

2012 European Business Position Paper

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

*“Strengthening European-Thai Economic Relations
towards Competitive Thailand”*



This European Business Position Paper represents the views of European businesses as communicated to the European ASEAN Business Centre in Thailand (EABC). Following its recent establishment in late November 2011, 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 first 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.

The information in this Position Paper is provided for informational and recommendation purposes only, and should not be construed as business or legal advice on any specific facts or circumstances. The information contained herein is based on input and analysis received as at May 2012. No users of the Position Paper should act, or refrain from acting, on the basis of any content included in the Position Paper without seeking appropriate professional advice.

The European ASEAN Business Centre in Thailand does not assume any legal liability or responsibility for the accuracy and completeness of the information provided in this Position Paper.

Content

Message from the President	2
About the European ASEAN Business Centre (EABC)	3
Executive Summary	5
Acronyms and Abbreviations	9
Introduction	10
Section One: Cross Sectoral Issues	15
• Enhancing transparency in policymaking and the application of rules and regulations, in particular on:	15
- Customs	16
- Grey markets	18
• Ease of doing business for improved business and economic efficiency	19
- Competitive tax and investment promotion regime	19
- Standards and conformity assessment	20
- Efficient schemes of Free Trade Zones	21
• Creating an enabling economic and regulatory environment	22
- Greater access to market opportunities and a level playing field for European players, with particular focus on the services sector:	22
o Relaxation of foreign ownership restrictions / liberalisation of services sectors	22
o Ease of restrictions to facilitate free movement and recruitment of foreign skilled and unskilled workers	24
- Sound economic and regulatory framework / effective engagement in regulated industries	26
o Court system, resolution of disputes, and arbitration	26
• Strengthening the legal framework and law enforcement to protect intellectual property rights (IPR)	27
- Proposed regulatory reform aimed at combating counterfeiting and piracy	27
- Strengthening IP enforcement	30
- Enhancing IP system towards sustainability	32
Section Two: Sectoral Issues	
Automotive	35
Food & Beverages	41
Healthcare & Pharmaceutical	45
Information & Communication Technology (ICT)	49
Insurance	66
Transport & Logistics	69
Section Three: Way Forward	75
Annex	79

Message from the President

Bangkok, June 2012

The European ASEAN Business Centre (EABC) is delighted to publish its first Position Paper in Thailand since the public launch of EABC in January 2012.

In this Position Paper the European ASEAN Business Centre has compiled recommendations made by European Industry to address business concerns and highlight areas where obstacles need to be overcome to achieve a level playing field for European companies investing and doing business in Thailand; as well as those European companies, including SMEs, wishing to establish themselves in Thailand.


I believe if implemented our recommendations will greatly improve the Thai economy in terms of its competitiveness, leading to higher creativity and greater innovation: important factors if the country is to compete successfully in the forthcoming ASEAN Economic Community (AEC).

2 This Position Paper contains work derived from eight EABC Working Groups, ranging from Cross Sectoral Issues to Intellectual Property Rights (IPR) and key economic sectors namely: Automotive, Food & Beverages, Healthcare & Pharmaceuticals, Information Communication Technology (ICT), Insurance, and Transport & Logistics. The guiding principle behind the recommendations coming from the EABC's Working Groups is 'Strengthening European - Thai economic relations for a more competitive Thailand'.

On behalf of the European 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 constructive dialogue that has enabled the development and publishing of this first Position Paper from the European ASEAN Business Centre.

I would also like to acknowledge the dedication and endeavours of everyone related to EABC in making the publication of this first Position Paper a reality and thus forming a cornerstone of EABC's work to date.

Yours sincerely,



Rolf-Dieter Daniel
President

About the European ASEAN Business Centre (EABC)

The European-ASEAN Business Centre (EABC) is a newly established platform representing the interests of the European business community 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 Europe¹, 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. Eight 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, 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 and Standard Chartered Bank.

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.

3

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

EABC Board Members

President

Rolf-Dieter Daniel
Staedtler (Thailand) Ltd.

Vice Presidents

Jan Eriksson
Spica Co., Ltd.

Lyn Kok
Standard Chartered Bank (Thai) PCL.

Anne-Marie Machet
Franco-Pacific (Thailand) Co., Ltd.

Treasurer

John G. Sim
KPMG Phoomchai Holdings Ltd

Board Members

Arnaldo Abruzzini
EUROCHAMBRES - The Association
of European Chambers of
Commerce and Industry

Gunnar Bertelsen
Telenor Asia (ROH)

Axel Blom
Blue Business Solutions Ltd.

Graeme Harlow
Diageo Moet Hennessy (Thailand) Ltd.

Rob Hurenkamp
Mazars (Thailand) Ltd.

Roby Janssens
Atlas Copco (Thailand) Limited

Jerome Kelly
Lawton Asia Insurance Brokers Ltd.

Stephane Passeri
Heritage Consulting Co., Ltd.

Peter Emil Romhild
ECCO Thailand Ltd.

Thavirap Tantiwongse
GlaxoSmithKline (Thailand) Ltd.

Thomas Tieber
DHL Global Forwarding (Thailand) Ltd

Stefan van der Sluys
Cargo-Partner Logistics Ltd.

