streamlined implementation of policies and regulations.

Discriminatory excise taxation and licencing fees on alcohol beverages

Thailand maintains a complicated and discriminatory tax and retail licence structure which favours domestic brown and white spirits over imported spirits and favours domestic traditional fermented beverages over imported wines.

Discriminatory tax treatment between similar domestic and imported products is non-compliant with WTO rules. The Thai authorities have themselves recognised that their excise tax regime is not compatible with their WTO obligations. Despite a welcome move in August 2012 to somewhat raise taxes on local spirits, the structural discrimination remains and continues to have a serious impact on EU spirit exports. EU spirit exports to Thailand declined from €80.5 million by value in 2005 to €68 million in 2011. Meanwhile, over the same period, sales of local brown spirits grew rapidly. There was also no movement in 2012 to redress the discrimination between the treatment of domestic traditional fermented beverages and imported wines.

Apart from the differential tax treatment, the Thai Liquor Act also discriminates against imported spirits with respect to licencing fees, with the license fees charged for selling domestic spirits being lower than those charged to sellers of imported spirits.

The European beverage alcohol industry, working with the European Commission, has been engaging the Thailand government on its longstanding excise tax discrimination against imported spirits and wines for a number of years. Concrete progress is yet to be achieved to effectively address discriminatory practices with respect to excise taxation and licencing fees on alcohol beverages.

Given the centrality of distilled spirits and other alcohol beverages to the EU's food and beverages export sector, of particular concern is the longstanding tax discrimination against imported spirits, which has led to declines in the volumes of imported spirits, even as overall economic growth and consumption of local spirits continue to rise strongly. Addressing this discrimination would level the playing field and unlock huge potential for European exports. The European industry therefore views that Thailand should immediately eliminate the excise tax and license fees discrimination between imported and domestic alcohol products – the obligations that Thailand is already required to observe under the WTO framework. The EU-Thailand FTA negotiations should provide an immediate opportunity in this regard. In addition, there should not be additional excise (or other tax) increases on imported products so long as the existing discrimination is in place.

In terms of structure, alcohol excise structure should be simplified towards a non-discriminatory, single, specific tax on a per-litre-of-pure-alcohol (LPA) basis. This is consistent with international best practice and recognised as such by the World Health Organisation's Global Alcohol Strategy. As well as being recognised as best practice, a single, specific tax would level the playing field between domestic and imported products; increase government revenue; and create a tax policy environment to support responsible drinking.

Recommendation

Thailand is encouraged to immediately eliminate the excise tax and license fees discrimination between imported and domestic alcohol products and there should be no additional excise (or other tax) increases on imported products so long as the existing discrimination is in place. In the long term, the alcohol excise structure should be simplified towards a non-discriminatory specific tax structure which is consistent with international best practice and recognised by the World Health Organisation's Global Alcohol Strategy.

EU-Thailand FTA Negotiations

The EABC fully supports the EU-Thailand FTA negotiations. Thailand has been identified as one of the most important European investment destinations within ASEAN. At present, the EU works closely with Thailand under many cooperation forums to secure a cooperative environment for trade and investment relations. The EABC strongly believes that the parties should aim to launch the ambitious FTA, which would deliver significant liberalisation to both parties, with all economically significant chapters being included into the scope of the negotiations.

- ***Elimination of high import tariffs and non-tariff barriers***

Thailand's FTAs with key trading partners have provided for tariff reduction of various food and beverages products across the board to the competitive disadvantage of similar products from the EU. Importation of fruits, vegetables and meat products from Europe into Thailand is subject to stringent – or even redundant – SPS standards and requirements. Licenses to import are not automatically granted to all applicants. The EABC therefore supports the negotiation of the EU-Thailand FTA to significantly reduce import duties for European food and beverages, as well as to facilitate and remove redundant non-tariff measures in order to improve market access for European food and beverage products.

Despite no import prohibition on alcohol beverages, Thai import tariffs on alcohol beverages in general range between 54-60 per cent, which is high by both regional and global standards (for example Singapore: 0 per cent, China: 10 per cent, Korea: 0 per cent under the EU-Korea FTA once fully implemented). The high tariffs and taxes lead to a high prevalence of informal activity. By way of comparison, in the ASEAN-Japan FTA, Thailand eliminated its tariffs on Japanese-origin spirits and under the ASEAN-Australia/New Zealand FTA, Thailand eliminated its tariffs on both spirits and wines, albeit in both cases over a transitional period.

Tariff elimination is crucial for EU alcohol beverages to realise their potential in the Thai market by reducing excessive tax burden given the multiplier effect of the overall tax calculation (i.e. tariff will be part of the tax base for further domestic taxation). Removal of tariff and non-tariff barriers will lead to favourable outcomes for Thailand, not only in terms of reduction in non-tax paid activity (smuggling and counterfeit), but also in support of long term growth in government revenue through an expansion of legitimate goods – at the expense of non-tax paid alcohol – which will also support the further success of Thailand's tourism and hospitality industry. Given the size, distribution reach and robust growth of domestic alcohol beverages, tariff elimination on imported products will have little impact on their growth prospects in the long term[26]. Indeed, countries like China and Japan where import tariffs on imported alcohol products have been reduced / eliminated still have a domestic industry that make up 98-99 per cent of the total alcohol market.

[26] According to International Wine and Spirit Research data, imported spirits have declined by almost 8 per cent year on year between 2007 and 2011, whereas local spirits have grown by 4 per cent over the same period. In 2011, imported spirits made up less than 5 percent of total distilled spirits in Thailand.

Recommendation

The EABC encourages the EU and Thailand governments to accelerate progress towards completing the negotiations to conclude an ambitious EU-Thailand FTA, ensuring that all key areas and products are included in the FTA scope with the aim of eliminating high import tariffs (including on spirits and wine).

- ***Rules of origin to allow maximum use of regional hubs***

The European wine and spirits sector would favour rules of origin that allow the use of the regional hub model and retain eligibility for preferential tariff rates. Many countries use regional hubs to consolidate shipments of non-country specific bottles and apply country specific back labels and tax stamps when it is required. Regional hubs provide time and cost savings for consumers and importers.

Many companies use regional hubs to consolidate shipments of non-country specific products, and apply country-specific labels and tax stamps (where required). The hub model significantly decreases order fulfilment time for customers, provides for significant cost savings, and adds flexibility. Ensuring rules of origin that will allow EU exporters to maximize the use of the regional hub model while retaining eligibility for preferential tariff rates should be a priority in all FTAs[27].

As a related matter, it is increasingly common that the certificate of origin and transportation documents may show the goods coming from one country (e.g. the United Kingdom), but the invoice may show a billing entity in a different country (e.g. Netherlands). In the absence of any explicit treatment on re-invoicing in the FTA, Customs in the importing country may cite this discrepancy as grounds to deny FTA benefits. The FTAs should include a clause that specifically allows for this type of re-invoicing.

Recommendation

As the number of FTAs in the region increases, we are asking to allow products which are produced wholly from qualifying goods from a number of countries with which the country has an FTA to qualify for the preferential agreement accorded by any of the FTAs.

Lack of certainty in the Alcohol Advertising and Beverages Control Act

The Alcohol Advertising and Beverages Control Act (ABCA) was introduced in 2008 to govern the sale and advertising of alcohol beverages. The industry (including traders/distributors/outlets) has experienced great difficulty in the reliable interpretation of the ABCA and has consequently faced a number of unfair actions by government bodies and individuals.[28]

From a business perspective, the ABCA includes terms which are unnecessarily restrictive. Arguably, the ABCA favours domestic manufacturers and has created a high level of uncertainty for the industry. The definition of 'manufacturer' is not clear and appears to discriminate against importers and distributors of imported alcohol beverages.

Recommendation

The EABC is concerned with the lack of transparency and uncertainty in the application of alcohol-related legislation including the ABCA. The Government is encouraged to comprehensively review the ABCA, in full consultation with industry and other stakeholders, to ensure that there is greater clarity on alcohol advertising and that any discrimination against imported products is removed.

[27] The current standard language used in EU FTAs does not permit any processing or manipulation of exports in third countries before arrival in the importing country, other than loading and offloading of a vessel.

[28] For example, section 32 of the ABCA stipulates that no person shall advertise alcohol beverage products by presenting the names or marks of the product in the manner of "product quality assertion" or the "inducement of other persons for consumption". However, there are no clear definitions of "product quality assertion" or "inducement of other persons for consumption" given under the Act. In addition, there are certain terms under the same section which can be interpreted as an exemption of the above terms for advertisements made by the manufacturer. In particular, the said terms require that the manufacturer can advertise or engage in public relations so long as it was for the purpose of providing information and socially constructive knowledge. According to these terms, it appears that the manufacturer and other types of business operators (e.g. importers and distributors) have been treated differently under the Act.

Graphic health warnings labelling for alcohol beverage products

In May 2009, Thailand issued a draft Notification calling for graphic health warning labelling on alcohol packaging, mirroring tobacco regulation. This would require grim colour pictures (e.g. of bloody road accidents, suicides, domestic violence, etc.) to cover up to 50 per cent of the total product packaging area along with text warnings stating that alcohol consumption per se will lead to the harms portrayed. The proposal continues to be considered by Thai authorities.

The EABC recognises Thailand's right to regulate alcohol beverages and we fully support targeted initiatives to reduce alcohol-related harm. However, we are concerned that the proposed labelling requirements are extreme and disproportionate measures, which no other country in the world has mandated. The EABC recommends that graphic health warning labels on alcohol beverages should not be introduced. Instead, the government should engage constructively with all stakeholders to identify more appropriate and targeted initiatives to reduce alcohol-related harm.

Unlike the World Health Organisation's Global Alcohol Strategy, the proposal does not make the very important distinction between the harmful use of alcohol and alcohol consumption per se. The extreme imagery of the proposed labels would project a negative and distasteful portrayal of Thai society, and do serious damage to its reputation as a tourist destination. Alternative approaches, which are evidence-based and less trade-restrictive, could achieve the same policy objective. It is also important to note that the Technical Barriers to Trade (TBT) Committee under the WTO should be informed about any further developments regarding this issue.

Recommendation

Graphic health warning labels on alcohol beverages are not introduced and that the Government engage constructively with a broad range of stakeholders to identify more appropriate and targeted initiatives to reduce alcohol-related harm.

Unauthorised use of trademark regarding refilling practice

The EABC is concerned about the lack of effective application and enforcement of the Trademark Act B.E. 2534 in respect of the food and beverages sector, as well as the lack of deterrent fines or penalties against whiskey counterfeiters (i.e. those who resell genuine bottles and packaging of European liquor refilled with non-genuine liquid). The current Trademark Act does not consider the use of a genuine trademark for such practices as a violation under the Act, and therefore penalizes only those who counterfeit or imitate a trademark. Infringements and violations are currently dealt with under general criminal law. In such cases, although the Court may award damages, most companies consider any damages awarded to be too small to be an effective deterrent.

It is recognised by industry operators that this practice has been widespread for a long time. The challenges we face should not be underestimated and our pressing priority is timing. Alarmingly, based on information collected by the industry, more than 800,000-1,000,000 bottles of violated products are sold each year in Thailand. Rampant and unchecked refilling now affects a broad range of products, resulting in large damages to trademark holders' revenue and reputation. Just as importantly, consumers are at risk as the infringed products are sub-standard and may possess dangerous contaminants. This may lead to further damages to the trademarks as consumers are led to believe that the consumed products are genuine.

Recommendation

At the earliest opportunity, Thailand is strongly encouraged to push for necessary amendments to the current Trademark Act to illegalise the practices of refilling and reselling genuine bottles with deterrent fines or penalties.

Reform in Thai Customs practices and procedures

Under Thai law, customs officials who identify erroneous or fraudulent customs transactions are rewarded by receiving a percentage of the damages paid by the offending importer. The stated purpose of the policy is to professionalize the customs authority by eliminating the customs officials' vulnerability to bribery and encouraging strict and fair application of the customs laws. The effect, however, is that customs officials have a personal stake in the outcome of reviews and challenges to import transactions, which eliminates their objectivity in evaluating appeals. Further, there are no clear administrative review procedures in place for challenging customs transactions. The lack of clearly defined administrative steps with clearly established deadlines for action results in administrative challenges that linger indefinitely.

Recommendation

The personal incentivization scheme should be removed, or, at a minimum, administrative processes should be put in place that ensure that customs officials who have a personal stake in the outcome of a decision are excluded from any involvement in the matter after it has been brought to the attention of appropriate officials.

The EU-Thailand FTA should lead to reforms in Thai Customs practices and procedures in order to remove incentives for individual customs officers to challenge import transactions without justification.

The EABC supports legislative changes to enhance transparency in customs procedures, particularly in respect of customs valuations and taxation issues, in order to address current problems with respect to customs procedures as implemented by the customs authorities, as this will provide a meaningful contribution to facilitate trade. Full details as to our proposed recommendation with respect to the Customs law amendments can be found in the earlier section on Cross Sectoral Issues of this Position Paper.

[1] Source: World Investment Report 2013

Healthcare & Pharmaceuticals

Striving to move beyond middle income status, economies such as Thailand have been shown to rise up the global value chain through the application of knowledge to become innovation-based economies, which increases and translates national capacity to growth. In anticipation of the EU-Thailand Free Trade Agreement (FTA) and ASEAN regional economic integration, Thailand's investment creation dynamics need to change pace, from attracting physical assets to driving the generation and industrialization of intellectual capital. Innovation cannot succeed and be sustainable without a number of key enabling conditions:

- **Effective enforcement and protection of innovation for sustainable growth;**
- **Viable and fair market mechanisms; and**
- **Clear and transparent administrative procedures.**

The EABC highly recommends that Thailand nurture and reinforce these enabling conditions to not only capitalize on expanded trade in goods and services, but also to grow and monetize the nation's intellectual capital with European partners in the healthcare and pharmaceutical industry.

In a competitive global economy, while innovation is important in all industries, from high to low tech, investment in new technologies, infrastructure and human capital ensures the increase of national capacity to transmit and apply knowledge that is not easily codified. Health remains an integral tenet central to development and is also in and of itself an investment that enables economic growth and poverty reduction. In 21st century healthcare, no one category of stakeholder can solve the next generation of communicable and non-communicable disease burden and development challenges alone – partnerships are essential. By creating partnerships of shared value between the public and innovative private sector, the private sector can offer not only expertise, resources and wealth creation in the communities in which they operate, but by aligning with the country's development agenda they can propel the progress of that agenda.

The current global economy is characterized by Global Value Chains (GVCs), in which intermediate goods and services are traded in fragmented and internationally dispersed production processes. To successfully be a part of this value chain in the healthcare and pharmaceutical sector is highly challenging. For Thailand to succeed as a healthcare hub, to create high-wage employment and economic growth, and to evolve as knowledge-based economy, becoming a critical part of the global healthcare value chain will be essential. Foreign direct investment has been observed to be one key factors of success. The World Investment Report 2013 states that: "Countries with a greater presence of FDI relative to the size of the economies tend to have a higher level of participation in GVCs and to generate relatively more domestic value added from trade"[29].

A recent study by the World Intellectual Property Organisation (WIPO) suggested that countries such as Thailand are well positioned to take action in the new innovative knowledge-based economy, given that innovation is stimulated and sustained by early institutionalization of national models that link various stakeholders[30]. The pharmaceutical industry is a prime example of a high-tech sector harnessing technology and innovation to serve unmet medical needs and improve productivity and efficiency of economic growth. Figures[31] show that the global pharmaceutical market will reach a value close to USD 1,200 billion by 2016. Becoming a part of this global value chain will be significant to the Thai economy, allowing Thailand to benefit from the right EU partners sharing similar values in incremental innovation, knowledge gain and international best practice.

In 2010, the WIPO global innovation index illustrated that R&D spending by the pharmaceutical and biotechnology sector grew by 6.2 per cent, strengthening its position as the top R&D investing sector. The bulk of the investment was to serve new medical needs and improve on current ones, in an environment where as a result of changing demographics, both communicable and non-communicable diseases create new challenges for the health system.

Thailand is not immune. The elderly population is projected to grow, with rising demand for pharmaceutical products, diagnostics and medical devices, while newly emerging diseases and re-emerging diseases will be the consequence of greater migration as the AEC is fully implemented. It should be noted that the prevailing weak enforcement against counterfeit products, protection of patent rights holders, potential threat of compulsory licenses, low per-capita healthcare expenditure, a 'pro state enterprises' uneven playing field between pharmaceutical companies and the Government Pharmaceutical Organisation (GPO), and regulatory inconsistencies will continue to deter foreign direct investment from overseas partners seeking to further endow their intellectual capital within the region.

To be prepared and to capitalize on the economic opportunities, Thailand needs to take the lead in the healthcare industry in the region, not only in the provision of services but also by becoming part of the intellectual global value generation chain. To succeed in the global value chain, Thailand is urged to enable and ensure three key conditions: Effective enforcement and protection of innovation for sustainable growth; Ensuring a viable and fair market and regulatory mechanisms, supportive of a sustainable business environment; and Clear and transparent administrative procedures.

Effective enforcement and protection of innovation for sustainable growth

As an important requirement for the promotion of R&D, innovation and high-skilled employment, the protection of intellectual property rights is crucial for the investment climate and overall competitiveness. But more critically, measures to control counterfeit products must be strengthened, especially in relation to pharmaceutical products.