Luca Vianelli
MDA Consulting SEA Co., Ltd.

Peter Wolf
BMW Manufacturing (Thailand) Co., Ltd.

EABC Executive Director

John Svengren

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 has long been a favoured investment destination and European businesses have long been proud contributors to the Thai economy and, to a larger extent, to Thai society. Europe and Thailand share a long history of friendship and cooperation with broad and expanding relationships in many key areas, resulting in the creation of jobs, development of expertise and technology transfer, generation of tax revenues, and the introduction of cutting-edge and new technology, as well as provision of many new goods and services to the benefit of consumers.

Thailand is an attractive destination for overseas investment and foreign companies from around the world, including from Europe, a key trade & investment partner of Thailand - in 2011 the EU was Thailand's third largest export market (after ASEAN and China) and Thailand's fourth largest merchandise supplier. As ASEAN actively embraces deeper integration under the ASEAN Economic Community (AEC) - which brings with it lower tariff and non-tariff barriers as well as freer flows of goods, services, capital and labour in 2015 - Thailand is ideally placed to serve as a potential gateway to this prospective market and production base of almost 600 million people. Despite impressive statistics, it is our belief that current trade and investment relations between Europe and Thailand are significantly below their real potential.

EABC applauds the resilience of Thailand's economy and wishes to congratulate Thailand on having managed to both cope with the flood consequences and increase its growth in times of global economic difficulties. We are encouraged by Thailand's adherence to the principles of free and fair trade, transparency and good governance as part of the Government's strategy towards regional integration and sustainable development. Recognising the importance of an open trade regime for the shared benefits of businesses and consumers, we strongly support the Royal Thai Government to pursue further trade and investment liberalisation. Fostering closer commercial ties between Thailand and the EU would provide positive impetus and broaden the horizon

for both Thai and European businesses. Stronger trade and investment relations will create employment, open up opportunities and reinforce mutual benefits.

Despite commendable progress made in various areas, there is still room for improvement in respect to Thailand's key trade and investment policies and measures. Last year Thailand faced its worst flooding in five decades. More than two-thirds of the country was swamped, with businesses, agricultural sectors and households tragically affected. Undoubtedly both the private and public sectors will need tremendous financing for rehabilitation and will have to work closely together towards restoring investor confidence for a stronger and more resilient economy. EABC recognises the importance of restoring investor confidence amid Thailand's post-flood reconstruction.

Thailand and the EU have now moved away from a traditional donor-recipient relationship towards a true partnership for development. To strengthen Thailand's competitiveness, and its enviable position as a potential gateway to vibrant ASEAN, Thailand is encouraged to strive towards 'raising the standards' of its policy and regulatory framework in view of intense competition and global dynamism, and is urged to further liberalise various sectors, especially the services sector.

Thailand is a valued trading partner, as well as a prominent destination, and home to many well-known European companies and investors. Representing the unified voice of European businesses in Thailand, EABC considers ourselves to be direct stakeholders in Thailand's past and present, and will continue to be so for the country's future success. In light of challenges that the AEC and the forthcoming conclusion of FTAs between the EU and neighbouring ASEAN countries will bring, prompt and effective action is needed to strengthen Thailand's competitive edge in ASEAN. These key developments also make a rational economic case for the EU-Thailand FTA negotiations all the more compelling.

Highlighted throughout the sectors featured in this first EABC Position Paper is the importance European businesses place on ease of doing business and the need to compete, with free and fair competition, on a level playing field. Enhanced transparency, improved efficiency and an enabling economic and regulatory environment are regarded as the main factors needed to improve the trade and investment climate in Thailand. EABC earnestly looks forward to engaging with the Thai government on these and other issues with a view to promoting and further strengthening European-Thai Economic Relations, based on a modern trade agenda and enabling policy dialogue, that will help

to support a competitive economy. We also aim to bring to fruition the discussion on various aspects of Thailand's policy development and how European businesses can make positive contributions in this regard.

In this Position Paper, EABC sets forth positions and recommendations as identified by its Working Groups on key issues affecting Thailand's competitiveness in the region and globally. Below is a summary of key trade/investment issues and recommendations that EABC strongly supports in order for Thailand to make meaningful improvements and tangible progress.

Summary of key recommendations

Issues	Recommendations
Macroeconomic/Policy Development	
	<ul style="list-style-type: none"> 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, as a boost to overall economic growth and resilience.
Cross Sectoral Issues	
Enhanced transparency in policymaking and the application of rules and regulations	<ul style="list-style-type: none"> Customs: Profound modification in the penalty scheme and the 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 interest of brand owners
Ease of doing business to improve business and economic efficiency	<ul style="list-style-type: none"> Competitive tax and investment promotion regime: <ul style="list-style-type: none"> Simplify the tax compliance methods to improve economic efficiency as well as enhance transparency in tax collection Enhance the competitiveness 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

Issues	Recommendations
An enabling economic and regulatory environment	<ul style="list-style-type: none"> • Relaxation of foreign ownership restrictions / Liberalisation of services sectors <ul style="list-style-type: none"> - Progressive liberalisation of Thailand's services sectors 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 sectors - 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, corresponding to dynamic business needs • Improve, in terms of speed and efficiency, the processing of disputes and the issuing and enforcing of judgments and arbitration awards • Strengthen the legal framework and its law enforcement to protect intellectual property rights <ul style="list-style-type: none"> - Proposed regulatory reform aimed at combating counterfeiting and piracy - Strengthen IP enforcement - Enhance the IP system towards sustainability
Sectoral Issues:	
<ul style="list-style-type: none"> ▪ Automotive 	<ul style="list-style-type: none"> - Dismantle redundant Approval/Homologation Standards - Put in place a harmonised, technologically-neutral, taxation on automobiles based on CO2 emission for all types of powertrain - 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 Thai-EU Free Trade Agreement (FTA) negotiations
<ul style="list-style-type: none"> ▪ Food & Beverages 	<ul style="list-style-type: none"> - 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 alcoholic 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 alcoholic beverages - Prioritise legislative amendments to address unauthorised use of trademarks regarding refilling practice - Expedite progress on the Thai-EU Free Trade Agreement (FTA) negotiations

Issues	Recommendations
<ul style="list-style-type: none"> ▪ Healthcare & Pharmaceutical 	<ul style="list-style-type: none"> - Implementation of strong market mechanisms to address distortion and improve access - Strengthen cooperation and partnership on IPR development <ul style="list-style-type: none"> ○ Innovative Medicines Initiative (IMI) & the Seventh Framework Programme for Research and Technological Development (FP7) ○ Cooperation against counterfeiting
<ul style="list-style-type: none"> ▪ Information & Communication Technology (ICT) 	<ul style="list-style-type: none"> - 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)
<ul style="list-style-type: none"> ▪ Insurance 	<ul style="list-style-type: none"> - Raise of capital to strengthen the industry base and real long term investment - Review of current regulations/product approvals with a view to facilitate issuance of new products and minimise delays - Building 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
<ul style="list-style-type: none"> ▪ Transport & Logistics 	<p>In order to expediently meet the requirements set forth for 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:</p> <ul style="list-style-type: none"> - Market access - Customs and compliance <ul style="list-style-type: none"> ○ Formal customs entry in English ○ Raise the <i>de minimis</i> level - Air transportation - Maritime transport and ports - Domestic transport & warehousing - Cross-border transportation / Multi-modal transportation

Acronyms and Abbreviations

ACFS	National Bureau of Agricultural Commodity and Food Standards	IMF	International Monetary Fund
ADB	Asian Development Bank	IPR	Intellectual Property Rights
AEC	ASEAN Economic Community	ISO	International Standardisation Organisation
AFAS	ASEAN Framework Agreement on Services	ISP	Internet Service Provider
AFTA	ASEAN Free Trade Area	JFCCT	Joint Foreign Chambers of Commerce in Thailand
ASEAN	Association of Southeast Asian Nations	MFN	Most favoured nation
BOI	Thailand Board of Investment	MICT	Ministry for Information and Communications Technology
CAP	Certificate of Approval for Protection	MOC	Ministry of Commerce
CEPEA	Comprehensive Economic Partnership for East Asia	MOF	Ministry of Finance
CFZ	Customs Free Zone	MOPH	Ministry of Public Health
CIPITC	Central Intellectual Property and International Trade Court	MOU	Memorandum of Understanding
CJEU	Court of Justice of the European Union	NBTC	National Broadcasting and Telecommunications Commission
CMO	Collective Management Organisations	NESDB	National Economic and Social Development Board
DIP	Department of Intellectual Property	NTBs	Non-Tariff Barriers
DSI	Department of Special Investigation	OECD	Organisation for Economic Co-operation and Development
EAFTA	East Asian Free Trade Area	PCT	Patent Cooperation Treaty
EFTA	European Free Trade Association	ROO	Rules of origin
EU	European Union	SOE	State owned enterprise
FBA	Foreign Business Act B.E. 2542 (1999)	SPS	Sanitary and phytosanitary measures
FDA	Food and Drug Administration	TBA	Telecom Business Act
FDI	Foreign direct investment	TDRI	Thailand Development Research Institute
FEL	Foreign Equity Limits	TBT	Technical barriers to trade
FTA	Free trade agreement	TISI	Thai Industrial Standards Institute
GATS	General Agreement on Trade in Services	TFP	Total factor productivity
GATT	General Agreement on Tariffs and Trade	USPTO	U.S. Patent and Trademark Office
GDP	Gross domestic product	VAT	Value-added tax
GDP (PPP)	Gross domestic product at purchasing power parity	WEF	World Economic Forum
GSP	Generalised system of preference	WTO	World Trade Organisation
IEAT	Industrial Estate Authority of Thailand		
IMD	International Institute for Management Development		

Introduction

Thailand is economically characterised by steady growth, strong exports and a vibrant domestic consumer market. Strategically located, it serves as a gateway into the heart of Asia, with easy access to the business potential of ASEAN's emerging markets and the trade routes between China and India. With abundant natural resources and a large workforce, as well as sufficiently good infrastructure and modern transportation facilities, Thailand is regarded as an attractive investment destination for foreign investors, enabling businesses to prosper and the development of many world-class industries. Despite a number of economic and political challenges, Thailand continues to make impressive progress as the country's industrial production continues to grow and diversify. Since July 2011, Thailand has been recognised by the World Bank as an upper-middle income economy.