Not only is economic loss[32] a result of the existence of counterfeits, but endangerment of health and safety to patients and the public has become a critical health issue. Fake, falsified or counterfeit medicines pose a public health risk because their content can be dangerous, lacking, or contain the wrong proportion of active ingredients. Counterfeit or falsified medications can lead to varying degrees of ineffectiveness and danger. Their use can result in treatment failure and contribute to increased resistance as with counterfeit antimalarials that contain insufficient active ingredients, or even death in cases involving lifesaving medicines.

In 2011, EU customs officials seized more than 27 million fake medicinal products in 2,500 cases of anti-counterfeiting enforcement, a dramatic rise compared to 2010, when 3.2 million fake medicines were found. Overall, counterfeit drugs and condoms accounted for one-quarter of EU seizures[33]. In contrast, only six and eight cases of imported counterfeit goods were recorded by the Thai Drug Control Office in 2006 and 2008 respectively[34]. For a nation with high cross border and internet based trade the small number of detections may be indicative of a need to provide greater resources to detect and stop such growing illicit trade from affecting both the nation's health and the economy.

[30] INSEAD, WIPO (2012) The global innovation index 2012: Stronger innovation linkages for global growth. Geneva: World Intellectual Property Organization. http://www.wipo.int/econ_stat/en/economics/gii/
[31] International Federation of Pharmaceutical Manufacturers & Associations (IFPMA)

Recommendation

Enforcement against manufacturing, importing or sale of counterfeit drugs, particularly the de facto implementation of enforcement actions is in great need of strengthening. Reassessment of penalties should be done to allow for a better deterrence. The EABC strongly urges the Thai intellectual property enforcement authorities as well as other relevant agencies including the Thai Food and Drug Administration (FDA) to enhance the effective legislation allowing tougher sanctions, and effective enforcement against providers, conveyers and facilitators of counterfeit medicines including those purchased over the Internet.

To maximise gains from the EU-Thailand FTA negotiations and create the right investment environment, it is vital for Thailand to ensure appropriate protection of the legitimate interests and investments of right holders against increased possibility of infringement to the detriment of both European pharmaceutical companies and Thailand's prospect of promoting R&D and innovation.

Ensuring fair market and regulatory mechanisms, supportive of a sustainable business environment

Public procurement represents a major market mechanism contributing to a viable and sustainable business environment for both overseas and local entities. Any absence of open competition and of impartiality in the process limits availability to the population and healthcare practitioners whilst creating de facto barriers in addition to tariffs and other non-tariff barriers.

- **The regulations of the Office of the Prime Minister on Procurement B.E. 2535 (1992)**

allows the state enterprise – the Government Pharmaceutical Organisation (GPO) – a strong preference and price advantage which distorts the market mechanisms of the public healthcare and pharmaceutical market.

More specifically, 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.

o *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.*

o *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.*

o *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 advantage. 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.

[32] The earnings from the largest illegal online medicine sellers are estimated at USD 1 million to 2.5 million monthly, based on data collected by University of California San Diego (UCSD), PharmaLeaks: Understanding the Business of Online Pharmaceutical Affiliate Programs, 2012

[33] Security Industry, EU fake medicine seizures soar 700 per cent in 2011, Nick Taylor, 25 July 2012

[34] www.who.int/impact/activities/Thailand_JAKARTA_Conf.ppt

Recently, as the 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 none essential or life-saving medicines as required by the normal fast track criteria
- Be the exclusive supplier of the selected generic items.

Recommendation

With a view to fostering long-term development and competitiveness for Thailand's pharmaceutical industry, it is advisable for Thailand to remove restrictions and partiality treatments which have curtailed open competition while disadvantaging other enterprises in favour of a single state enterprise.

The presence of non-tariff barriers which favour a state enterprise agency weakens the nation's competitiveness and attractiveness for investment. A level playing field is critical for competition in both the public procurement process and the private market place. It is therefore critical that a repeal of inappropriate legislation, in both procurement and regulatory levels, as well as the Trade Competition Act, be undertaken most urgently and the public procurement market be liberalized to allow for competition on equal grounds.

- **The Civil Service Medical Benefits Scheme (CSMBS)** is an integral component of public employment in Thailand, reimbursing the full healthcare costs for each civil servant. On-going procurement and reform of the CSMBS continues to be a growing concern for Thailand's patients, doctors, and healthcare industry at-large.

A new price negotiation procedure has been established, with uncertainty in criteria, scope and timelines, specifically only the medicines which are not in the National List of Essential Medicine (NLEM), and which are mostly innovative medicines. Compulsory Licensing has also been presented in the process as the last resort if the price negotiation does not yield the desired results.

CSMBS cost containment measures have been considered to include the establishment of Non-NLEM Prescription Criteria as the limitation of the prescription specifically for medicines which are not in the NLEM, as well as enhancement of generic promotion policies. In some specific therapeutic areas like anti-cancer and rheumatoid products, the reimbursable lists of innovative drugs have been established since 2006, but the lists have never been updated. This, hence, affects access for patients requiring special treatments and physician prescription.

While the NLEM has been referred to as the reference list for the public healthcare sector as such, the cycle of revision announcements of the NLEM is done only every three to four years which makes the list rather outdated and creates problem with access. Furthermore, selection criteria based on a ranking formula with price as the predominating driver excludes the value of innovation to therapeutic outcomes while accentuating cost as the deciding factor.

Recommendation

It is recommended that prescription and reimbursement should be applied based on clinical needs and international standard practices including the innovative medicines outside the NLEM. The reason given is that the NLEM contains a limited number of items, the majority of which are generic drugs and it therefore should not be implied as a comprehensive list.

In accordance with NLEM evaluation procedures, clear selection criteria on a thorough and transparent needs analysis, taking clinicians' professional expertise on therapeutic choice into consideration would be crucial in ensuring patient access to medicines. An official communication dialogue, industry involvement and establishment of defence mechanisms as well as a clear regular update cycle and timeline would enhance transparency in evaluation procedures and upgrade practice to a higher level, as currently in place in other countries.

The EABC also encourages the outline of clear criteria, scope and process aimed at increasing transparency and mutual understanding; this is not only in the process of price negotiation but also the review of the prior authorization list to include an up-to-date drug list, diseases and recent approved indications which will be highly benefit to patients.

The EABC also underlines the importance for Thai authorities to engage all stakeholders in collaboration and discussion. We strongly believe that collaboration between regulators and the private sector would create better and sustainable solutions towards enhancement of access to medicines.

▪ Referring to the development of the **Drug Act and Thai Regulatory System,** the current version of the Thai Drug Act dates back to 1967. Purportedly, the revised and updated version of this Draft Drug Act is pending under consideration of the Council of State. Noting the beneficial aspects of the new Drug Act, particularly in improving pharmaceutical product regulations, regulatory procedural efficiency as well as enhancing consumer protection, the Act remains of great concern to the European healthcare and pharmaceutical industry. These concerns mainly relate to regulatory requirements on drug registration applications where if it is legislated, the Act will require mandatory disclosure of patent information of the new drug upon submission. Subject to any patented new drug, the disclosure of the price structure would also be required.

In addition, one provision in the new Act would clearly empower the Thai FDA to refuse regulatory approval in the event that the price of a patented new drug is deemed unreasonable or not cost-effective, however the criteria for justification of this remains uncertain. These additional imposing requirements are deemed as technical barriers to trade and barriers to the access of medicine to Thai society as a whole. It is a distinctive discriminatory practice levied on new patented medicines.

Recommendation

The EABC believes the new Drug Act will be beneficial for improving pharmaceutical product regulations as well as for consumer protection. There are some key concerns which may negatively affect access to medicine for Thai society and as such, the EABC urges the Government to consider amendments of some provisions in the Act as follows:

- In accordance with the submission of patent information, the establishment of a process of conditional marketing authorization approval for generic drugs, whereby such drugs will be approved under the condition that they can only be marketed once the patents for the originator drug as disclosed in the drug application have expired or if it can be proven that such drug has no patent protection or pending patent application. This process would benefit the prevention of unintentional patent infringement by generic companies.

- The removal of the clause requiring disclosure of the price structure would be a fairer practice considering it is deemed a trade secret. It is worth mentioning that the pricing structure is and should remain under the administration of the Department of Internal Trade provided that no discrimination between patented and non-patented drugs should be observed.

- With regard to the regulatory evaluation of new drugs, the EABC recommends that the evaluation should retain its focus on aspects pertinent to efficacy, safety and quality as required to ensure effective consumer protection. Cost effectiveness, which in the current draft of the Act, is not defined in justification criteria and should not be deemed a criterion for regulatory approval or refusal.

This would establish similar practice to other countries, where the control of marketing authorization approval and price are ordinarily separated and administered by different control mechanisms and by different government authorities.

The EABC also stands ready to support and collaborate with Thai authorities in finding creative solutions for improving regulatory approval efficiency, capacity building, sharing best practices and system development.

Bolstering for clearer administrative procedures

Lack of information relating to administrative procedures of the public authority has proved to be a challenge for the pharmaceutical industry. Examples identified include that in the process of requesting for a listing in the National List of Essential Medicine (NLEM), there is no clear information or update on the request provided by the Thai authority to the applicant. These concerns are the result of a lack of transparency in the evaluation procedures as well as a lack of official communication to applicants relating to the authorities' reasons of inclusion, exclusion and not encouraging industry involvement during National Drug Listing.

The recent Notification of the Thai FDA regarding the GMP Accreditation of an Overseas Manufacturer, which came into force on 1 October 2012, indicates that business operators in the healthcare and pharmaceutical industry who import drug products from new overseas manufacturers must submit all of the following additional documents:

- A Plant Master File, complying with the requirements stated in the Notification of the Ministry of Public Health re: Good Manufacturing Practices (GMP) and Requirements for Manufacturing of Modern Drugs in accordance with the Drug Act B.E. 2555 (2012).

- A flow chart and other relevant information indicating all manufacturing processes, including premises and equipment involved in the manufacturing of such pharmaceutical products.

- A GMP inspection report, issued by the authorized government agency of the country of origin or the International Certificate Organizations (if applicable).

- A current Certificate of GMP, issued by the authorized government agency of the country of origin.

The requirements are shown to be in accordance with international standards, yet the de facto application and interpretation of requirements may pose to be more challenging than general practices, for instance the submission of drawings or photos of manufacturing premises is interpreted by the Thai FDA as a mandatory document rather than a preferred option as is practice under the GMP Guidelines of the European Medicines Agency.

The timeline and evaluation procedures of this GMP Accreditation for overseas manufacturers remain unclear and uncertain, which may become another barrier in evaluation during registration procedures. Until now, none of the GMP accreditation applications has been evaluated or approved, because the checklist for evaluation remains underdeveloped.

Undeniably, the authorities should prepare by ensuring the readiness of their management system and resources, as well as communicate to achieve mutual understanding with all stakeholders prior to the implementation of any new or amended laws and regulations. A transition period for industry preparation and adjustment should be allowed to ensure smooth implementation with fair and appropriate treatment.

Recommendation

In ensuring a clearer process for registration in the NLEM and the Notification of the Thai FDA regarding the GMP Accreditation of an Overseas Manufacturer under the Ministry of Public Health, it should be noted that there is a strong need to establish administrative guidelines. The EABC encourages the Thai authorities to consider the creation of such guidelines, to be standardised and applied to all applicants equally.

Information and Communication Technology (ICT)

The ICT sector can represent about 10 per cent of a nation's GDP, and are regarded as strategic – efficient functioning can have a 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 two sub-sections, Telecommunications and IT. Recommendations are summarised at the end of this ICT section.

This paper underscores the importance of service sector liberalisation, the attendant challenges and the benefits this brings.

Telecommunications: **The sector has a dual role in the economy but in Thailand it underperforms; some services available in many other markets are currently not available in Thailand. Thailand continues to lag in relevant rankings such as the Networked Readiness Index and Cloud Scorecard. Although competition on price has been strong, competition on service and innovation dimensions is only starting to take hold with the advent of mobile broadband. There are some positive developments with the issuance of new spectrum with licences directly from the regulator, the National Broadcasting and Telecommunications Commission (NBTC) and the introduction of regulations to support better interworking. The root cause about structure and some operational issues. Global norms have not been used, and the evolution of relevant State Owned Enterprises (SOEs) has stalled.**

Recommendations include enforcing a wholesale market with non-discriminatory, cost-oriented rates, SOE strategy to evolve to be network operators (notably wholesale) and not trying to be retail mobile service providers; proceeding with spectrum return to the NBTC for re-issuance rather than extending SOE use; moving away from the concession era to arms-length licensing directly from the regulator, the NBTC. Broadband development similarly needs a co-ordinated, structured approach. The Foreign Dominance Notification which limits foreign involvement sends a negative message about investment and has, we believe, no place in the industry.

IT: **Challenges in this sector are not about structure, but other issues. The development of Thailand as a competitive and innovative IT and software services hub could also be the story of productivity gains, skills development and creating innovation hubs. But there are barriers. A review of the work permit and visa regime is needed to ensure free movement of the necessary skills, and again broadband services are needed. Much better access to funding, IT procurement issues, and creative economy with an IT focus are other areas receiving attention.**

We seek a thriving, innovative, attractive and efficient ICT sector which contributes more positively to the economy which it serves, to quality of life and to the attractiveness of Thailand as a regional centre.

The papers from the ICT Conference on 2 July 2013 'Unlocking ICT: an engine for innovative growth' found on the EABC website act as a useful collection point to illustrate many of these policies.

Recommendations are summarised at the end of this ICT section.

A. Role of ICT

The ICT sector in Thailand plays a vital role for the wider services sector. It is a strategically important sector that enables and strengthens key economic processes in the economy. Where the ICT sector is well-functioning, efficient, effective and innovative it will have a positive multiplier effect on the economy as a whole.

B. Telecommunications

1. The Data and trends

While 2G / 2.5G mobile penetration is now well above 110 per cent (a simple measure of number of post-paid and prepaid subscriptions divided by population), and 3G is starting to grow, other measures show less impressive results. Fixed line broadband penetration is low at around 5 per cent and mobile broadband is in its infancy in Thailand (but is expected to grow rapidly). Broadband penetration will continue to be impacted until there is a more conducive industry structure, with a wholesale market and regulated access to base infrastructure and services. The recent award of technology neutral mobile licenses (generally referred to as '3G' although it may be deployed for 4G/LTE) in the 2.1GHz spectrum outside the Concession system (i.e. with direct licensing from the NBTC to operators) should provide a solid basis for the provision of wireless broadband in Thailand, thus stimulating more innovative competition on services rather than just price.

Services for corporates are also not up to the standards available in some other ASEAN markets, thus having a negative impact on other sectors. Overall service quality in Thailand (availability of broadband, and range of service offerings for businesses) is not close to what it should be, except on one dimension – price.

The advent of smartphones, cloud computing, consumer and other data retention, management and analysis, and the data centre industry have combined to place massive demands on networks and the need for greater fixed and mobile bandwidth.

2. Role of telecommunications

As noted in GATS (and many FTAs with telecommunications chapters), the telecommunications sector has a dual role in the economy:

(ii) An industry in its own right, contributing often as much as 10 per cent to a nation's GDP; and
(iii) a support sector for the rest of the economy

A well-functioning, efficient, effective and innovative ICT sector has a positive multiplier effect on the economy.

Within a certain band from example, an increase in 10 per cent mobile penetration can contribute to a material percentage increase (in single digits) in GDP. Other dimensions include the productivity and efficiency gains in the economy brought about by ICT advances, contribution to better education and quality of life.

ANNEX ON TELECOMMUNICATIONS - GATS

1. ***Objectives***

"Recognising the specificities of the telecommunications services sector and, in particular, its dual role as a distinct sector of economic activity and as the underlying transport means for other economic activities, the Members have agreed to the following Annex with the objective of elaborating upon the provisions of the Agreement with respect to measures affecting access to and use of public telecommunications transport networks and services. Accordingly, this Annex provides notes and supplementary provisions to the Agreement."

3. Sectoral development and frustrated prospects for growth; the importance of industry structure

The telecommunications industry works best when well structured; a structure that is currently not present in Thailand. No part of the telecommunications industry has been able to evolve and develop in ways in which it might have, nor in ways which would provide better support for national economic development and various user groups, including businesses.

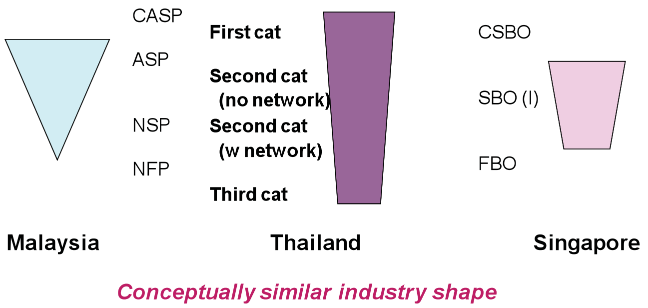
For a very long time the effects of vested interests and the lack of an over-arching and well supported vision for the industry have combined to frustrate real progress. In some respects Thailand has an almost unique history in this regard, but the issues are by no means novel or unique. Thailand has not followed certain global norms which are almost universally standard in the sector even in many less developed economies, although in some instances it has, or has had plans to do so.

The dual role of the industry (described above) means that these issues are economy-wide and not just sector specific.

The legislative basis for the industry in Thailand are Article 47 of the Constitution of Thailand B.E. 2550 (AD 2007), the Telecommunications Business Act (TBA) B.E. 2544 (AD 2001 and amended AD2006), the Act on Organisation to Assign Radio Frequency and Regulate Broadcasting and Telecommunication Services B.E. 2553 (2010) which replaced the BE 2543 (AD 2000) Act, and numerous regulations and notifications issued by the former National Telecommunications Commission (NTC) and current 'merged' regulator the National Broadcasting and Telecommunications Commission (NBTC).