10 European Trade and Investment with Thailand and ASEAN

Thailand and Europe have long shared a vibrant history of friendship and cooperation which is broad and growing in many areas, including trade, investment, tourism, science & technology, and education. Trade between the EU and Thailand is considerable. Thailand is among the largest beneficiaries of the EU's Generalised Scheme of Preferences (GSP), with a wide range of Thai exports benefiting from privileges and preferential access to EU markets until the end of 2013.

In the regional context, Thailand is an open economy and a founding member of the Association of Southeast Asian Nations (ASEAN). ASEAN is now home to almost 600 million people with GDP in excess of US\$ 1.5 trillion and total intra-trade volume of more than US\$ 1.7 trillion per annum, and has long been an important trade and investment partner of the EU.

With the ASEAN Economic Community (AEC) coming into effect by 2015, deeper integration of economic and business activities - with lower tariff and non-tariff barriers

as well as freer flows of goods, services, capital and labour - should provide a meaningful boost to regional economic growth. Thai manufactured products and services will enjoy facilitated access to the markets of ASEAN countries as well as other fast-growing trading partners in Asia. From a European business perspective, Thailand ideally serves as a potential gateway to this prospective market and active production base. The momentum of regional economic integration under the AEC puts Thailand in an enviable position with an even greater link to Asia, currently the most vibrant economic region of the world.

Putting Thailand in Perspective: Competitiveness and Challenges

When making business decisions, foreign investors - including European investors - look for prospective investment destinations offering competitive opportunities, as well as a reasonably stable and predictable environment in which to operate. The resilience of the Thai economy and its strong recovery from the global financial crisis is commendable. Thailand's macroeconomic competitiveness has been boosted by a subdued inflationary environment, as a result of prudent macroeconomic policies, although some view its performance in respect of fiscal balance in recent years as slightly deteriorating. However, many challenges will need to be addressed.

Thailand's Competitiveness

Recent data on the Global Competitiveness Index 2011-2012 of the World Economic Forum (WEF)² surveys show that Thailand's overall competitiveness ranking stood at 39th, down from 38th in 2010, 36th in 2009, 34th in 2008 and 28th in 2007. Although Thailand's ranking year-on-year was only one place lower in 2011, the fact that Thailand's competitiveness in almost all aspects has been on a constant decline cannot be disregarded. Key contributors to competitiveness, namely institutions, health and primary education, higher education and training and technological

² Thailand's performance under the WEF's Global Competitiveness Index: GCI 2005-2011 is shown in the Annex.

readiness, have continuously worsened over the years. One of the biggest areas of concern is the efficiency of its public institutions (ranked at 74th in 2011), which has been significantly deteriorating over the past years. The most alarming declines can be found in respect of property rights (down 58 places to 108th); intellectual property protection (down 48 places to 92nd); public trust in politicians (down 31 places to 91st), transparency of government policymaking (down 36 places to 75th); reliability of police services (down 40 places to 91st) and business cost from terrorism, stemming mainly from unrest in the South (down 15 places to 117th). Thailand's performance in terms of technology readiness is also regarded as low, as reflected in the ranking on availability of the latest technology (down 41 places to 82nd); company-level technology absorption (down 31 places to 75th), and internet users (down 21 places to 93rd).

According to the World Bank, on 'ease of doing business', Thailand is ranked 17th out of 183 economies - down one place from 2011. 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 years, Thailand is now faced with one of the highest rates of income disparity in the region and the impeding developmental challenges of the "middle income trap".

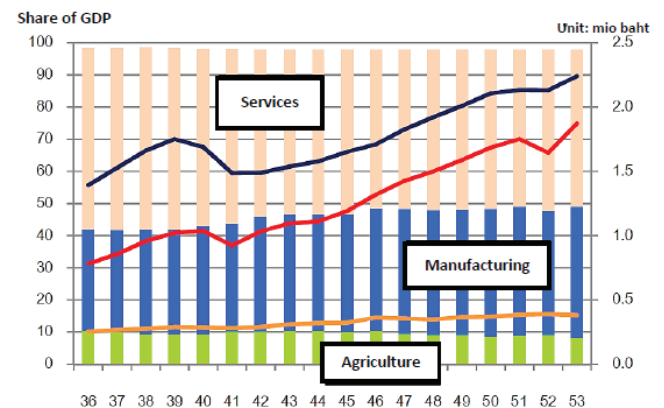
These key challenges need to be effectively and urgently addressed in order to maintain Thailand's attractiveness as a vibrant economy and investment destination, to strengthen its competitiveness, and to restore the trust and confidence of the business community for the longer term.

Thailand's Challenges: Services in Focus

Continual deterioration of Thailand's competitive-ness has

been well recognised by the relevant Thai authorities. In the latest report on Thailand's economic and social situation by the National Economic and Social Development Board (2011), it is clearly stated that despite the Government's efforts to alleviate the economic challenges that Thailand has been facing - and the economy has been slowly picking up - Thailand is still impeded by regrettably slow economic restructuring efforts. This mainly results from relative lower efficiency and productivity in all the main economic sectors (i.e. agriculture, manufacturing and services). Private sectors are facing a lack of the necessary financial and IT skills; whereas problems in terms of the potential 'brain drain' and good governance are also regarded as obstacles rendering Thailand less attractive as an investment.

Figure 1: Sector contribution to GDP at fixed prices



Source: NESDB (2011)

As figure 1 illustrates, the manufacturing and trade & services sectors are regarded as key driving engines of the Thai economy. In 2010 the manufacturing sector accounted for 43% of Thailand's moderate economic growth; whereas, the services sector contributed to 48.8% of Thai GDP. Interestingly, despite being the largest source of employment in Thailand (approximately 40%), the contribution of the services sector to economic growth in Thailand has been slightly declining over the past few years, which contrasts to trends in other major advanced economies. According to the Organisation of Economic Cooperation and Development

(OECD), most advanced economies derive more than half of their GDP from the services sectors.

The services sectors around ASEAN account for 40% to 70% of each economy's GDP; in Thailand's case 48%. Comparisons of service sector contribution to GDP and to employment (two charts are in the Annex) indicate that in 2008, as compared with 2000, Thailand was the only one among selected economies experiencing a decline in terms of GDP contribution from the services sector. In addition, the services sector contribution to employment in Thailand was significantly lower than those of advanced economies. The underlying message is that growth in service sectors has been well recognised as playing a key role in the economic advancement of the majority of developed economies. There do not appear to be many programmes in Thailand currently aimed at addressing this situation. The services sector is therefore an area of special emphasis in this Position Paper.

12

A joint report of the National Economic and Social Development Board and the World Bank on 'Measuring Output and Productivity in Thailand's Service-producing Industries' (2008) highlighted the fact that Thailand's services sector has experienced the lowest rate of growth, in both labour productivity and total factor productivity (TFP),

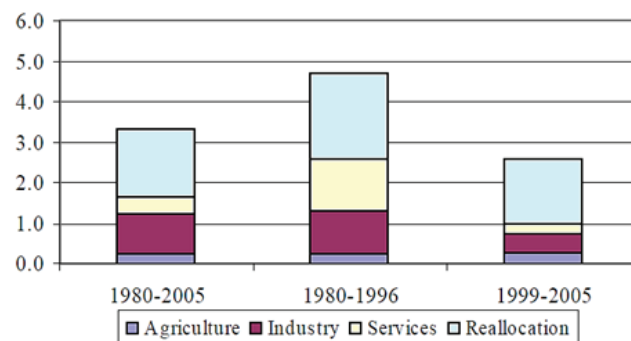
Table 1: Sources of growth, Thailand's services sector 1980-2005

	1980-2005	1980-1996	1999-2005
Output	5.4	7.6	4.3
Employment	4.5	5.0	3.8
Output per worker	0.9	2.6	0.5
Contribution of:			
- Capital	0.9	1.6	-0.5
- Education	0.4	0.3	0.6
- Factor productivity	-0.4	0.7	0.5

Source: NESDB & the World Bank (2008)

over the past twenty five years (1980-2005). Alarming, a large number of service industries had negative rates of growth in labour productivity, including key industries such as the wholesale and retail trades (accounting for more than a quarter of GDP contribution), hotels and restaurants, finance, real estate and health & social work. Although the finding on sustained negative rates of productivity within Thailand's services industries was difficult to concretely rationalise, this is suggestive of severe policy problems in attempting to foster competitive growth and improvement in important business infrastructure and performance.

Figure 2: Reallocations and sector contributions to labour productivity growth



Source: NESDB & the World Bank (2008)

Although Thailand has been doing well in the manufacturing and trade in goods, significant opportunities await in the services sector, which is considered a vital part of a modern economy. Many Thai and international scholars have consistently called for key obstacles to development and trade in the services sectors to be dismantled; in particular discriminatory practices and restrictions on foreign ownership. To cope with the foreseeable challenges of global, as well as regional, dynamism ahead, there will also be competitive requirements on the enhancement of skills, on-the-job training, technical development and technology transfer.

Another key development aspect, which has posed significant challenges to Thailand's economic advancement, relates to innovation and research & development capability. The complexity of today's global economic environment has made it more important than ever to recognise and encourage the qualitative, as well as the quantitative, aspects of growth to sustain fruitful results for developmental efforts. Technology and innovation are regarded as increasingly essential for firms to compete and prosper in a globalised world.

To achieve a competitive economy, the role of education, skills upgrading, infusion of foreign skills (the cross-learning which results), and overall productivity increases are the cornerstones to a competitive economy. 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. Unemployment starts to be a problem where there is no vibrant services sector. Further, the services sectors are recognised for bringing new areas of growth and development for Thailand, e.g. creative industries (and the move from raw creativity to real innovation). Another reason for this is that, out of the leading six ASEAN economies, Thailand has slipped in terms of commitment to liberalisation of the services sector.

The strategic importance of some parts of the services sector cannot be emphasised enough. For example, gains in efficiency and effectiveness in the telecoms sector will have a multiplier effect on the economy overall. But a lagging sector disappoints the rest of the economy. Contributions of insurance to a country's economic growth and social well-being of the population have been consistently noted than would have been the case in absence of risk management instruments. This has recently been highlighted in case of Thailand's flood catastrophe in late 2011 and post-flood reconstruction efforts. Also no less importantly is the key importance of services sectors, such as banking as well as transport and logistics sectors, provided their vital role as enabling infrastructure for increased efficiency and competitiveness of other manufacturing and services sectors.