The TBA prescribes three categories of licence, a practice which is in keeping with global norms. The idea is that appropriately structured industry is efficient, effective, attractive and innovative, and has the means to avoid non-productive, duplicative investment. This can be achieved through cost-based, regulated access to basic infrastructure, as well as infrastructure sharing on a competitive basis, with confidence in the rules. There are many more category 1 licences, fewer category 2, and even fewer category 3. The diagram illustrates how conceptually similar the basic structure is (using the relevant legislation) to two other ASEAN economies– i.e. the basic legislation is in place. The acronyms or terms used for the other two markets can be approximated to the categories in Thailand.

Figure 22: Comparison of industry structures



Thus it is not the basic legislation in this respect which is the cause of concern; it is the implementation of the next level of rules, the unevolved state of the SOEs, industry governance and operational practices which are the concern.

The telecommunications industry is arguably the most interdependent industry in the world. It cannot work without interoperability, without interconnect and thus standards. It will not operate on an optimum cost structure if every operator has to build and operate infrastructure and services at every level. For example, in Thailand mobile operators should not have to build out anything like the level of backhaul infrastructure (or other passive infrastructure) which is currently required. As the majority of the telecommunication infrastructure in Thailand historically has been constructed on a Build Transfer and Operate (BTO) principle, and such infrastructure is to be handed over to TOT Pcl or CAT Pcl upon expiry of the Concessions, the concentration of control over essential facilities and key network elements is significant. This cannot work without other 'soft' infrastructure such as enforced competition regulation. And due to the massive abuses of position which can occur, by its very nature it works best if regulated where rules are transparent, fair and enforced.. Industry structure and a range of predictable rules of engagement in support of access, free and fair competition are paramount.

The above BTO Concessions will expire as follows:

Expiry	Concession	BTO owner	Spectrum holding
Q4 2013	True Move	CAT Pcl	1800MHz 12.5Mhz
Q4 2013	DPC (AIS)	CAT Pcl	1800MHz 12.5MHz
Q4 2015	AIS	TOT Pcl	900MHz 17.5MHz
Q4 2018	DTAC	CAT Pcl	1800MHz 50MHz* 850MHz 10MHz

**Only 25MHz approved for utilization.*

We believe it is now becoming most urgent for Thailand that the sector functions properly so as to increase its contribution to the economy, and furthermore, that telecommunications be empowered to play a key role in enhancing Thailand's attractiveness for domestic and foreign investment.

It is (unfortunately) well-acknowledged that Thailand is lagging on almost all 'network readiness' / 'knowledge economy' indicators. This fact is reflected in (among other places) the second five-year ICT Master Plan (published October 2009 by NECTEC and the Permanent Secretary of MICT). The 2013 Networked Readiness Index (NRI) published by WEF and INSEAD as part of the Global IT Report, shows Thailand improving slightly overall from 77th place to 74th place (59th place (2011); 77th place (2012)). Thailand Impact Sub Index is 88th and has dropped in affordability (a key strength from 33rd to 45th).

"Within ASEAN, Thailand (74th) leads a group of four members that do not leverage ICTs to their full potential. Trailing by more than 70 and 40 places behind Singapore and Malaysia, respectively, Thailand exhibits a number of weaknesses across the board. The highlights of its performance are the relative affordability of ICTs (45th), in particular mobile telephony, and the quality of its business and innovation environment (52nd). However, in this latter category as elsewhere, Thailand alternates good and poor assessments. Aside from mobile telephony, other technologies remain relatively scant, translating to a middling 88th rank in the individual usage pillar. Also the institutional environment does not seem to be particularly conducive (81st) and the government does not appear to be particularly ardent at pushing the digital agenda nationwide (86th). In this dimension, the satisfactory ranks obtained in both the Government Online Service Index (64th) and E-Participation Index (46th) conceal relatively low marks (0.51 and 0.32, respectively, on a 0-to-1 scale)" *(pp 22-23 of the full 2013 report)*.

According to the National ICT Policy Framework 2011-2020 (ICT: 2020), Thailand has a goal to strengthen the competitiveness of the IT/ICT industry to support the country's economic growth particularly when the ASEAN Economic Community (AEC) fully emerges by the end of 2015. However, according to the IT Industry Competitiveness Index conducted by the Economist Intelligence Unit (EIU) to benchmark IT industry competitiveness, Thailand achieved a position of 50th in the world in 2011, a drop from 49th in 2009[35]. This is mainly due to deterioration in performance in the area of government support for IT industry development.

The second, five year ICT Masterplan was a well-regarded plan, but most of its goals have not been met. In preparing a third, five-year ICT Masterplan, the Ministry has some challenging decisions to make. We believe that only through acceptance that structural reforms are needed (including the roles to be played by the SOEs), will real progress be made.

A useful Cloud Scorecard is described in the IT Section of this paper.

Lack of political will to implement the required re-structuring of the SOEs and setting a clear Policy for the entire industry is impacting on the ability of operators to make long term investment plans.

Thailand has laws which provide for some opening up of the sector, for establishment of a regulator, and for introduction of an interconnect framework (although there has been much resistance, by some, to implement and support it). Implementing competitive safeguards, separating regulatory and operational issues, and creating a framework to manage scarce resources (such as spectrum) and access to public telecommunications transport networks and services, are also part of a nation's usual obligations in the sector.

With 2G / 2.5G mobile service, comparatively low broadband penetration (another area in which many countries are overtaking Thailand), and comparatively inferior and costly services for corporate users, after several years of delays

[35] Thttp://www.nationmultimedia.com/technology/Thailand-slipped-one-spot-in-IT-industrys-competit-30171143.html

Thailand has issued technology neutral spectrum in the 2.1GHz band (commonly referred to as supporting 3G licences). Significant progress has been made by the issuance of regulations covering network sharing, domestic roaming and MVNO provisions. However, the issuance of regulations mandating access to networks is experiencing significant legal challenges by one of the SOEs. Taking due account of the current industry structure where the vast majority of the network elements were constructed under the BTO regime and the Government policy of turning the two SOEs into wholesale providers, such legal challenges are cause for concern. In moving to 3G, LTE (4G) and other technologies, the absence of important regulatory clarity in a more complex and unpredictable environment mean that investment in the sector will not be attracted in the way it might otherwise be, nor would the operating environment be conducive to healthy or free and fair competition.

Infrastructure sharing, access and competition rules are necessary preconditions for an effective sector which includes 3G; but it is imperative that policy makers focus on both reform of the SOEs and the creation of an environment where the vast networks owned by the SOEs are utilized in a cost efficient and optimum manner for the benefit of the overall Thai economy. This will clearly entail moving from a rent-seeker position to a competitive and productive element in the telecommunications value chain.

4. Reformation of the State Owned Enterprises / 'Concession evolution':

We strongly believe that a plan is needed for reformation and evolution of the two State-Owned Enterprises. The plan should include at least partial privatisation. There was a plan for corporatisation, then partial privatisation, but it stalled shortly after corporatisation. 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. After the expiry of the three year moratorium (late in 2013) in the new Frequency Act, much of the revenues which are currently streamed to the SOEs will go to their shareholder, the MOF. But we urge reforms prior to that event and early planning. Alarmingly, media reports show that one SOE in particular will now book a full year loss. This was foreseeable.

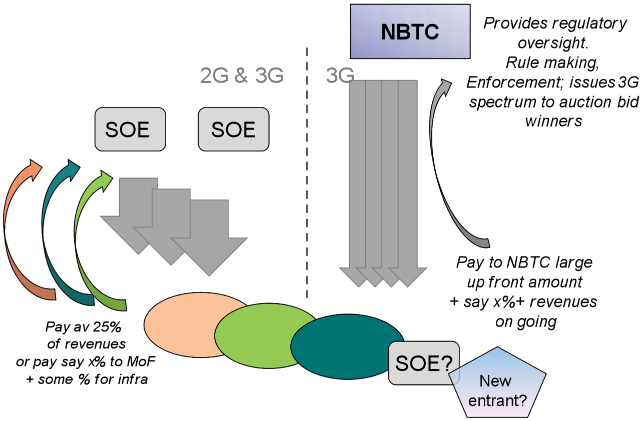
We believe that such measures are an essential and valuable first step in reform of the telecommunications sector.

Thailand is not an exception in this regard. There is nothing so different about Thailand which makes universal global experience inapplicable. The only thing exceptional is that basic reforms of the telecommunications industry were never put in place – the industry is currently handcuffed to a business model nearly 20 years old (concession-based) and does not even reflect what the legislated changes (about a decade old) contemplated. Reform is needed and with certain concession-based contracts expiring in 2013 and the last in 2018 the moment is opportune. An overview of Concession expiry dates can be found earlier in this document.

While these issues have already been the subject of lengthy debate in Thailand, the history of the telecommunications sector, globally, shows that structural reform is not easy, but it is necessary. Further, until such a time as reform has taken place we do not now believe that, on balance, the new 3G licences will work to maximum advantage. It was and should still be an urgent matter to effect concession reform (or conversion) as an essential first step in evolution of the SOEs, and ideally it should have been done prior to new spectrum issuance.

The evolution away from concessions was the subject of a lengthy analysis and debate during 2010 via the so called 'K2' committee, and the fact is that these changes have not been effected. Thus, 3G issuance has resulted in quite different licensing regimes:

Figure 23: 2G + 3G regime in Thailand – simplified and aggregated



Thus, there will be (without a proper resolution of issues) at least for a period, a multiple of regulatory regimes:

- Concession-based operations for two mobile operators
- Depending on how the matter is resolved, one mobile operator with a special deal with an SOE (whereas all post concession assets of SOEs should also be regulated under the infra sharing or wholesale arrangements)
- 3G operated via MVNO arrangements by one SOE (which are different to wholesale)
- Another SOE operating 3G spectrum
- Directly licensed operation from the NBTC for newly issued spectrum

This is a far cry from the only structure which will truly support free and fair competition, which is arms-length licensing to all operators directly from the NBTC. It is noted that the NBTC aims to facilitate more rapid number porting from 2G services to 3G and has a stated policy of supporting direct licensing, away from the concession era.. The NBTC presentation at the 2 July 2013 event "Unlocking ICT: an enabler for innovative growth" available on the EABC website in instructive in this regard.

The task to convert or terminate concessions prior to new 3G spectrum issuance was shown to be too difficult in the circumstances. We thus recommend using the situation to support a wholesale market and thus as a matter of policy to allow for the wholesaling of mobile services through existing concessions.

Currently the economic value of high concession fee payments is dissipated in the SOEs overall revenues. Without those payments, the SOEs would have annual losses.

Unlocking those payments for reinvestment in innovation would surely be worthwhile, rather than levying new imposts on revenue or profits in the belief that above-average economic profits are currently obtained from the sector. A well-structured industry would see more competitive pressure for better and more varied services, fairer pricing and above all, room for reinvestment.

A choice: the industry and the economy overall, or State-Owned Enterprises (as they are currently structured) above all?

A decision must be made as to whether governments will stick, in the long run, with ownership of such enterprises, competing with the private sector, or will see greater good and value in creating an attractive and innovative industry overall, where fair competition can take hold, and thereby allow state-owned monopolies to evolve and develop through privatisation and reformation. It is long settled that GATS acknowledges the fact that such issues impact international trade and investment directly and are not simply domestic issues. We also take note that relevant principles are enshrined in Thailand's constitution supporting such moves, notably in Articles 43 and 47, which mandate free and fair competition, including in 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 become independent.

iii) Corporatisation, often with postal services restructured to another entity
iv) At least partial privatisation
v) Injection of different financial targets and seeking out value-adding roles
vi) The reformation or restructuring of the SOE

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 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. The transformation story was illustrated at the 2 July 2013 ICT Conference: "Unlocking iCT: an enabler for innovative growth" – with presentations from BT and NTT of their story of evolution. These can be seen at on the EABC website at: http://www.eabc-thailand.eu/advocacy-group/ict/212-unlocking-ict-an-enabler-for-innovative-growth

In Thailand the evolution away from the concession era has been a long journey. SOE development and resistance from SOEs to various developments has troubled potential and current investors, both local and foreign.

We do not see that the SOEs (being corporatized entities) can themselves necessarily make all of the appropriate decisions about their own strategy and direction. In the context of overall industry development we observe that it requires the political will of their owners and masters.

As will be recalled, following the successful challenge to the proposed '3G' spectrum auction in 2010, the then government decided to make an SOE the centrepiece of the industry. The Bangkok Post editorial of 4 October 2010 included this comment:

> "The government has set back national telecommunications policy more than a generation. The cabinet decision to re-engage the TOT-CAT Telecom duopoly marks a retreat in the treatment of taxpayers, consumers and business investment. Far from a step ahead, this decision moves us backwards. "

It is our observation that the sector is not performing in ways which it could and should and is thus not only not providing the levels and range of service to business, government and individual users which are possible but it is also not contributing to the economy in ways in which it could.

In spite of the positive developments referred to earlier, as in 2010, we would observe that the currently proposed re-engagement of SOEs in continuing with privileges and continuing to use spectrum would have the same effect as described in the quoted extract from the Bangkok Post editorial of 2010. No material extension, in our recommendation, should be provided. If a one year extension is proposed in order to assist with customer migration or to avoid service disruption, we recommendation that ways be found so that there is no incentive to continue with such extensions. Thus for example the economic treatment could be different to the technical treatment – the channelling of revenues could be such that the SOE covers direct costs only for example.

We also note that in the context of impending or current trade negotiations, Thailand has an opportunity to strengthen this sector. The existing GATS terms include provisions on market access and by way of relevant specific commitments, allocation of scarce resources (which would include spectrum). It is to be hoped that any new FTA would build further on that in terms of market access, allocation of scarce resources, supporting fair competition and predictable outcomes, rather than moving backwards.

A stronger sector will also help build Thai companies ability to invest and compete overseas.

The SOEs are currently pursuing retail mobile models. This is symptomatic of wrong strategy and inappropriate investment. We question why the SOEs are adventuring into retail mobile services at all as the current Policy is that the SOEs should be contributing as wholesale network operators. Taking due account of the provisions contained in the Thai Constitution whereby the State should not be in competition with private enterprise, the policy direction that the SOEs focus on providing network wholesale services to the overall retail operators makes sense.

We thus ***recommend, on the general and structural issues:***

(1) The recently issued regulations pertaining to network access, domestic roaming and MVNO should be backed by the necessary political will to put in place reforms in the industry. Wholesale services include access on open access and non-discriminatory terms and conditions. Wholesale licences should be assessed independently and separately to those for retail services. Wholesale services should apply to all services using fixed, wireless and converged transport or transmission technologies and such principles must also be adhered to by the SOEs.

(2) The ***evolution of the SOE*** not to pursue retail mobile but to become network operators and play a sound role in wholesale services as outlined in the national Policy and being subject to the same terms as apply to the private sector; extension of spectrum use by SOEs should be limited and only as necessary on technical grounds, and then the economic treatment should be different to the technical.

(3) Dealing with ***concessions*** by supporting their being used on a wholesale basis (in the absence of being able to effect concession conversion or termination now) as envisaged in the recent access regulations from NBTC

(4) Spectrum as a scarce national resource should be auctioned for all commercial uses. Only where there are non-commercial deployments and subject to other conditions

(5) Review of ***competition regulation*** to see that real, fair and effective (i.e. enforced) regulation results

(6) Finalisation of ***interconnect*** – a common standard for termination rates; dispute resolution procedures need improving as a lengthy process impacts confidence in the system.

5. Spectrum management

Historically spectrum was issued primarily to the two SOEs and reassigned to Concession holders. This was the case in relation to all available 900MHz and 1800MHz spectrum whereas CAT retained 10MHz of the 850 band for its own use. Broadly, spectrum is or is to be deployed currently under these regulatory commercial models:

- Directly licensed from NBTC (e.g. the future 2.1GHz for '3G' and later applications)
- Historical spectrum issued to SOEs and used for its own purposes
- Spectrum issued to SOEs and used under concession arrangements.
- Spectrum used for broadcasting

The NBTC has issued its five year spectrum master plan, which is compliant with the stipulations of the legislation.

Although the 2.1GHz auction was completed late 2012, the current failure to immediately address the expiry of the True Move and DPC Concessions in Q4 2013 and its associated spectrum is of concern both for consumers and industry. Current plans are to delay such auctions for one year on the basis of consumer protection.

We support the NBTC in adopting global spectrum management harmonisation, helping the industry and public to gain technology advantage with the best economies of scale. Considering current and future demands with global technology trends, we recommend:

i) 1800 MHz re-farming (whereby the spectrum should go back to the NBTC, not to the SOE)
ii) Within less than 12 months, a spectrum auction for 2.6 GHz, and a plan for 2.3GHz

iii) Within 18 months: a review of 850 MHz / 900 MHz spectrum: There needs to be a review, and with full industry consultation, a plan for evolution of these bands; there is some overlapping across these bands.

iv) Within 24 months, a plan for digital dividend spectrum - e.g. 700 MHz etc. The choice, along with most ASEAN economies, of the European DVB-T2 standard for broadcasting terrestrial digital TV service is well noted. The particular 'digital dividend' spectrum is to be chosen and there should be a plan for that. The benefits of using 20 MHz of spectrum should be noted – mobile broadband / smartphones are putting pressure on spectrum needs globally.