Strengthening European-Thai Economic Relations for a more Competitive Thailand

Thailand is a valued trading partner, as well as a prominent destination, and home to many well-known European companies and investors. Representing a unified voice of European businesses, EABC appreciatively takes note of Thailand's efforts in managing various economic and social challenges, while preparing the economy to perform well in an increasingly complex global landscape. Despite the need to focus on the management of short-term challenges, it remains as critically important for Thailand to establish strong fundamentals to underpin long-term economic growth and sustainable development. Striving for 'quality growth', Thailand is encouraged to ensure that factors which are necessary to foster the nation's competitiveness remain in place. Competitiveness-enhancing restructuring and reforms would critically improve Thailand's potential and provide a propitious environment to make the country's economic development more sustainable.

13

As a strong supporter of free and fair trade, European businesses place priority on transparency, good governance and fair competition on a level playing field. We welcome Thailand's commitment to progressive liberalisation and further opening of its markets. Like other foreign investors, European businesses look for an investment destination which offers a free and fair market economy, with a sound regulatory framework, that does not discriminate against particular categories of investor in respect of the application of trade and investment rules. In a time when investor confidence in Thailand might be shaken due to the unfortunate consequences of natural disasters, it is even more crucial to put in place a predictable framework with clear and transparent rules and regulations with the aim to stimulate a 'second wave' of 'high-class' FDI to promote strong economic growth. However, liberalisation of services - and the trade in them - will need different kinds of changes to those applicable to trade in goods and manufacturing.

Today, Thailand and the EU have moved away from a traditional donor-recipient relationship towards a true partnership for development. The focus of our cooperation

has shifted from pure economic assistance towards a modern policy agenda of economic development. Thailand's trade and export performance has benefited from a liberal trade policy, bolstered by a series of recent FTAs. In a similar vein, the EU has already started bilateral FTA negotiations with ASEAN countries³. We believe that the conclusion of FTAs between the EU and neighbouring ASEAN countries, together with the likely graduation of Thailand under the EU's GSP, could potentially result in a significant loss in Thailand's competitiveness. This makes a rational economic case for the FTA negotiations all the more compelling. European businesses look forward to the prompt commencement of the EU-Thailand FTA negotiations - with no 'a priori' exclusion of any economic sector - to further strengthen trade and investment ties between Europe and Thailand.

14 EABC's overarching objective is to contribute to the improvement in trade and bring in more investment from Europe to Thailand; and to promote Thailand and ASEAN as potential markets for European companies. This first EABC Position Paper serves as a timely opportunity to communicate our key issues of interest and propose recommendations to respective Thai authorities and counterparts for the improvement of the trade and investment climate in Thailand. European investors and companies are recognised as having resources and expertise in cutting-edge technology, innovations and R&D. Stronger trade and investment relations between Thailand and Europe would therefore be complementary and create mutual benefits. EABC warmly welcomes our dialogue with the Deputy Prime Minister and Minister of Finance H.E. Mr Kittiratt Na Ranong on 26 April 2012, as well as other high-level discussion with relevant authorities. We aim to bring to fruition our constructive discussion on various aspects of Thailand's policy development and how European businesses

can make positive contributions to strengthen Thailand's competitiveness.

Our priorities are in areas where we believe that tangible improvement would meaningfully improve Thailand's position. On balance, **enhanced transparency, improved efficiency, an enabling economic and regulatory environment and liberalisation of the services sector** have been highlighted in the EABC Position Paper as the main enabling factors to strengthen Thailand's competitiveness and its potential position as a gateway to ASEAN. Our recommendations herein however are not intended to be exhaustive, but rather to focus on 'practical' aspects towards 'raising the standards' of Thailand's policy and regulatory framework. EABC also aims to use the Position Papers for our future communication with relevant authorities and counterparts.

Recognising this as an ongoing process, EABC is committed to provide constructive contribution 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.

³ The FTA negotiations with Singapore were launched in March 2010 and the tenth negotiating round took place in March 2012. EU Trade Commissioner De Gucht and Singapore's Minister of Trade and Industry Lim also met on 1 April 2012 in Phnom Penh (in the margins of EU-ASEAN meetings) to review the state of play in FTA negotiations with intensive work continuing in various formats. For Malaysia, the negotiations were officially launched in Brussels on 5 October 2010. A consultation of stakeholders was completed and the seventh round of FTA negotiations took place in Brussels in April 2012. The eighth round of negotiations will take place in Kuala Lumpur in September 2012 with both sides sharing the main objective to conclude the negotiations in 2012. For Vietnam, an official commencement of full-fledged FTA negotiations has already been announced on 1 April 2012 in Phnom Penh. Indonesia and the Philippines are also well-placed next in the pipeline for the FTA negotiations with the EU.