On all the above issues at the time of publication there are current deliberations. ITU has been selected to design the 1800 and 900MHz auctions, which are scheduled for Q4 2014. In relation to the utilization of the 700MHz band for wireless broadband, recent communication from NBTC indicates that they will follow the APT and ITU band plans and utilize this for mobile broadband. The 430-510 MHz band is being used by many state agencies. The Telecoms Committee (Commission) of NBTC has recommended using 698-806 MHz band (a 108 MHz swathe generally referred to as the '700 MHz' band) for mobile broadband, in line with the APT-ITU ASEAN plan and had advised the Broadcasting Committee (Commission) to use 470-694 MHz for broadcasting, whereas the Broadcasting Committee (Commission) expressed preference for 698-806 MHz to be used for digital broadcast rather than broadband wireless.

We recommend that the 700 MHz band be made available for mobile broadband, consistent with regional plans

Timing of this is not yet set as it is dependent upon the release of lower spectrum bands for digital broadcasting. However, the final decision has not been made on either of these two items as the MICT has tabled a proposal to Cabinet that the two SOEs be allocated all spectrum released from Concessions until 2025 (see above re continued use by SOEs of spectrum).. This move would not be helpful to the proper evolution of the industry.

6. International Gateways (IGWs)

CAT had provided Thailand's sole IGW, other than for routes to neighbouring countries where TOT had IGWs until the gateway's failure at the end of 2006 following an earthquake off the coast of Taiwan. This prompted the NTC to open up the sector for internet traffic to other operators with a partial liberalisation. Today, IGWs are deregulated either for voice or for IP transit.

The two options are either leasing capacity from CAT – i.e. backhaul (which refers to the link from the landing station to the service provider's main distribution point or network operating centre) plus submarine cable – or building a fibre network linking to neighbouring countries like Malaysia while ISPs are able to negotiate on their own for international connections, however, most transmissions for non-Malaysian routes are still routed through CAT, which owns the infrastructure. By current practice, some Thai operators other than CAT are using IP bandwidth to Singapore or Hong Kong, enabling local operators to use less expensive IP bandwidth purchased outside Thailand. As some put it, due to monopolistic-type prices, revenue is 'leaking' out of Thailand.

International bandwidth is a commodity; keeping its costs down is an essential part of Thailand's competitiveness in this area and will also improve the costs for corporations. To help achieve this goal we recommend the following:

- The landing station is an essential facility with the potential to be a bottleneck, like the traditional MDF (main distribution frame) room – its space must be regulated and access by third parties allowed on regulated technical and commercial terms.
- Allowing third party carriers to have access to backhaul capacity linking to cable stations owned and operated by CAT – while making sure that the operator can buy international cable capacity (e.g. on the APCN2 or SMW4 cable system) from the market (i.e. not only CAT) – will enable them to provide international gateway services using the landing station currently reserved for CAT.
- Access at landing stations should be liberalized so that additional backhaul can be built with direct landing station access; if necessary these could be treated as domestic circuits rather than parts of international infrastructure.

7. *Broadband development*

Broadband development in Thailand has been slow, with access limited to major cities and towns and many parts of the country relying on dial up connections to the Internet. Many will leapfrog to mobile broadband due lower current fixed broadband capability. But even mobile services require high capacity trunks, gateways and backhaul. We believe that the government does recognise the importance of broadband infrastructure and services for the future prosperity of the country. Following are the key policy objectives, as previously endorsed:

- Develop a broadband network that covers at least 80 per cent of the population by 2015, and at least 95 per cent by 2020, as well as providing high-speed broadband services through fibre optic cable in cities that are the economic centre of each region with a speed of at least 100 Mbps by 2020.
- People are able to receive universal and equal broadband service in the fields of education, public health, disaster monitoring and warning, and other public services to reduce differences in the ability to access information and knowledge, of which:

  (1) Sub-district schools are able to access quality broadband services by 2015.
  (2) Sub-district health promoting hospitals or all health stations are able to access broadband services that have the same quality as provincial hospitals by 2015.

- E-government service provision through broadband network by every sub-district administration organisation by 2015.
- Natural disaster and emergency monitoring and warning system to inform the public of correct information in time.
- The business sector is able to access and utilise broadband network.
- Reduce the overall cost of broadband services by sharing access to infrastructure.
- Foster the creation of content and application development that is useful for education, public health, life and asset protection, religion and culture, environmental preservation, and daily living, as well as promoting business operations to increase competitiveness.

Master plans (including the proposed next five year ICT Master plan of the MICT) need to address these points, both in terms of broad targets and also in terms of an actionable plan. . Planning on implementation of the above can be greatly assisted by the foreign business community, including the European business community.

In order to achieve this kind of policy objective, comparative studies should be conducted into various National Broadband Network (NBN)-type structures with a view to assessing the benefits of such structures to find whether they can, if appropriately structured and managed, accelerate broadband rollout and take-up. This should also include the evaluation of efficiency gains by pooling or leasing or vending in fibre backbone. Thus MEA, PEA, EGAT all have fibre which can be usefully deployed.

Such structures (e.g. being built in Australia and in operation in Singapore) or different approaches such as in Malaysia, where the former but now evolved government monopoly provider, Telekom Malaysia Berhad (TM), which has won regional awards for its wholesale and retail broadband services, has obligations to roll out and provide broadband services based on a national plan. The new PPP Law should also afford some means of supporting development of broadband infrastructure.

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, 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 which came into effect in April 2013 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 s recommended that arbitration be allowed for government contracts.

iii) Infra owners can vend or lease in.

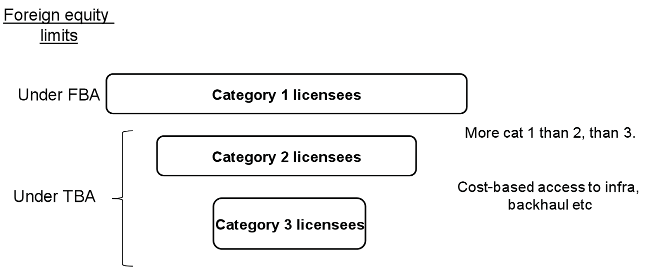
iv) Appropriate separation (e.g. structural or operational) as between infra owner and retail service provider needs to be determined. A range of wholesale services should be available at non-discriminatory, cost-oriented rates.

v) Facilities-based competition should continue and not be terminated.

8. *Foreign Equity Limits in the Telecommunications Sector*

A separate more detailed paper has been prepared on this topic. The legislative regime for foreign equity is illustrated by this diagram:

Figure 24: Building blocks in the telecommunications industry – licencing perspective



Up to 100 per cent foreign equity has been approved for Category 1 licences on a case-by-case basis.

We recommend as a starting point the premise that 100 per cent foreign ownership be allowed, with certain category 3 operators being exceptional cases to be assessed on a case-by-case basis. None of these structures rules out the involvement of local partners or investors, they simply propose that local equity participation should not always be a requirement. It is appreciated that legislative change will be needed in order to accommodate the recommendations for categories 2 and 3.

The area of global managed services illustrates the need for potential 100 per cent foreign equity. MNCs and larger corporations are the clients of such services and providers seek to provide a high standard, one-stop solution for seamless global coverage. Effective control of the entire operation will deliver better results. Restricting ownership makes Thailand a less attractive choice as a hub in this area.

(i) *Category 1 and Category 2 operators*

Category 1 licences allow for 100 per cent foreign ownership. The Ministry of Commerce, which administers the FBA, must approve such applications on a case-by-case basis. We recommend that such allowance be understood as normal, rather than exceptional, practice. The JFCCT made a detailed submission about the value of allowing for 100 per cent foreign ownership for category 1 licences.

For category 2, in our view, the industry would be well-served through allowing majority ownership, through to 100 per cent foreign ownership. That would include both the 'network ownership' and 'no-network ownership' parts of category two.

(ii) *Category 3 - fundamental national domestic infrastructure-based operator.*

There is often some sensitivity about the levels of foreign ownership of the fundamental national domestic infrastructure-based operator. This might be because of such an organisation's role in fulfilling certain national social and economic policies – such as a Universal Service Obligation (USO) to provide services to all.

But such organisations must evolve so that they can become effective players in a competitive multi-operator market. FEL policy should ensure that the entity can effectively compete in a dynamic market, and not be concerned to protect the entity's current market position. Thus, some level of foreign equity needs to be contemplated.

Thus, for example, even in category 3, we might see a differential between TOT on the one hand and CAT on the other. If we use some examples, PT Telkom is majority Indonesian-owned (although its cellular arm is 35 per cent foreign-owned), whereas Indosat is foreign controlled and majority foreign-owned. In Australia, Telstra is likely to see some foreign ownership restrictions, while Optus is foreign-owned and controlled.

We recommend that such category 3 operators be treated on an exceptional, case-by-case basis. Such operators might include TOT, EGAT Telecom, PEA, MEA, although their likely or possible role in a nationwide broadband network using a PPP model would require case-by-case consideration.

(iii) *Category 3 – other operators*

Ownership levels should allow, in our view, foreign majority ownership and control, right up to 100 per cent, with the aim of stimulating participation by local companies.

9. Liberalisation of the services sector

Within ASEAN, the service sector accounts for 40 per cent to 70 per cent of each economy's GDP, and 48 per cent in Thailand. Education, the upgrading of local skills, infusion of foreign skills (which will lead to mutual technology/knowledge transfer), and overall productivity increases are the cornerstone of a competitive economy. It is the services sector which can tap new areas of growth and development for Thailand – e.g. creative industries, and the move from raw creativity to real innovation.

An export-led economy which does not re-invest in productivity enhancements will end up being a weak one. Wage increases are hard to justify without productivity enhancements.

Out of the leading six ASEAN economies, Thailand has slipped in terms of commitments to liberalisation of the services sector and a re-focus on this important reform is required. Service sector liberalisation needs to be understood as not just being about relaxation of foreign equity limits (although that is a key element, as AFAS shows). Rather, services liberalisation has a number of elements; all of which we recommend be pursued:

- Relaxation of foreign equity limits
- Facilitation of free movement by changes to work permit and visa rules.
- Sector specific changes and mandates by way of relaxation of restrictions on permits, licences and other barriers to entry, and to mandate access to facilities – such as is done in GATS in relation to telecommunications, and in other FTAs with telecommunications chapters
- Other sector specific reforms or mandates (e.g. structural changes in a sector to make it competitive and innovative, such as recommended for the telecommunications sector)

In a more general, economy-wide context, these are described in earlier section on Cross Sectoral Issues of this Position Paper. The strategic importance of some parts of the services sector cannot be emphasised enough. For example, gains in efficiency and effectiveness of the telecommunications sector will have a multiplier effect on the economy overall, while a lagging sector disappoints the rest of the economy.

The **Board of Investment** is able to provide incentives (usually tax based). The BOI has confirmed however that it currently has no broad remit to support an enhanced services sector. In fact it appears that there is no one body or agency which does. Please see in this regard the TDRI paper given at the 2 July ICT Conference: Unlocking ICT: an enabler for innovative growth – found on the EABC website.

A number of recommendations in the iCT area have been made jointly by EABC/JFCCT during special consultative sessions with BOI These include a recognition that to support the services sector's development, liberalisation is needed and thus incentives to spur on various activities of strategic importance are needed. Thus support for eCommerce, Data Centres, Software parks, various IT services and software development generally. It is understood that the new policies which are due to come into force in January 2015 will include some at least of these proposals.

10. Foreign Dominance Notification

The JFCCT has made separate submissions and policy recommendations on foreign dominance since 2006, joined since 2011 by EABC, along with the many of Thailand's trading partners. The Foreign Dominance Notification had a long gestation period, from 2006 through to its passage by the NTC in August 2011.

A revised Notification, which became law in July 2012, widens the legal concept of 'foreignness' well beyond shareholding to almost every conceivable aspect of foreign connectedness (including shareholding, voting, advisors, banker relationships, mid to senior staff, equipment providers, paying dividends, financial accommodation or services, voting, board seats, use of IP and even customers if they are influential much of which is included in the Annex to the Notification). 'Dominance' simply means influence. If the NBTC determines that, based on three threshold criteria (holding more than or equal to 50 per cent of voting shares, having control of the majority vote at the shareholders' meetings and being able to appoint or remove more than or equal to half of the board of directors) the total effect of the influence level is over 50 per cent, the NBTC has powers to cancel the licence, order divestiture or make other correction orders. While the NBTC is to be commended for holding a review and public hearing to issue a revised Notification, the resulting law does not allay concerns about investor confidence or even basic fair competition. More recently the NBTC has said that the Annex should be treated merely as guidelines.

The Notification was objected to formally shortly after it came into force. Norway, supported by the EU, US and Japan, tabled the matter at WTOs Council for Trade in Services. The matter is on-going. Essentially the objection is to the enlargement beyond the basic criteria on which the GATS commitments were made.

We recommend that ultimately the industry and economy would be well served if the Notification were ***revoked,*** and make these points:

(i) Investors in the sector need to make commitments in the order of multi billions of baht. The ***investor uncertainty*** which the Notification brings will cause a risk-averse approach whereby the political and regulatory risk of investing in Thailand increases; the Notification fails to agree with normal investor practices in the sector.

(ii) It is a sound principle of investment in all sectors that some kind of non-passive activity be allowed. Investors in the telecommunications sector are ***not passive investors;*** No-one has complained that the level of skills and useful talent contributed by foreign investors is too much.

(iii) All three current leading mobile operators have, over time, contributed to the market in Thailand the benefits of skills, processes, products and technology which have been learned elsewhere in the world as well as in Thailand. Such skills, regardless of their source, help make Thailand more competitive, and should be encouraged, not censured. This is not a zero sum gain, ***increased skills even in one or two players raises the bar overall.***

At a time when the effect of free trade agreements and framework agreements is to support increasing levels of investment in the service sector, the proposed rules go in the opposite direction; the same applies to the free movement of skills in such contexts. Given the dual role of the sector, the ***'dumbing down'*** effect that the Notification will have is contrary to the recommendation of the World Bank and ADB, for example, to increase productivity by building skilled capacity.

(iv) The Notification will have the effect of ***reducing effective competition*** in the sector. By reducing the skills in the sector, effective competition is impeded.

(v) From an investment certainty perspective, the Notification ***undoes certain safeguards*** and predictable means of carrying on business. The Civil and Commercial Code, the Public Companies Act and the FBA allow foreigners to hold shares conferring voting rights in excess of 50 per cent and allow for a number of aspects of investment and operation which the Notification undoes; the Proposed Revision compounds this and brings ***Thailand's WTO obligations*** into sharp focus.

(vi) ***Other sectors are impacted*** by the Notification; the Proposed Revision does not change that. Thus financial advisors, systems and equipment providers, professional service providers, managers etc. if foreign, could negatively impact their own clients, customers or employer. This is contrary to global practice.

11. Consultation - general

We note the improvements brought about by the NBTC in public consultations. However, we note that in this rules-based, highly interdependent industry, consultations are an essential part of industry buy-in and education. 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, a consulting firm (with some strong economic regulation background) for the necessary periods to help prepare materials, process the inputs and responses.

These external skills would report into an NBTC executive and all would be done under the direction of the NBTC; now there is an appearance that industry consultative forums are not always sincere attempts to get clear comment and the NBTC is not taking the opportunity to educate the industry (which the two round process would better do).

12. Independence of the NRA (NBTC) Competition Regulation – assessment

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 is more effective when it is undertaken by a body which is independent of 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 not only for formal independence from government and the absence of successfully prosecuted departures from impartial behaviour but also for a system of governance within the regulator which includes an element of independent directors.

Independence is generally understood in the industry to mean two things:

i) Independent of government (recognising that it is government which sets policy nevertheless); and
ii) Independent of any operator.

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

a) Stock exchange listing requirement – at SET and elsewhere
b) Some other agencies in Thailand
c) Other regulators in the sector (e.g. MCMC)

A board which is fully comprised of executives will thus have more challenges in achieving an independent status. The Agency should consider having independent, non-executive directors on its board and the legal machinery necessary to support this should be explored.

A 'superboard' has been appointed by the Senate to provide oversight. While this is a positive move, we maintain our existing recommendations.

13. ASEAN ICT Master plan

Since September 2003 the ASEAN Telecommunications and Information Technology Ministers (TELMIN) have adopted various programmes for employing ICTs to strengthen and develop ASEAN economically, politically and socially. Economically, to reduce the transaction costs of intra-ASEAN trade and boost ASEAN international trade and investment; politically to develop a 'people-oriented' approach to growth and development; and socially to bridge the digital divide and open the door to equal opportunity to drive skills development, innovation and entrepreneurship. As a broad outline, this is the ICT component of the vision ASEAN has for itself.

The vision is most comprehensively spelt out in the 2010 Master plan on ASEAN Connectivity: One Vision, One Identity, One Community (MPAC). The MPAC was drawn up in consultation with the ADB and the Tokyo-based Economic Research Institute for ASEAN and East Asia (ERIA), UNESCAP and the World Bank.

The ASEAN ICT Master plan grew from the principles of ASEAN Connectivity. We welcome the ASEAN ICT Master plan as a basis for enhancement of the role the industry plays in the member economies and towards ASEAN economic integration. Through the Pillars and Foundations (and the details on which they are based), the opportunity to engage with major government policies in these areas will support enhanced outcomes for the economies, for consumers and for economic integration.