Section One: Cross Sectoral Issues

This section addresses key policy and regulatory issues affecting European businesses across multiple sectors in Thailand. Constructive advice and practical recommendations herein are aimed at:

- Enhancing transparency in policymaking and the application of rules and regulations, in particular on:
 - Customs
 - Grey markets
- Ease of doing business for improved business and economic efficiency
 - Competitive tax and investment promotion regime
 - Standards and conformity assessment
 - Efficient schemes of Free Trade Zones
- Creating an enabling economic and regulatory environment
 - Greater access to market opportunities and a level playing field for European players, with focus on the services sector:
 - Relaxation of Foreign Ownership Restrictions/liberalisation of services sectors
 - Ease of restrictions to facilitate free movement of foreign skilled and unskilled workers
 - Sound economic and regulatory framework / effective engagement in regulated industries
 - Court system, resolution of disputes, and arbitration
- Strengthening the legal framework and law enforcement to protect intellectual property rights (IPR)
 - Proposed regulatory reform aimed at combating counterfeiting and piracy
 - Strengthen IP enforcement
 - Enhancing IP system towards sustainability

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.

Despite impressive statistics, current trade and investment relations between Thailand and the EU remain somewhat below their real potential. Significant policy and regulatory improvements have been made in many areas and Thailand has impressively managed to maintain quite a strong overall economic performance and openness. Important concerns however remain. EABC recommends improvement in the following key areas, which would make significant and meaningful contribution towards strengthening Thailand's competitiveness and attractiveness as a global investment destination to the benefit of both Thailand and its trading partners.

ENHANCED TRANSPARENCY IN POLICYMAKING AND THE APPLICATION OF RULES AND REGULATIONS

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. According to many surveys, conducted both at the national and international levels, lack of clarity and transparency in policymaking and the application of rules and regulations in Thailand has been identified as a key concern⁴. Despite certain efforts being made over the years⁵, it is arguable that the business climate in Thailand seems to be affected by lack

of transparency. As seen from the most recent WEF Global Competitiveness Report 2011-2012, companies considered corruption and government instability, as well as an inefficient bureaucracy, to constitute a substantial barrier to doing business in Thailand. The 23 member Anti-Corruption Network is a commendable development from the private sector perspective.

More recently, the Financial Action Task on Money Laundering (FATF) has downgraded Thailand due to the country's inability to enact more money laundering laws aimed at countering terrorism. Thailand's international financial transactions have therefore been negatively affected. Foreign investor confidence and the country's reputation have also been impacted. This is one of the more recent samples which justify the need for EABC to call upon Thailand to expediently work on enhancing transparency in policymaking, as well as in its laws and regulations.

16

The nationals of many trading partners are 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). Some have perceived a relative disadvantage due to that fact, but are in no position to avoid its reach. Thus they will generally perceive it to be unfair if others not so bound, are awarded contracts etc. due to corrupt practices. Thus anti-corruption measures are very much encouraged. Corruption does not help the economy.

Customs

The Thai Customs Regime and the Customs Valuation process are governed by the Customs Act and relevant Ministerial Regulations issued in accordance with the Customs Act. Aiming to promote transparency and consistency as well

as facilitating trade for importers and international trade entrepreneurs to be more competitive, Thailand has made a number of commendable efforts. It appears however that certain customs valuation practices continue to cause concern to foreign businesses operating in Thailand. As a member to the World Trade Organisation (WTO), Thailand is obliged to comply with the WTO Agreement on Customs Valuation. Questions as to conformity with WTO rules arise as Thai customs authorities sometimes opt not to apply the transaction value method, and instead rely on wholesale/retail prices in certain foreign markets or customs declaration for similar goods for valuation purposes. This at times results in arbitrary valuations and penalties for traders. In addition, the documentation requirement as imposed by the customs officers seems excessive.

On balance, the Revised Kyoto Convention (RKC) provides a set of comprehensive customs procedures to facilitate legitimate international trade while effecting customs controls including the protection of customs revenue and society. The RKC is internationally recognised as an indicator of best practices in customs procedures. EABC strongly supports Thailand to pursue successful RKC accession in order to reap the full benefits of the RKC. Having in place modern and effective customs laws would legitimately safeguard Thailand's borders and generate revenues, while duly playing a key positive role in facilitating trade and investment in the country.

In a collaborative and consultative spirit, EABC welcomes the discussions to amend the Customs Act in Thailand. We appreciatively take note of the proposed amendments in respect of the penalty scheme (First Customs Act Amendment) and encourage that the amendments be expediently re-introduced for due approval according

⁴ 41% of companies surveyed by the World Bank & IFC Enterprise Surveys 2006 considered corruption to be a major constraint to their operations. In the survey by Political and Economic Risk Consultancy (PERC) in 2008, expatriates perceive the level of corruption in Thailand to be among the highest in Asia. This is confirmed by the Transparency International Global Corruption Barometer 2010, in which public officials and civil servants are perceived by Thai households as the most corrupt in Thailand. The report also notes that vote-buying and the purchasing of posts within the bureaucracy is common practice. The general view by the public on the government's anti-corruption measures is somewhat pessimistic, with 47% of household respondents viewing the government's efforts to fight corruption as ineffective. Furthermore, 23% of the citizens surveyed reported paying a bribe in the past 12 months. According to a September 2011 article by Bangkok Post, an ABAC Poll revealed that 64% of Thais see corruption as an acceptable behaviour if it benefits the country or themselves in one way or another. What is even more alarming is that 70% of the young population share the same opinion.