In this context we highlight in particular certain ***key areas of interest:***

- The ASEAN Broadband Corridor and the very positive effect which broadband services can have on member economies and on economic integration
- Building capacity through ICT skills enhancement
- PPP developments as a good route to ensure infrastructure is available to support wider aims
- The promotion of level playing fields and pro-competitive forces.

We would also like to note the following areas ***where further developments will be needed:***

i) Free Movement of skilled workers – support for ease of labour and immigration issues which can sometimes be an impediment and can appear inconsistent with the aims of the Master plan

ii) AEC Scorecard is a compliance tool but can be misleading when used to indicate overall progress towards the AEC 2015 objectives. It should be understood for what it is but revamped to be a genuine indicator of progress.

iii) A better understanding of the aims and expectations concerning the telecommunications sector in the context of AFAS and in particular the foreign equity limit targets applicable to the telecommunications sector (e.g. 51 per cent by December 2010 and 70 per cent by 2015). The principles of safeguards in allowing for investor direction-setting as reflected in the ACIA should also be noted.

iv) Inappropriate restrictions on foreign participation. In this regard in respect of Thailand please refer to our recommendations under the Foreign Dominance heading.

Recommendation

The ASEAN ICT Master plan includes many projects and strategies designed to achieve valuable and valued outcomes. In particular we encourage governments to develop broadband capabilities, to support PPP models, ICT reskilling and skilling, support level playing fields and ensure effective competition regulation. In particular there are some specifics desired: (i) free movement of skilled workers, (ii) an understanding of real effective progress, (iii) foreign equity levels, (iv) avoid inappropriate restrictions on foreign investment.

14. Intellectual Property Rights

IPR protection is an important aspect of building a knowledge and innovation economy and in supporting investor confidence overall.

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. 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.

IPR in an eCommerce context.
In the bricks-and-mortar world, a shop or provider or goods or services (merchant) can be liable for infringing IPRs in the goods of services provided.

In the on-line world, the on-line merchant may similarly be liable. These matters are covered in more detail in the IPR section of this Paper.

Greater co-operation is sought from on-line merchants. But clarity is needed about the role of ISPs, which are not the same as on-line merchants. For ISPs (which merely provide access) the only real remedy is to block access to the site. Blocking orders which are validly obtained through a court process or are validly issued by a government agency may apply. Unfortunately too often blocking orders are issued without due process and for a range of reasons, some valid, somewhere any validity is not visible. In our recommendation it is also not appropriate to make the ISP responsible for a breach of IPRs where it is merely providing access to a site where a merchant may be infringing IPRs.

Recommendation

Software piracy needs a range of measures in order to change attitudes and practices.

A clear distinction should be made between on-line merchants and ISPs. ISPs may be subject to valid blocking orders following due process but unless there is some cogent evidence of complicity in the IPR infringement, should not be liable for IPR infringement simply by providing access.

15. Special focus - mobile money

There are many applications and tools which the online and broadband mobile world enables. We illustrate with one area. This is an exciting development in the banking sector and in the mobile services sector. While some economies have not yet evolved to readiness for such services, being able to plan for them is useful. Mobile money (including banking and mobile e-services) have been used in developing or emerging markets to give greater access to finance and financial services for lower income earners, who are often below the traditional level of attractiveness to many banks. Mobile operators have also aligned with banks through a range of business models or have been able to secure rights to operate payments . There are over 160 mobile money deployments in the world today. In Kenya, according to a recent Credit Suisse report, revenue from mobile money contribute 16 per cent of Safaricom's (a leading mobile network operator in Kenya, subsidiary of Telkom Kenya) total service revenues, driven by M-Pesa (a mobile payments business). As of September 2011, M-Pesa's customer base numbered 14.9 million, which represents 82.4 per cent of Safaricom subscribers and 37 per cent of Kenya's population. In the six months between April and September 2011, US$3.5bn worth of transactions were made via M-Pesa. This is the equivalent of approximately 20 per cent of Kenyan GDP. As of September 2011, there were 32,000 M-Pesa agents, far outnumbering the less than 1,000 Kenyan banks.

The Credit Suisse report notes: *"The foothold mobile money has in Kenya is by far the greatest of any country worldwide. Kenya's example though shows the potential for mobile* *money in emerging markets, launched as it was in Kenya comparatively early (in 2007). While not all emerging markets may be as ripe for such expansion, Safaricom's significant success with M-Pesa shows the potential, in our view."*

M-Paisa, a similar system in Afghanistan, won the 'Most Innovative Telecom Project' award at the region Telecom Asia 2011 awards.

In the EU, the Single Euro Payments Area (SEPA), which is based on the premise that there should be no distinction between cross-border and domestic electronic retail payments in euro across the EU.

The SEPA project covers the key retail payment instruments: credit transfers, direct debits and payment cards. This represents a stage of integration beyond where ASEAN is now, but illustrates further potential.

Recommendation

ICT businesses should be pleased to engage with government to facilitate a better understanding and appreciation of the opportunities of mobile money (including banking, mobile payments etc), and to be aware of the kind of policy and regulation changes which may be necessary to support the initiatives.

C. IT

Thailand is the second largest IT market in the ASEAN region, and the national PC penetration rate is above 18 per cent. Unlike the telecommunications sector, industry structure is not the key issue for IT.

The ICT Conference on 2 July 2013 'Unlocking ICT: an engine for innovative growth' included many relevant topics on IT, which can be found on the EABC website. The location acts as a collection point for many of the relevant policy issues.

The Cloud Scorecard 2013 (published by Business Software Alliance – BSA) assesses the world's top 24 economies which make up 80 per cent of the world's IT spend. It uses seven criteria to rank the economies included in the scorecard. Thailand is ranked 23rd out of 24th. The criteria are: ICT readiness/broadband deployment, data privacy, IPR, security, promoting free trade, standardization/harmonization, and cybercrime.

1. Skills, Education and free movement

ICT skills are in short supply. 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 mindset 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 questioning 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 market place 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 Masterplan 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.

2. Free Movement of skilled people; work permit and visa issues

The benefits of liberalisation of the services sector and what it means have been addressed earlier.

The ICT sector is regarded as strategic for Thailand's economic and social development; an innovative and attractive ICT sector has a multiplier effect on the rest of the economy. The growth and enhancement of a nation's ICT industry relies on access to skills and on the continuing development of the industry's capabilities. Not all skills will be found within one nation's borders and thus a high level of 'free movement' is needed. In addition, both local and foreign investors need the freedom to conduct business without undue impediments.

Certain existing laws and regulations in Thailand are, however, impediments to the development of a more robust ICT sector. 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 SME's, especially in the service sector and in the 'knowledge industries' which propel ICT and the Creative Economy. SMEs, many of which provide important services to much larger organisations, often begin as sole proprietorships, or with just two or three partners and no additional employees. Furthermore, 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 (especially in support of the Creative Economy) to invest and start-up in Thailand, regardless of employees hired 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 the strength of Thailand's ICT sector in particular.

Another impediment to development of Thailand's ICT sector arises from short-term business visitors having no easy way to enter Thailand and legitimately conduct business or respond to urgent needs of a customer or employer. Many larger ICT firms regionally resource various skills. The process for receiving what is, in essence, a short-term business visa (WP-10) is impractical and inflexible.

The Cross-Sectoral Issues section of this Position Paper covers the recommended changes. As stated there, some changes may be achieved by change to administration or policy rather than necessarily by legislation.

3. Data Centres

We note the BOI promotion for data centres. However, a number of issues need to be addressed to capitalise fully on attracting data centre business. Free movement of skilled people, broadband services and international connectivity (IGW) issues also need to be addressed. These are discussed elsewhere in this document. Ultimately a data protection law is desirable.

4. IT Procurement: eAuction, Unlimited Liability, Software IP; source code handover

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

eAuction: eAuctions can be a useful tool for commodity purchases. Multi-variant analysis 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 eAuction and a revised model which supports proper appreciation of overall value.

Unlimited liability: This is an unnecessary term in most supply contracts. Governments elsewhere have come up with solutions to address the issues.

Software Customs Duty / import duty on software: Duty on software imports is hard to administer. We recommend 0 per cent import duty.

Source code handover: the requirement to hand over the source code can be a deterrent to getting the best solutions.

5. eGovernment in Thailand is at a relatively early stage of development

'e-Government' can be defined as the use of information technology to support government operations, engage citizens, and provide government services. e-Government can also include a wide range of governmental activities that are not services to users, such as intra-ministerial, inter-ministerial, and in the case of ASEAN and other external relationships, inter-Governmental; as well as the essential use of technologies other than the Internet in the provisioning of Government services[36]. It is important that non paper records be considered the primary form, rather than paper being the primary form with a digitised version merely being used to convey a process.

EABC along with JFCCT has developed a policy paper n eGovernment. This takes into account Thailand's current position, various programmes and makes these recommendations:

1. By 2016, all C2G (citizen to government) data captured should be digitised and in some structured format, thus moving beyond merely paperless to ensure that all incoming data is accurate, indexed, searchable, and able to support analyses for policy research etc.

2. At the same time, the Government should allow to all citizens with appropriate authorization to access public information – this will allow the public and private sectors to utilize Government data for better decision making and effective allocation of resources.

3. By 2015, ministerial workflows should be based on the assumption of no paper; thus recognition as to the validity of e-Documents and e-Signatures as indicated in Sections, 7, 8, 9 and 26 of the Thailand Electronic Transaction Act of B.E. 2544 is required.

4. Universal acceptance of smart ID cards in the public and private sectors; as well as the issuance of smart-cards to foreign residents with valid work permits *(possibly as the replacement of)*, retirement visas, or permanent residency. This would serve as the key for citizens and residents alike to access various government agencies.

5. On the customs front, full implementation of the National Single Window system to support the development of the regional e-Government plan related to logistics including the ASEAN Single Window.

6. Perform a comprehensive review of the legal framework and protections governing privacy, data security, biometrics, and storage – this review should include stakeholders from all sectors.

7. Launch single ticket system for all public transportation services, including buses, trains, taxis, etc. This system could utilize existing smartcard/NFC technologies similar to the Rabbit Card.

8. Through cooperation with industry, choose the appropriate actions needed to move e-Government initiatives, such as TH-GIF, NSW, and universal access via SSO Gateway, to completion.

9. Increase stakeholder engagement by gaining feedback from citizens through e-Government polls as outlined in the EGA Roadmap. The results of the polls should be reviewed by public/private working groups to implement actions that will improve performance.

[36] State University of New York, University at Albany – Center for Technology in Government. Retrieved 5 June 2013. A working definition of E-Government. http://www.ctg.albany.edu/publications/reports/future_of_egov?chapter=2

6. Online commerce

There are impediments to the take up of online commerce including some of the restrictions in the Computer Crimes Act. This should be considered with a view to enhancing not restricting online commerce. A dialogue with the banking industry and government is needed in order to ease restrictions on payment practices and small business support generally.

As to the responsibility for ISPs in relation to IPR infringements, please see above in the Telecommunications part.

7. Creative Economy – IT focus

Creative Economy (discussed in this section with an IT focus) represents a new area of growth and productivity enhancement. We note the developments of Chiang Mai Creative City, of which JFCCT is a member. We consider that a regional focus will work best in fostering these objectives. A regional focus:

- Allows experimentation (certain things may be too much of a commitment nationwide)
- Diversifies the economy and creates new clusters of economic development and job creation; centres of excellence and collaboration
- Is an established tool in economic development (e.g. cluster and spatial focus)

We have developed the following broad needs for fostering a creative economy, particularly with an IT focus:

1. Policies and regulations which make a region or location more attractive and can benefit from a focused policy (the current BOI model does not have this approach) with special programmes for regional funding, investment, science park establishment

2. Tolerance and risk taking: being innovative, creative, taking risks is OK and important

3. Low cost reliable broadband: good services through sector liberalisation and resolution of industry structural issues. Currently we are moving in the wrong direction.

4. Availability of funding including grants: especially private equity and venture capital; limit risks of financiers; availability of exits

5. Role of state enterprise: not to compete or crowd out but to facilitate and (where needed) kick start /complement

6. Free movement of skills: labour and immigration roadblocks; liberalise service sectors

7. Education: teach IT soft and hard skills, national or regional IT competency framework, and adopt English as the language of IT at secondary level.

8. Cultural preservation through investment in a living Thai language: literature which resonates, language as a communication tool for soft IT skills (problem solving, project management). The aim is not homogenisation.

9. Collaboration: university and industry collaboration (teaching and research dimensions); peer-to-peer collaboration; regional collaboration; large scale global collaborations on large projects; smaller local collaborations

10. Copyright protection for software (software piracy continues to be a major issue) and resolution of the in-house employee's technical achievement relating to intellectual property rights.

11. Mentoring for start-ups.

12. A sense of urgency: waiting for ASEAN economic integration – reactive only, will not work. Proactive about AFAS etc.

It is noted that IT start-up communities have grown, almost in spite of government policy. Funding tends to be the glass ceiling in many cases and the venture often goes overseas to secure the funding.

8. A Data Protection Law

Developments in Big Data usage have necessitated rules of conduct for the collection, management, and use of personal data. Such regulation, if well-conceived and implemented, can have a very positive effect on confidence in the jurisdiction as a data analytics centre, and also raise consumer confidence. Such a law can thus be good for consumers, for business and for the economy. The development of such a law needs good input from industry and consumer groups.

An older draft law pre-dates more recent thinking in providing for such issues as cross-border collection and management, amongst other things. A review of the proposed law is needed in order to bring it up to date with current practices.

D. Summary of recommendations

Telecommunications

1. General and structural issues:

1) The recently issued regulations pertaining to network access, domestic roaming and MVNO should be backed by the necessary political will to put in place reforms in the industry. Wholesale services include access on open access and non-discriminatory terms and conditions. Wholesale licences should be assessed independently and separately to those for retail services. Wholesale services should apply to all services using fixed, wireless and converged transport or transmission technologies and such principles must also be adhered to by the SOEs.

2) The evolution of the SOE not to pursue retail mobile but to become network operators and play a sound role in wholesale services as outlined in the national Policy and being subject to the same terms as apply to the private sector; extension of spectrum use by SOEs should be limited and only as necessary on technical grounds, and then the economic treatment should be different to the technical.

3) Dealing with concessions by supporting their being used on a wholesale basis (in the absence of being able to effect concession conversion or termination now) as envisaged in the recent access regulations from NBTC

4) Spectrum as a scarce national resource should be auctioned for all commercial uses. Only where there are non-commercial deployments and subject to other conditions

5) Review of competition regulation to see that real, fair and effective (i.e. enforced) regulation results

6) Finalisation of interconnect – a common standard for termination rates; dispute resolution procedures need improving as a lengthy process impacts confidence in the system.

2. Spectrum Management

i) A spectrum auction for 2.6 GHz within 12 months, and a plan for 2.3GHz

ii) Digital dividend spectrum choice – recommended 700 MHz band for mobile broadband

iii) 850 MHz / 900 MHz review and plan with industry consultation

iv) Continued use by SOEs of concession spectrum is not justified.

v) All commercial allocations should be by a transparent, economically fair means; auction being the obvious choice.

3. International Gateways

Full liberalisation

4. Broadband

i) Start with a wholesale market

ii) Work out broadband targets in terms of reach, penetration and kinds of solutions, devise and implement policies to foster

iii) Exploration of the right structure and solutions based on key guiding principles to achieve targets.

5. Foreign Equity Limits / Liberalisation of Services / Foreign Dominance Notification

i) A structured approach to lifting foreign equity limits

ii) Liberalisation of the services sector with four dimensions of policy initiatives

iii) Revocation of the Foreign Dominance Notification as it is not helpful to the cause of attracting foreign investment in the sector or of enhancing skills and competitiveness.

6. Consultation

The sector is highly interdependent and needs rules which need to be understood. Two-stage consultation allows for buy-in and industry education.

7. Independence of the National Regulatory Authority (NRA) – i.e. NBTC

To enhance competition regulation and the overall effectiveness of the NBTC, we recommend adding a third dimension to independence and stepping up effective competition regulation.

8. ASEAN ICT Master plan

Make use of the aims and principles in the ASEAN ICT Master plan better to support the overall position of Thailand. In particular we encourage governments to develop broadband capabilities, to support PPP models, ICT reskilling and skilling, support level playing fields and ensure effective competition regulation. In particular there are some specifics desired: (i) free movement of skilled workers, (ii) an understanding of real effective progress, (iii) foreign equity levels, (iv) avoidance of inappropriate restrictions on foreign investment.

9. IPR issues

A multi-pronged approach to tackle software piracy is needed. For IPR infringements in the on-line world, the focus should be on on-line merchants, not on ISPs which merely provide access. Blocking orders where used should be based on law and due process.

10. Mobile Money

Mobile money and mobile eservices have been used in developing or emerging markets to give greater access to finance and financial services for lower income earners, who are often below the traditional level of attractiveness to many banks. Mobile operators have also aligned with banks through a range of business models or carried out a mobile money business on their own. Many operators have developed mobile banking solutions. ICT businesses should be pleased to engage with government better to appreciate the opportunities of mobile banking, mobile payments etc., and to be aware of the kind of policy and regulation changes which may be necessary to support the initiatives.

IT

11. Skills, productivity enhancements, free movement; work permit and visa issues

ICT skills are in short supply. The nature of the industry is global. Confining source pools to national boundaries makes it harder to find the right skills and limits innovation. Education, reskilling and both administrative and legislative changes to the work permit and visa area regimes are needed. An IT Competency Framework is useful but licensing and centralised certifications are not necessary nor positive contributions.

12. Data Centres

To achieve the aims of data centre promotion, work permit and visa issues, and connectivity and IGW issues need to be addressed. Ultimately a data protection law is desirable.

13. IT Procurement: eAuction; Unlimited Liability; copyright protection for software; and source code handover are areas needing revisions.

14. eGovernment

eGovernment development is lagging. Structured and phased policy recommendations are provided.

15. Online commerce

Impediments in legislation need to be addressed. A dialogue with the banking industry and government is needed in order to ease restrictions on payment practices and small business support generally.

16. Creative Economy – IT focus

Identified are a number of policy ingredients and measures designed to make this work. The creative economy, particularly the promotion and protection of innovation with a focus on IT, is new area of growth and productivity enhancement. We believe a regional focus will work best for many of these initiatives. Positive developments in IT Start Ups are done almost in spite of government policy. A glass ceiling is often hit with lack of availability of funding locally, thus sending the venture overseas. Local availability of funding needs addressing.

17. A Data Protection Law

The development, with industry consultation, of a law which will make Thailand an attractive location for data analytics and management and give consumers and operators full confidence in the jurisdiction. A review of a very old, proposed law is needed in order to bring it up to date with current practices.

Insurance

The Thai insurance industry, although growing at a promising rate, remains hampered by regulations compared to other markets in ASEAN and other regions. For the best interests of Thai consumers and to boost the nation's competitiveness, it is strongly encouraged that constructive changes be made to both the insurance laws and regulations as well as how the policymakers and regulators carry out their oversight. Although the said changes cover multiple dimensions; such as consumer protection, market access, prices, product approval process and the internal processes of regulators, the EABC Insurance Working Group emphasises the two most critical issues as follows:

1. **Foreign ownership restrictions** of insurance companies should be totally liberalised. It is most crucial to amend the existing related laws and regulations to allow up to 100 per cent foreign ownership in order to successfully establish a competitive insurance industry in Thailand. Also, the Thai insurance regulatory framework needs to be revised to provide more flexibility and so that it keeps pace with the rapidly changing industry and market.

2. **Capita**l. New capital needs to be encouraged to strengthen the industry's capital base, enabling it to be in a position to better retain insurance risks within Thailand, instead of the heavy reliance on foreign reinsurance companies. To achieve this goal, the government needs to create a climate that is friendly to foreign investors, including the movement of funds in and out of Thailand.

Failure to make such changes in the long term will result in a small number of existing insurance companies benefiting from the current restricted market conditions, while consumer protection and market competitiveness would be largely ignored. The opportunity for the insurance sector to become a major part of the Thai economy exists but only with the support of the Government in embracing the changes needed. The EU-Thailand FTA negotiations provide an opportunity to clearly illustrate the importance of a liberalised insurance industry. The EABC and its working groups will provide any assistance and clarification to enable the Government to take steps for positive change.

Insurance Industry Overview

The insurance industry contributes materially to economic growth by improving the investment climate and promoting a more efficient mix of activities and complementary development of other relevant services than would otherwise be undertaken in the absence of risk management instruments. Non-life insurance contributes to growth in countries at many different levels of development; while life and health insurance not only makes a substantial contribution to growth, but also insure people's loss for the betterment on social welfare grounds.

According to the Comité Européen des Assurances (CEA) report entitled 'The contribution of the Insurance Sector to Economic Growth and Employment in the EU' (2006[37], the insurance industry plays a significant role in promoting economic growth and structural development including:

1. *Providing broader insurance coverage directly to firms, improving their financial soundness* since it allows them to expand and tackle economic risks more conveniently without the need to set aside capital in a liquid contingency fund.

[37] CEA. (2006). The Contribution of the Insurance Sector to Economic Growth and Employment in the EU. Brussels.

2. *Fostering entrepreneurial spirit and attitudes, encouraging investment, innovation, market dynamism and competition.* Uninsured or underinsured firms are not likely to exploit new business opportunities and invest less in innovation.

3. *Offering social protection alongside the state, releasing pressure on public sector finance.*

4. *Enhancing financial intermediation, creating liquidity and mobilizing savings* due to insurance companies' extensive investment in the economy.

5. *Promoting sensible risk management by households and firms,* contributing to sustainable and responsible development. Insurance offers households and firms an indicator of their risk level and encourages responsible and sustainable use of resources.

6. *Fostering stable consumption throughout life.* Insurance acts as a security net to allow stable consumption throughout an individual's life.

Empirical studies also suggest that the benefits for developing countries from opening up their financial markets to foreign competition include: a more efficient financial sector; a broader range and improved quality of services for the consumer as well as corporate services; improved acquisition of human resources skills; pressures for improved regulation and supervision; better disclosure rules and general improvements in the legal and regulatory framework for the provision of financial services; and a reduction in (systemic) risks and improvements in liquidity. Importantly, it also allows consumers to obtain better and more appropriate services at competitive prices.

The Thai insurance market (both life and non-life insurance) has been growing at a promising rate. The insurance industry is driven by economic growth and several factors have contributed to such growth, including the outstanding role of Bancassurance and growing awareness among Thai consumers about the importance of insurance, not only as a risk management tool but also an investment.

In data obtained from the Insurance Market Development Department of the Office of Insurance Commission (OIC), there are currently 25 life insurance companies, 66 non-life insurance companies, and 695 insurance brokers operating in Thailand. In the current life insurance market, four incumbent players are collectively holding nearly 60 per cent of the total market share, i.e. AIA Thailand (24.03 per cent), Muang Thai Life Assurance (12.77 per cent), Thai Life Insurance (12.55 per cent), and Bangkok Life Assurance (11.22 per cent). In the current non-life insurance market, three incumbent players are collectively holding more than 30 per cent of the total market share, i.e. Viriyah Insurance (14.35 per cent), Dhipaya Insurance (9.14 per cent), and Bangkok Insurance (8.84 per cent).

Research reports forecast that the Thai insurance industry in 2013, including both life and non-life insurance, will grow by approximately 15 per cent – 17 per cent from 2012 to 2015 and will keep growing continuously. Furthermore, the relatively low insurance penetration rate and premium per capita compared to other countries, in ASEAN and other regions, also reflects the high growth potential of the Thai insurance market.

Another event that will inevitably affect the Thai insurance market is the integration of 10 ASEAN countries to establish the ASEAN Economic Community (AEC) by the end of 2015. As a consequence, more players, both local and foreign companies, will enter the market, increasing its competitiveness and benefiting the consumers. The AEC will also provide opportunities for Thai insurance companies and brokers to expand their businesses to other ASEAN markets. In addition, mergers and acquisitions between insurance companies are expected to take place, resulting in capital increases and cost reductions to strengthen their financial status. Mergers and acquisitions will result in the Thai insurance industry becoming less fragmented.

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. It is important to note the desired market conditions that enable the Thai insurance industry to head in the right direction.

To begin with, features of liberalisation in a competitive insurance market should be noted. In general, the most obvious results from opening up a market to competition are that consumers will benefit from lower prices and new, more efficient and more consumer-friendly services. Four key areas of liberalisation can be summarised below:

1. Greater access to capital: including improvements in the quality of insurance regulation, transfer of technological and managerial know-how, and improvements in customer service and value.

2. Economies of scale: including market consolidation by merger operations, reduction of costs, and fostering efficiency in capital allocation.

3. Market efficiency: including wider spectrum of new or innovated products, empowering underwriting experience to price setting, and moderate product pricing to the public.

4. Social values and economic benefits: including enhanced financial stability of individuals, families and organisations, increased domestic savings, and complementary savings to government expenses on social insurance programs.

However, in order to move forward in the same direction, each stakeholder within the insurance industry should clearly understand a complete picture of the components required to constitute a liberalised insurance market. The foundation of a liberalised insurance market requires a balance between regulations and facilitation. For this reason, a liberalised insurance market should be based on four major principles:

1. *Risk-Focused*

Although the risk-focused principle can be defined in several dimensions, it simply means that the more complex or higher risk an insurance company engages in, the more risk management capabilities, capital, and/or reserve it has to demonstrate, raise, and/or set aside. Accordingly, the role of regulatory bodies should focus on the risk profile of each institution rather than strictly rely on standard rules bindings all insurance companies. An example of this principle is Risk-Based Capital (RBC), a principle adopted by various countries including Thailand. Mainly for the purpose of consumer protection, RBC ensures that each insurance company has enough capital to sustain operating losses while maintaining a safe and efficient market. As a consequence, consumers can rest assured that their selected insurance companies have a solid financial grounding.

2. *Stakeholder-Reliant*

Regulatory bodies have to put in place an appropriate supervisory framework that allows them the ability to closely monitor the behaviour of insurance companies and other players in the market. At the same time, they should avoid interfering with insurance companies' board and management. In the event that interference is required, they need to develop intervention criteria that must be strictly followed. They also need to encourage the board and management to always seriously take into account fair business practice with clients, consumer protection, corporate governance, and utmost compliance with regulatory standards. In addition, all relevant stakeholders within the insurance industry should be encouraged to take part in active monitoring of the safety and soundness of insurance businesses as well as the roles and responsibilities of regulatory bodies.

3. *Disclosure-Based*

This disclosure-based principle encourages the creation of educated consumers who can make well-informed decisions. Those consumers understand the nature of different insurance products and what they should look out for when contemplating each alternative. Therefore, in concurrence with the product approval process, insurance companies have to make available to consumers accurate material information regarding their products and services in a timely manner. Regulatory bodies should also place great importance on this principle to enhance its market facilitation role, instead of focusing mainly on regulation.

4. *Business-Friendly*

It is desirable to promote a business climate conducive not only to business retention but also expansion. Laws and regulations have to keep pace with the rapidly changing insurance industry landscape and regulatory bodies need to find a balance between being a regulator and being a facilitator. This means that effective monitoring and mitigation of risks (such as controlling licencing of the business and strengthening solvency regulations) are equally as important as promoting a competitive insurance market and business innovation. Any activities that may hinder the growth and competitiveness of the insurance market should be avoided. Regulatory bodies should also maintain close relationships and contacts with all interested stakeholders and engage in dialogue with them to keep them updated about information and data concerning current market conditions.

Issues & Recommendations

Despite the nature and characteristics of a liberalised insurance market described earlier, several gaps exist (particularly in connection with the ‘Business-Friendly’ principle) between the desirable market conditions and the current conditions within the Thai 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 social and economic functions of insurance in line with the public interest, especially in relation to consumer protection and benefits.

Capital

The first key issue is in response to the Risk-Focused principle. The financial strength of the Thai non-life insurance industry has been affected by losses from the floods in 2011 and there are several examples of foreign capital being brought in to Thailand to shore up existing businesses. The need to retain existing capital and generate new capital remains more important than ever if the Thai insurance industry is to rebuild its capital base and be in a position to provide its customers with financial security and the products that are needed. In addition, though there are some new foreign reinsurers entering the market, replacing those who in the past effectively lent their capital to cover risk in Thailand but are no longer willing to provide cover for natural catastrophe perils, the current amount of capital to cover natural catastrophe risk might still be insufficient. This leaves the average customer with limited options in this area.

The conclusion to be drawn from this is that 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 operating insurance businesses 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.

Regulations / Product Approval Process

This key issue is in response to the Business-Friendly principle. The regulatory framework which governs the Thai insurance industry is commendable, in that it recognises the importance of capital, expertise, customer protection and the resolution of disputes. The regulations governing the introduction of new products do however cause some insurance businesses to be reluctant to innovate and 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 do 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 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. As a consequence, an insurer who innovates to create 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, with markets like Indonesia and the Philippines enjoying more than 60 per cent 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 licencing 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 LTF and RMF mutual funds.

Recommendation

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 advantage. 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.

Expertise Shortage (Difficulties to Attract and Maintain Foreign Investors and Experts)

This key issue is in response to the Business-Friendly principle. Academic literature on trade and investment in financial services (including insurance) assert the potential benefits of foreign entry into the domestic economy, by leading to greater competitiveness, forces domestic players to operate more efficiently. Foreign entry has also been found to facilitate the use of more modern skills and technology, improved risk management, the provision of specialised value-added services, and financial deepening through the provision of services in under-served segments of the market (such as SMEs).

Insurance expertise shortage can be separated into two parts, which are the difficulty in attracting foreign investors to invest in the Thai insurance market and the difficulty in attracting foreign experts to work in Thailand.

- *Difficulty in attracting foreign investors*

According to the Foreign Business Act (FBA) B.E. 2542 (1999), foreign participation is allowed in a range of business activities. However, services businesses on 'List 3' (businesses in which Thai nationals are deemed not ready to compete with foreigners) are restricted and controlled by the Ministry of Commerce. A foreign business entity who wishes to enter into one of these businesses requires a business license, which generally takes time and cost money to obtain, and specific financing with a 7:1 debt to equity requirement, which is not required for a local entity.

Foreign participation in the life and non-life insurance sector remains restricted and has been further limited with the enactment of the Insurance Amendment 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-capitalise the cash-strapped Thai insurance sector. This however has only happened on a case-by-case basis. At the same time, Thailand is contemplating relaxation of foreign investment in the insurance sector of up to 49 per cent foreign equity, paving the way towards preparing for intense competition under the full implementation of AEC in 2015. Nonetheless, there has been no formal notice issued that clearly states that those limits no longer apply from a certain date. To progressively liberalise 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 any concrete, measurable result 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 restriction under the existing Insurance Amendment Act of 2008, which requires foreign insurance companies to restructure by 2013 to reflect Thai control. Those failing to comply with such restrictions will be subject to penalties under the existing insurance laws, including prohibition of business expansion.

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[38].

- *Difficulty in attracting foreign experts*

This mainly deals with 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. Certain existing laws and regulations in Thailand are impediments to the development of more robust critical sectors. It is very important that the FTA negotiations lead to positive outcomes towards materialising the combination of administrative and legislative remedies to ease restrictions, with the aim to facilitate the free movement and recruitment of expatriate skilled and unskilled 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 service sector and when critical skills are needed. SMEs, many of which provide important services to much larger organisations, 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

[38] Other barriers to entry include 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 to high premiums and restrictions on innovative products, i.e. medical insurance are other industry concerns.

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 mean 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 recognised 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[39].

Recommendation

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.

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 the Insurance Amendment Act of 2008 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.

Also, the EABC recommends a combination of administrative and legislative remedies to ease restrictions with the aim to facilitate the free movement and recruitment of expatriate skilled and unskilled 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 towards this objective.

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.

[39] There are, within the ASEAN region, insurance markets that have encouraged foreign insurance investors; the most obvious being Singapore where the insurance industry has moved from a small domestic market 10 years ago to a dynamic international insurance centre. The levels of expertise in that market now rival some of the traditional centres such as London.

Although the reason behind those Sections is greatly for consumer protection and to help small and medium firms to compete with larger players, it also has 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 innovate such a product will have to set premium rates that are worth the innovation cost, i.e. the 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 rate they pay.

Recommendation

For free market competition and in the best interests of Thai consumers, de-tariffing insurance premiums (deregulation of pricing) is the desired goal. The EABC would like to urge a revision to alleviate the said restrictions from any laws and regulations in connection with the insurance premium tariff system being currently enforced.

Other Recommendations

- 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 a purchase 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.

- 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.

Transport & Logistics

As Thailand has evolved into a regional hub for many industries, the country has moved quickly to develop its logistics and transportation systems in view of sourcing, producing and exporting, which are expected to increase with the greater integration of ASEAN. Among the Government's priorities include establishing Thailand as a logistics hub in ASEAN, with its strategic location connecting Indochina and Myanmar with the rest of ASEAN to the south, and China to the north. However, a number of factors hamper Thailand from fully tapping its potential as a strategic hub in the region.

Despite the Government's efforts to actively promote the transport industries through fiscal and financial incentives and to encourage the private sector in infrastructure development, the regulatory framework for the provision and management of infrastructure services is complex and restrictions on foreign investment apply in all transport subsectors. Among the requirements for economic integration with ASEAN, set for 2015, liberalisation of transport and logistics policies are among the key issues that will have to be addressed in the lead-up to the single market. The EABC therefore encourages Thailand to step up its efforts towards trade facilitation, promoting healthy competition on a level playing field and easing hindrances and unnecessary restrictions in the following key activities in the transport and logistics sector:

1. **Market access**
2. **Customs reform and modernisation**
3. **Postal services**
4. **Air transportation**
5. **Maritime transport and ports**
6. **Domestic transport and warehousing**
7. **Cross-border transportation**

The global supply chain has in recent years become increasingly complex, with different parts of the manufacturing process spread around the world and around the region. Different products need to be moved at different speeds along the supply chain, while logistics companies need to offer varying service levels. A transport and logistics system that operates smoothly, efficiently and conveniently contributes significantly to the promotion of commerce and trade, driving the development of relevant industries, and strengthening the competitive edge of the market, both in attracting investment and products for exports. Literature offers substantial evidence linking improvements in transport and logistics directly to improvements in export performance[40]. Logistics is a multiple-service industry that combines transport, storage

[40] A World Bank study by Wilson and others (2002) shows that that APEC (Asia Pacific Economic Cooperation) countries differ substantially in the quality of their logistics and trade facilitation across a broad range of measures, including ports infrastructure, customs clearance, regulatory administration, and e-business use. They find that these differences are significantly related to differences in trade performance, and conclude that substantial growth in trade within their block could be accomplished by bringing lagging countries up to median performance levels. Further, improving access to international markets raises incomes. Frankel and Romer (1999) show that countries that are closer to world markets enjoy higher levels of trade, and that a 1 per cent rise in the trade to GDP ratio increases income per person by at least 0.5 per cent. Redding and Venables (2002) estimate that more than 70 per cent of the variation in per capita income across countries can be explained by the geography of the market and supplier access. Better access to coasts alone raises incomes by 20 per cent.

and warehousing, freight forwarding, information services, etc. The industry plays a key role in the national economy by linking various sectors together, generating a number of jobs and enhancing economic growth and development.

Thailand has evolved into a regional hub for many industries. The country has moved quickly to develop its logistics and transportation systems. The overall quality of Thailand's transport infrastructure has been upgraded, but there is an opportunity to upgrade it further, to enhance the country's logistics efficiency and competitiveness. In view of increased sourcing, production and exporting among ASEAN countries, as well as export to other regions with greater ASEAN integration and connectivity, Thailand has prioritised the policy to develop logistics systems and facilities to support trade and tap into the benefits of ASEAN integration. With its unique geographical advantage, Thailand benefits from easy accessibility to all major ports in Asia's growing economies including China, India, and Japan as well as emerging economies like Myanmar, Cambodia, Vietnam and Laos. Thailand is also committed to open regionalism and trade integration through a series of trade pacts, including the on-going negotiations on an EU-Thailand FTA.

Thailand has an extensive road network and the growth of its air transport infrastructure has the potential to place Thailand as a logistics hub for the region, including becoming a transit hub to Myanmar. However, there are challenges that Thailand must overcome in order to become a competitive regional logistics hub.

Thailand still lags behind Singapore and Malaysia in terms of infrastructure development. Logistics costs in Thailand are very high compared with its gross domestic product (GDP). Apart from limitations in transportation and warehousing infrastructure, communication and information networks in the country also need to evolve significantly to match those of its rival neighbours. Human resource is also a big challenge for the logistics industry in Thailand. Identifying the right people to do the job, as well as training and helping them to hone their skills, needs significant investment from logistics companies.

Table 7: Proportion of logistics costs to GDP

Unit: per cent to GDP

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012e
Transportation cost to GDP	7.4	7.1	7.9	8.2	7.8	8.2	7.1	7.3	7.3	7.1
Inventory holding cost to GDP	7.2	7.2	7.6	8.0	7.8	7.4	6.6	6.5	6.1	5.9
Logistics administration cost to GDP	1.5	1.4	1.6	1.6	1.6	1.6	1.4	1.4	1.3	1.3
Logistics costs to GDP	16.1	15.8	17.1	17.8	17.1	17.1	15.1	15.2	14.7	14.7

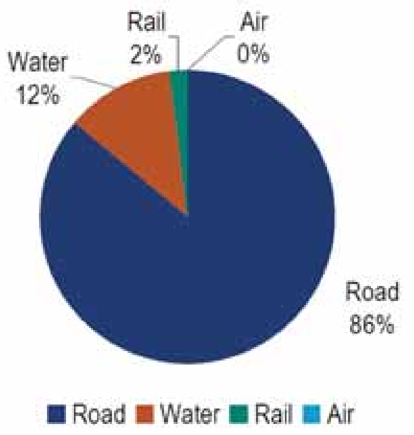
Source: NESDB

Restructuring Thailand's transportation system[41]

Thailand's inland transportation infrastructure is road-biased, which is in fact much more expensive than other forms of transportation such as rail and water[42]. There are 200,000 km of roads in the country but less than 4,000 km of railway tracks. Water transportation is also under-utilised as waterways measure only 5,000 km. According to the WEF Global Competitiveness Report 2012-13, Thailand ranks 49th overall in terms of infrastructure quality, but ranks relatively better for roads (36th) and airports (28th) than for railways (57th). Given the fact that 86 per cent of Thailand's freight is transported by road and only 2 per cent by rail, transportation consumes as much as 31per cent of Thailand's energy use (industrial production by comparison accounts for 41 per cent). Transportation typically accounts for about 15 per cent of total energy use in developed countries. It is therefore no surprise that Thailand's logistics costs amount to approximately in the range of 15-18 per cent of GDP.

[41] Summarised from Thailand Macro Viewpoint on "Thailand's transportation infrastructure projects" by Dr Supavud Saicheua, Thanomsri Fongarunrung of Phatra Securities in GEM Economics | Asia | Thailand, 25 January 2013 available at https://www2.phatrasecurities.com/phatra/Research/upload/0000111089/0125ECON.pdf
[42] Estimated at Bt1.72 per ton per km (t/km), followed by rail at Bt0.93/t/km and water 0.64/t/km.

Figure 25: Thailand's freight by mode of transportation



Source: Ministry of Transport

Table 8: Infrastructure quality ranking

	Road	Railway	Port	Air Transport
Hong Kong	4	2	1	1
Singapore	1	6	2	2
Korea	14	10	25	22
Taiwan	16	8	30	53
Malaysia	21	20	19	29
Thailand	**36**	**57**	**43**	**28**

Source: The Global Competitiveness Report (WEF), Office of Transport and Traffic Policy and Planning (OTP)

Realising a number of key limitations in Thailand's transport infrastructure, the Government has made one of its top priorities to overhaul Thailand's transportation system by means of a modal shift from road to rail through accelerating the expansion and improvement of Thailand's railways. Over the next seven years, Thailand will undergo a transport transformation as the Government pursues the projects under its ambitious 2-trillion-baht programme to improve national infrastructure and logistics systems on the largest scale in recent history, with 78 per cent of this package devoted to railways development.

Among other objectives, the government sets some well-defined targets which include:

- Reducing Thailand's logistics costs from 15.2 per cent to 13.2 per cent of GDP
- Raising train speed for freight from 39 km/hr. to 60km/hr., and to raising it for passengers from 60km/hr. to 100km/hr.
- Doubling transportation of freight by rail from 2.5 per cent to 5 per cent
- Increasing passengers carried by rail from 45 million to 75 million trips per year
- Achieving fuel savings of 100bn baht per year through a modal shift of transportation and improved efficiency
- Cutting travel time from Bangkok to provincial cities within a 300km radius in half, from three hours currently
- Creating 1.6 million jobs; and raising annual GDP growth by 1 ppt.

Despite the Government's laudable efforts to actively invest in upgrading Thailand's transport infrastructure, the regulatory framework for the provision and management of infrastructure services in Thailand is still complex and restrictions on foreign investment apply in all transport subsectors. Market access and foreign ownership restrictions hinder the inflow of trade and investment and limit the growth of the logistics industry. Restriction of foreign equity ownership is considered as the most significant barrier for development and expansion of high quality transportation and logistics services. Thailand is therefore encouraged to continue its efforts towards facilitating trade, promoting healthy competition on a level playing field, and enhancing the overall economic environment in a sustainable way, by eradicating hindrances and unnecessary restrictions in the following key areas of the transport and logistics sector as outlined below:

1. Market Access

An efficient and integrated transport network, measures for trade facilitation and more streamlined customs procedures as well as improved connectivity are vital to strengthen Thailand's competitiveness as ASEAN economic integration materialises. The ASEAN Connectivity Master Plan acknowledges that domestic legal regulations often constrain further liberalisation, leading to higher costs for users and compromising quality and service levels. Market access and foreign ownership restrictions hinder the inflow of trade and investment and limit the growth of the transport and logistics industry by stifling investment in the sector. European businesses are therefore strongly supportive of the objectives of the ASEAN Logistics Roadmap and the Master Plan on ASEAN Connectivity in contributing to the ASEAN Economic Community by 2015, through liberalisation and facilitation measures in the area of logistics services and the creation of an integrated ASEAN logistics market.

Logistics businesses covering domestic land, waterway, and air transportation, including domestic airlines, are classified under List 2 of the Foreign Business Act (FBA); while other services such as packaging and warehousing are classified under List 3 of the FBA. The FBA imposes certain restrictions on equity participation by foreigners in these parts of the services sectors. Domestic road transport must also comply with the criteria set out in the Land Transportation Act B.E. 2522 (1979) and concerned ministerial regulations. Under the WTO, Thailand does not have specific commitments in the postal/courier and logistics sectors.

Recommendation

As noted in the 2012 EABC Position Paper, the EABC views that Thailand's commitment towards relaxation of foreign ownership restrictions in the transport and logistics sector – with clear targets and an ambitious timeline – is a necessary step forward to enhance Thailand's competitiveness amidst the increasing regional integration process of the AEC and interconnection amongst Asian economies.

Thailand is also encouraged to ensure timely and effective implementation of the economic integration measures and concrete actions outlined in the ASEAN Strategic Transport Plan 2011-2015, Master Plan on ASEAN Connectivity as well as the AEC Blueprint.

With a firm belief that effective public-private sector engagements in policy formulation and implementation would be mutually reinforcing, the EABC supports the establishment of regular dialogue between the private sector, relevant business associations and government in ongoing policy discussions regarding this important sector.

2. Customs Reform and Modernisation

Customs facilitation plays an essential role in facilitating trade and lowering costs for businesses, in particular SMEs. Reducing time to market is critical to be able to compete in today's globalised world and complex supply chains.

In Thailand, whilst there have been some efforts at reforming and automating customs processes, unnecessarily complex customs clearances, inefficient transit arrangements and other non-tariff barriers persist. Business operators at times face high compliance costs and difficulties due to lack of transparency and unpredictability.

The overall problems with procedures and requirements for imports, exports and/or transit in Thailand include:

- The de minimis threshold for imports, set at 1,000 baht (around EUR 26), is low in comparison with regional and international standards. According to a study conducted by the Centre for Customs and Excise Studies of the University of Canberra and ITS Global, Australia, the net economic benefits for Thailand with a US$100 de minimis threshold was estimated at US$27 million per year.
- The threshold for **simplified clearance** (Category 2) is currently set at FOB value of 40,000 baht. Beyond this threshold, full formal customs declarations have to be submitted.

- Efforts to automate and enhance the paperless clearance environment in Customs should continue. Unfortunately, this has suffered a setback with recent measures at Suvarnabhumi Airport to impose printing of customs declaration forms and other paperwork (e.g. Licences) in return for manually printing cargo permits for 'Green Line' shipments prior to release. Manual printing of these permits are currently undertaken post-release as a documentation procedure. This reinstates parallel process for manual and hardcopy paperwork clearance and is a regression from the paperless e-Customs environment introduced by Thai Customs.

- **Transit procedures** in Thailand are burdensome and not aligned with ASEAN agreements, which particularly affect road freight services. Bonded goods in transit through Thailand is only recognised in case the full truck load (FTL) bound for a destination outside Thailand for the one and same consignee (i.e. goods in transit can only be carried for one consignee). For LTL (less than truck load), those transhipments loaded on a subject truck must be transferred at the involved border customs checkpoint and undergo import declarations. There is however an exception enacted by the customs notification no. 79/B.E. 2554 regarding the multimodal transportation in which the context allows for the bonded LTL truck movement from the RFID-equipped customs border checkpoint (so far only Sadao) to the Suvarnabhumi Customs Free Zone for customs clearance for all imported goods and transhipments to transfer to their final destinations at the airport.

  For multiple consignees and multiple destinations, customs clearance is required at first point of entry in Thailand, and last outgoing point from Thailand. Current Customs regulations do not allow goods in transit and goods with final destination Thailand to be co-loaded in the same vehicle. In case a transport provider still wishes to do so, a 'business case' must be presented to the Customs office to ask for permission to co-load. The rules are subsequently applied in a haphazard manner with uncertain and varying outcomes depending on the views of individual Customs officials.

- The Customs office does not allow the transporter to declare as the importer of all LTL cargo on behalf of the actual consignee at the port of entry, due to the fact that the transporter does not have the import license/permit/ specifically for each commodity in the container.

  However, the customs notification no. 79/B.E.2554 will allow for submission of a pre-arrival CAR MANIFEST as a replacement of Sor Bor 1 (ศบ 1) manual documentation and ask for the bonded movement approval from the customs border house to allow the movement of the container from the border to the airport. After unloading all shipments from the truck, each individual shipment must be cleared on the actual Importer of Record via the E-Customs paperless system with every single customs entry.

- The burdensome transit procedures create inefficiencies and high costs. The e-Transit system under the Master system of E-Customs is at present under development by the Customs Department and is not yet in place. The customs clearance – which is not fully automated and still requires some manual procedures – adds complexities and time.

- Customs carries out excessive inspections and applies high penalties, even in cases of minor administrative breaches. 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 formal import and export customs entries to be performed in both English and Thai languages. This requirement is not trade friendly and is not aligned with international best practices. In particular, this is also in contravention with the current Thailand Customs Law, Section 113, which only requires the submission to be performed in <u>either</u> English <u>or</u> Thai language. Customs officials often find 'errors' in the translation so that they can impose fines. This is due to the fact that Customs implements a system of reward/commission in case an individual Customs officer finds cases of non-compliance.

Recommendation

The EABC strongly views that measures for trade facilitation and more business-friendly customs procedures are of utmost importance for Thailand to improve its competitiveness externally.

Recognising that international trade is an engine of economic growth and the benefits of higher competitiveness when goods are traded faster and at lower cost, we encourage Thailand **to address the aforementioned problems with procedures and requirements for imports, exports and/or transit**. Thailand is also encouraged **to implement a revision fully reflecting international conventions, such as the Revised Kyoto Convention on the Simplification and Harmonisation of Customs Procedures,** as well as international best practices, in order to improve the trade and investment climate and support economic growth, in particular:

- *Raising the de minimis level*

  A 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, such that an exemption from payment of duties/taxes may be granted with minimal customs declaration requirements. A de minimis threshold reduces the compliance costs imposed on importers and accelerates customs clearance. 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. Both the World Trade Organisation (WTO) and the World Customs Organisation (WCO) recognise the important aspect of de minimis thresholds to facilitate trade.

  Most ASEAN economies already have de minimis arrangements but they vary considerably, which can significantly affect the balance of their economic benefits and costs. In Thailand, the threshold is currently only 1,000 baht (around US$27). The EABC recommends that this threshold is raised to US$100.

  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. To remain competitive, facilitate trade, reduce costs – in particular for SMEs – and free up resources for Customs, we encourage the Government to raise its de minimis level to a level comparable with regional standards.

- *Raising the threshold for simplified clearance*

  The EABC would recommend increasing the threshold for simplified customs clearance (Category 2) to 80,000 baht in order to accelerate the customs clearance procedure for inbound express consignment in alignment with the Immediate Release Guidelines from the World Customs Organisation.

- *Formal customs entry in English*

  We would like to seek the support of the Government to effect this critical improvement to the current Paperless Clearance System and allow customs entries to be submitted in English language only.

- *Transit procedures*

  The EABC recommends that Thailand fully transposes into national law and that Customs implements all ASEAN agreements related to multi-modal and inter-state transport.

- Finally, we would like to seek modification of the penalty scheme and the reward system to ensure transparency and predictability in order to avoid ‘undue penalties’ or encouragement of the ‘over-incentive’ effect.

Postal services

According to section 5 of the Postal Act from 1934, the Thai government has the exclusive right to control and handle postal services. Although the incumbent postal operator, Thai Post, was corporatized in 1999, collection, delivery, dispatch, request for acceptance or handling of letters and postcards fall under a monopoly held by Thai Post, of which shares are fully owned by the Government (Ministry of Finance). Letters and postcards are not adequately defined, and are hence arbitrarily applied. The incumbent postal operator is still operating under an exclusive right, which creates an unfair advantage, since it is also active in other segments which could clearly be considered outside of basic postal services (universal postal services). Breaches of the postal monopoly by private postal, courier or express delivery operators are currently subjected to a fine of up to 20 baht for each letter and postcard that is delivered from abroad to a Thai addressee (inbound). The current application of this outdated legal framework also gives the incumbent postal operator the right to impose this fine on delivery of documents/letters from Thailand to an addressee abroad (outbound).

In addition, section 7 of the Postal Act establishes further prohibitions on persons who are involved in the postal service as carriers who normally transport goods or passengers, including their employees and agents, or owners, controllers, or crew members of vehicles travelling domestically and internationally, including their employees and agents. Violation of section 7 of the Postal Act is subject to a fine of up to 20 baht per item.

Recommendation

The EABC seeks an abolishment of the postal monopoly, at a minimum introduction of a reasonable and commercially viable price-weight multiple to ensure fair competitive trade practices.

Air Transportation

To spur regional connectivity, ASEAN is set to fully implement its ASEAN Open Sky Policy in 2013, moving towards an ASEAN Single Aviation Market by 2015. Air transport is also one of Thailand's most important logistics sectors. The Suvarnabhumi Airport, with its capacity to handle 45 million passengers and three million tonnes of cargo a year, has affirmed Bangkok's status as a major aviation hub in Southeast Asia and an important crossroads for more than 100 airlines. The airport's success is evidenced by the increase of air traffic through Thailand.

We welcome Thailand's gradual liberalisation approach to its air transport policy with limitations and restrictions imposed on foreign airlines involving capacity and frequency as well as route schedule and traffic rights gradually being removed. However, the gradual liberalisation approach by exchanging rights with Contracting Parties has occurred on a reciprocal basis. Limitations exist on capacity and frequency entitlements. There is no specific timeline to abolish restrictions on points en route and traffic rights, e.g. fifth freedom traffic rights, depending on respective Contracting Parties and other considerations.

Restrictive aviation policies create inefficiencies and complexities in network operations for logistics providers, which have to operate with a patchwork of own carriers, partially owned carriers, chartered aircrafts and loading onto passenger aircrafts. This leads to higher costs for users and compromises service levels. In addition to adhering to the commitments and timelines under the ASEAN Single Aviation Market, Thailand could consider negotiating an Open Aviation Area with the EU.

Under the Air Navigation Act, in order to register a commercial aircraft and obtain an operating license, a company must be registered under Thai law and have its main office in Thailand, at least 51 per cent of its shares must belong to Thai nationals, and the majority of the board of directors must be of Thai nationality. The Government does not have a plan to relax the 49 per cent limitation of foreign equity and nationality requirement in the air transport services sector in the foreseeable future. This policy is not conducive to the further development of Thailand as a logistics and aviation hub, and these restrictions no longer respond to the needs of today's economy. It is high time to modernise the antiquated regulatory framework in aviation.

Recommendation

Thailand is encouraged to take appropriate steps to progressively remove restrictions on foreign equity ownership in order to facilitate cross-border movement of shipments to stimulate trade and investment. By reducing costs and providing for effective functioning of the free trade zone, there will be a significant increase of trade and economic growth in support of Thailand becoming an airfreight hub.

Maritime Transport and Ports

Thailand's international seaborne trade has steadily increased over the years. To support regional linkages with neighbouring countries, efforts have been made to improve Thailand's port efficiency and to strengthen its bid to become a major logistics centre for ASEAN and South Asian countries.

There are two major deep sea ports under the operation of The Port Authority of Thailand. Laem Chabang, which possesses various industrial and free-trade zone facilities, is capable of handling Super Post Panamax ships, and is Thailand's most important international port. The Port of Bangkok (Klong Toei) has bonded warehousing which offers such value-added services as online inventory account reporting. Laem Chabang is Thailand's key deep sea port and the gateway to the Asia Pacific region, with a bigger size and higher handling capacity; while the Port of Bangkok is closely connected to the central parts of Thailand. The other four main ports to support regional linkages with neighbouring countries are Chiang Khong and Chiang Saen in the north, Ranong in the southwest, and Songkhla in the south.

Restriction of foreign equity ownership to 49 per cent in maritime transport services is considered the most significant barrier for foreign operators.

It has however been reported that Thailand is currently reviewing the existing 'cargo reservation' scheme under Section 17 of the Maritime Promotion Act B.E.2521 (1978), as amended by the Act B.E.2548 (2005), with a view to reducing designated shipping routes where imported government cargo are required to be serviced by Thai-flagged vessels. Albeit questionable as to Thailand's WTO/GATS commitments, Thailand argues that the cargo reservation scheme has been specifically applied to imported government cargos, which constitute a very small proportion of Thailand's international maritime trade with no substantial trade value. In addition, it is possible to waive the requirement to use Thai-flagged vessels on designated shipping routes if such vessels are not available for service at the time such imported government cargos are to be loaded on board.

Thailand is not a party to the United Nations Liner Code of Conduct. Since at present its merchant fleet can accommodate only about 10 per cent of its international maritime trade in terms of volume, Thailand considers it difficult to implement and meet the commitment of certain provisions of the Code, e.g. those related to cargo sharing arrangements.

Recommendation

Concrete initiatives on facilitating maritime transport and expedient improvement of infrastructure bottlenecks in respect of port facilities would be most welcomed.

Domestic Transport & Warehousing

Inland transportation is an integral part of Thailand's transport system. Goods are moved throughout Thailand by railway, trucks and other vehicles (along major roads and the nation's highway system), and even by boat. Extensive hinterland infrastructure such as road and rail services to Thailand's major sea ports also contribute to efficient movement of products.

Similar to other key areas in the transport and logistics sector, the restriction of foreign equity ownership to 49 per cent in road and rail transport services is considered the most significant barrier for foreign operators. Despite the fact that Thailand aims to increase foreign participation in road transport services – as specified in the AEC Blueprint – and is considering amending concerned laws and regulations, at the moment, no company from another ASEAN country is allowed to conduct domestic transport in Thailand, regardless of the general relaxation of restrictions on other non-ASEAN operators.

Recommendation

We recommend that Thailand fully liberalises domestic transport and warehousing in order to allow for foreign participation in this sector.

Cross-border Transportation

The National Single Window (NSW) facilitates Thailand's trade within the ASEAN region by allowing customs documents for import to be submitted at a single location. The NSW system serves the valuable purpose of increasing the efficiency of traders, thus saving time and money; however, certain requirements remain which are burdensome to trade and not aligned with the customs practices in Thailand's major trading partners[43].

Cross-border trade among ASEAN nations is facilitated through the strengthening of infrastructure that creates links from one nation to another, such as the GMS Corridor. Forming links and strengthening the infrastructure promote and facilitate tourism, trade, and foreign investment in the region and provide an efficient means of controlling potential problems for the region, such as communicable diseases. Thailand participates in a number of cross-border trade agreements to enhance business and trade facilitation protocols and systems, including ASEAN Framework agreements: Facilitation of Goods in Transit (1998); Multimodal Transport (2005); Inter-State Transport (TBS); GMS-CBTA (2007) and one framework agreement with 20 annexes and protocols.

Thailand is committed to environmental concerns, a fact that is portrayed through the Hazardous Substances Logistics Association (HASLA), which represents logistics companies involved in the transportation of hazardous chemical waste in Thailand. Since its inception in October 2003, HASLA has continued to successfully represent this industry to the government and collaborate with it in order to solve members' problems. HASLA is actively involved in drafting guidelines for transporting hazardous substances, and it acts as a focal point for information and the exchange of best practices in enforcing compliance with safety standards and laws.

[43] Please refer to comments made in the earlier section on Customs and Compliance

Recommendation

- As stated above, cross-border shipments are often hindered by the lack of seamlessness for trucks servicing supply chains throughout the ASEAN region and the lack of harmonisation and mutual recognition of documentation, procedures and standards for inter-modal and multimodal transport of goods. Facilitating cross-border land and multimodal transport would help to maximise the efficiency of logistics services and lower costs for consumers. Thailand is therefore encouraged to support on-going efforts in ASEAN to have one common transit system, including customs, transportation and transit licencing. These transit procedures should be simplified and not unduly burdensome, for example in reporting requirements or paperwork. Common transit procedures should be available and applicable to ASEAN inter-modal and inter-state transport and border crossings should be open on a 24/7 basis.

- To support production networks across the Mekong region we would encourage Thailand to keep land border crossings open on 24/7 basis, or at least beyond office hours.

Annex

Annex I: Insurance

Industry & Market Analysis

The insurance industry contributes materially to economic growth by improving the investment climate and promoting a more efficient mix of activities and complementary development of other relevant services than would otherwise be undertaken in the absence of risk management instruments. Non-life insurance contributes to growth in countries at many different levels of development; while life and health insurance not only makes a substantial contribution to growth, but also the insurance of people's welfare needs.

According to the Comité Européen des Assurances (CEA) report entitled 'The contribution of the Insurance Sector to Economic Growth and Employment in the EU' (2006)[44], the insurance industry plays a significant role in promoting economic growth and structural development including;

1. *Providing broader insurance coverage directly to firms, improving their financial soundness* since it allows them to expand and tackle economic risks more conveniently without the need to set aside capital in a liquid contingency fund.
2. *Fostering entrepreneurial spirit and attitudes, encouraging investment, innovation, market dynamism and competition.* Uninsured or underinsured firms are not likely to exploit new business opportunities and invest less in innovation.
3. *Offering social protection alongside the state, releasing pressure on public sector finance.*
4. *Enhancing financial intermediation, creating liquidity and mobilising savings* due to insurance companies' extensive investment in the economy.
5. *Promoting sensible risk management by households and firms,* contributing to sustainable and responsible development. Insurance offers households and firms an indicator of their risk level and encourages responsible and sustainable use of resources.
6. *Fostering stable consumption throughout life.* Insurance acts as a security net to allow stable consumption throughout an individual's life.

Empirical studies also suggest that the benefits for developing countries from opening up their financial markets to foreign competition include: a more efficient financial sector; a broader range and improved quality of services for the consumer as well as corporate services; improved acquisition of human resources skills; pressures for improved regulation and supervision; better disclosure rules and general improvements in the legal and regulatory framework for the provision of financial services; and a reduction in (systemic) risks and improvements in liquidity. Importantly, it also allows consumers to obtain better and more appropriate services at competitive prices.

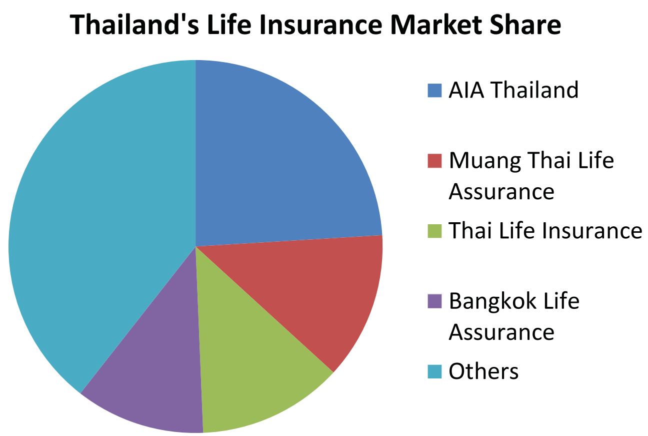
[44] CEA (2006). The Contribution of the Insurance Sector to Economic Growth and Employment in the EU. Brussels.

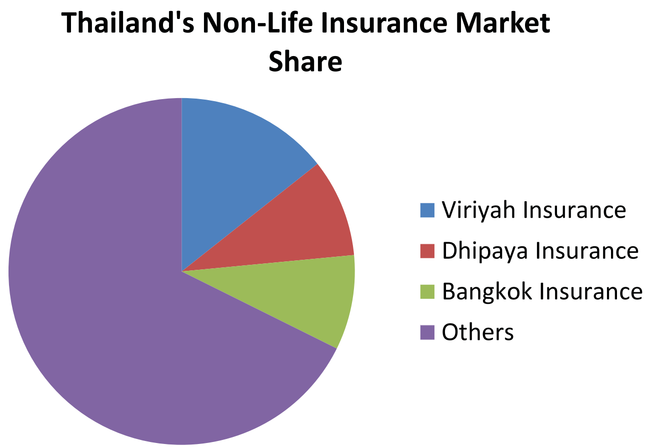
Thai Insurance Market Analysis

The Thai insurance market (both life and non-life insurance) has been growing at a promising rate. The insurance industry is driven by economic growth and several factors have contributed to such growth, including the role Bancassurance has played, the growing awareness among Thai consumers about the importance of insurance (not only as a risk management tool but also an investment), continuity of new insurance product introduction, development of distribution channels through social media, significant growth of motor insurance owing to the government's first-car tax rebate scheme, the tax benefit on life insurance premiums, and the adoption of Risk-Based Capital (RBC), etc.

In data obtained from the Insurance Market Development Department of OIC, there are currently 25 life insurance companies, 66 non-life insurance companies, and 695 insurance brokers operating in Thailand. In the current life insurance market, four incumbent players are collectively holding nearly 60 per cent of the total market share, i.e. AIA Thailand (24.03 per cent), Muang Thai Life Assurance (12.77 per cent), Thai Life Insurance (12.55 per cent), and Bangkok Life Assurance (11.22 per cent). In the current non-life insurance market, three incumbent players are collectively holding more than 30 per cent of the total market share, i.e. Viriyah Insurance (14.35 per cent), Dhipaya Insurance (9.14 per cent), and Bangkok Insurance (8.84 per cent).

Figure i: Market share of Thailand's life and non-life insurance markets





Source: Insurance Market Development Department of the OIC

Research reports forecast that the Thai insurance industry in 2013, including both life and non-life insurance, will grow at approximately 15 per cent – 17 per cent from 2012 to 2015. Furthermore, the relatively low insurance penetration rate and premium per capita compared to other countries, in ASEAN and other regions, also reflects the high growth potential of the Thai insurance market. The Thai Life Assurance Association expects life insurance penetration rate to reach 40 per cent of the total population in 2015, which is a 10 per cent increase from the current rate. In non-life insurance, the market has been gradually growing especially after the floods in 2011. For the past 10 years, the average growth of non-life insurance premiums was around 10 per cent per annum.

Another event that will affect the Thai insurance market is the integration of 10 ASEAN countries to establish the AEC by the end of 2015. As a consequence, more players, both local and foreign companies, will enter the Thai insurance market, increasing its competitiveness and benefiting the consumers. The AEC will also provide opportunities for Thai insurance companies and brokers to expand their businesses to other ASEAN countries. In addition, mergers and acquisitions between insurance companies are expected to take place in capital increases and cost reductions to strengthen their business financial status. Mergers and acquisitions will result in the Thai insurance industry becoming less fragmented.

Other factors affecting the Thai insurance industry that have to be closely monitored include Thailand's political stability and continuity of government policies, particularly those related to the insurance industry, and global and regional economic conditions.

Insurance Industry Liberalisation

Effects of market liberalisation

To begin with, features of liberalisation in competitive insurance market should be noted. In general, the most obvious results from opening up a market to competition are that consumers will benefit from lower prices and new services which are more efficient and consumer-friendly. Four key areas of liberalisation can be summarised below.

1. *Greater access to capital:* including improvements in the quality of insurance regulation, transfer of technological and managerial know-how, and improvements in customer service and value.

2. *Economies of scale:* including market consolidation by merger operations, reduction of the costs, and fostering efficiency in capital allocation.

3. *Market efficiency:* including wider spectrum of new or innovated products, empowering underwriting experience to price setting, and moderate product pricing to the public.

4. *Social values and economic benefits:* including enhanced financial stability of individuals, families and organisations, increased domestic savings, and complementary savings to government expenses on social insurance programs.

Principles of a liberalised insurance market

In order to move forward in the same direction, each stakeholder within the insurance industry should clearly understand a complete picture of the general components required to constitute a liberalised insurance market. The foundation of a liberalised insurance market requires a balance between regulations and facilitations. For this reason, a liberalised insurance market should be based on four major principles as follows:

1. Risk-Focused

Although the risk-focused principle can be defined in several dimensions, it simply means that the more complex or higher risk an insurance company engages in, the more risk management capabilities, capital, and/or reserve it has to demonstrate, raise, and/or set aside. Accordingly, the role of regulatory bodies should focus on the risk profile of each institution rather than strictly rely on standard rules bindings all insurance companies. This principle applies not only to the insurance industry but also to the financial services sector as a whole. An example of this principle is the Risk-Based Capital (RBC), a principle adopted by various countries including Thailand. RBC ensures that each insurance company has enough capital to sustain operating losses while maintaining a safe and efficient market. As a consequence, consumers can rest assured that their selected insurance companies have a solid financial grounding.

2. Stakeholder-Reliant

Regulatory bodies have to put in place an appropriate supervisory framework that allows them the ability to closely monitor the behaviour of insurance companies and other players in the market. At the same time, they should avoid interfering with insurance companies' board and management. In the event that interference is required, they need to develop intervention criteria that must be strictly followed. They also need to encourage the board and management to always seriously take into account fair business practice with clients, consumer protection, corporate governance, and utmost compliance with regulatory standards. In addition, all relevant stakeholders within the insurance industry should be encouraged to take part in active monitoring of the safety and soundness of insurance businesses as well as the roles and responsibilities of regulatory bodies. There are several ways to support the said encouragement; for example, a focus group that includes key stakeholders from the insurance industry to share with one another their points of view on current market conditions or hot issues.

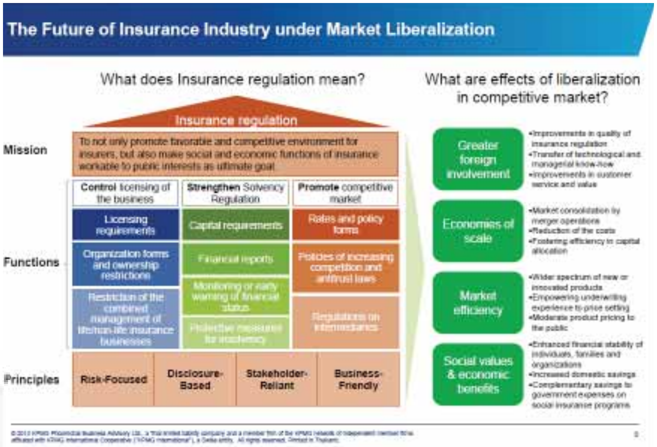
3. Disclosure-Based

This principle of disclosure-based encourages the creation of educated consumers who can make well-informed decisions. Those consumers understand the nature of different insurance products and what they should look out for when contemplating each alternative. Therefore, in concurrence with the product approval process, insurance companies have to make available to consumers accurate material and information regarding their products and services in a timely manner. Regulatory bodies should also place great importance on this principle to enhance its market facilitation role, instead of focusing mainly on the regulation role.

4. Business-Friendly

It is desirable to promote a business climate conducive not only to business retention but also expansion. Laws and regulations have to keep pace with the rapidly changing insurance industry landscape and regulatory bodies need to find a balance between being a regulator and being a facilitator. This means that effective monitoring and mitigation of risks (such as controlling licensing of the business and strengthening solvency regulations) are as equally important as promoting a competitive insurance market and business innovation. Any activities that may hinder the growth and competitiveness of the insurance market should be avoided. Regulatory bodies should also maintain close relationships and contacts with all interested stakeholders and engage in dialogue with them to keep them updated about information and data concerning current market conditions.

Figure ii: Market share of Thailand's life and non-life insurance markets



Source: Paperwork obtained from the Insurance Industry Group, KPMG Thailand

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