⁵ Thailand has seen some high-level officials being brought to court and sentenced for corruption in recent years.

to the legislative process. We are also pleased to learn of the contemplated amendment with regard to the reward system (Second Customs Act Amendment), which is under consideration by the Customs Department, and encourage that this proceed expediently. We earnestly support legislative changes to enhance transparency in the customs procedures, particularly in respect of customs valuations and taxation issues, as this should provide meaningful contribution to facilitate trade.

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 RKC which clearly states that 'Customs shall not impose substantial penalties for errors where they are satisfied such errors are inadvertent and that there has been no fraudulent intent or gross negligence. Where they consider it necessary to discourage a repetition

of such errors, a penalty may be imposed but shall be no greater than is necessary for this purpose'. 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 offence. 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.

17

Recommendation

In principle, 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 is reasonable ground, 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 supports 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 the 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.

Grey Market

Thailand's tax system and application of the system is regarded as complex covering a wide range of goods, including telecommunications services, certain consumer goods and durables. The excise duty rate also varies from one product to another, and can be very high for particular items such as automobiles. The excise duty on cars is calculated based on several factors, including engine size (cylinder capacity), horse power, and type of fuel. Since excise taxes are applied on top of import duties and other surcharges, the cumulative duties and tax burden on imported products

- 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.

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.

will be very high. Importers generally pass on this tax burden to consumers.

The volume of parallel imports in Thailand, particularly in respect to European luxury cars, has been significantly growing over the years. Wrong-doing, in terms of undervalued invoicing, is consistently reported. Arguably however, the situation has been deteriorating due to a lack of transparency and weakened regulatory enforcement, coupled with currency exchange rate appreciation. This

has caused serious concern within the industry as to unfair competition. The 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' investment and reputation as well as potential trademark infringement. 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 the confidence of legitimate investors and even Thailand's reputation as a competitive investment destination.

Recalling the high-level policy dialogue that we had with the Deputy Prime Minister and Minister of Finance H.E. Kittiratt Na Ranong on 26 April 2012, EABC welcomes the firm commitment of His Excellency to effectively address this issue and we earnestly look forward to tangible progress being made. Without effective, transparent and comprehensive regulations and enforcement to control 'grey market' imports, the European automotive industry will be unfairly deprived of its hard-won growth and competitiveness.

Recommendation

Consistent with the overarching objective to enhance transparency, strengthen good governance and improve the business investment climate, the Royal Thai 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, and in so-doing, protect the legitimate interest of brand owners and create a level playing field for all.

Efforts should be geared towards ensuring effective cooperation, both among relevant government agencies, and between the authorities and brand

owners. EABC welcomes the efforts made by certain enforcement authorities, in particular the Royal Thai Police and the Department of Special Investigation (DSI), in terms of their coordination with 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

19

Competitive tax and investment promotion regime

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 revenues. Both business and government can benefit from tax systems which are simple to administer and have reasonable compliance costs.

With the creation of the AEC in 2015 - and the free movement of goods, services, investment, capital and skilled workers that it will bring - the Thai 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. EABC therefore welcomes the recent government proposal to reduce the historical 30 per cent corporate income tax, as the rate is no longer competitive with the tax rates of other ASEAN Member States⁶.

As 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 even deteriorating. Thailand's rank on paying tax in 2012 stood at 100, down 6 places from a year earlier. This suggests a need to expediently address the issue of efficiency in tax administration and compliance, in order to make Thailand more competitive.

20

Recommendation

EABC positively takes note of Thailand's efforts on tax reform aimed at strengthening the country's competitiveness. Further concrete actions should be geared towards simplifying the tax compliance methods to improve economic efficiency, as well as enhancing transparency in tax collection.

Recognising the key role of the investment promotion scheme offered by the Board of Investment (BOI) in attracting FDI and the establishment of a number of prominent businesses in the country, Thailand is also encouraged to ensure that both tax and non-tax incentives remain available. 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.

EABC also recommends enhancing of the BOI's role as a key interlocutor for effective coordination with other Thai authorities in order to support the investors throughout the investment period.

EABC expresses its readiness to closely work with the Thai Government towards addressing hindrances and improving the competitiveness of the country's tax and investment regime.

Standards and Conformity Assessment

Several bodies are responsible for different aspects of technical regulations and standards in Thailand. 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 (including food 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.

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

⁶ In 2011, the income tax rates for Singapore 17, Cambodia 20, Brunei 22, Indonesia 25, Malaysia 25, Vietnam 25, Myanmar 30, the Philippines 30 and Laos 35.

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. electronic products and telecoms equipments 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. There are similar concerns relating to food products, particularly with regard to SPS issues and import procedures.

Recommendation

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 AEC2015 and the increasing linkages within greater Asia, Thailand intends to become a value-adding logistic hub and a regional exporting platform. To reach that goal, the promotion of effective Free Zones and efficient import/re-export processes is 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 licensing 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

Greater access to market opportunities and a level playing field for European players, with particular focus on the services sector:

Relaxation of Foreign Ownership Restrictions / Liberalisation of Services Sectors

The overall liberalisation of Thailand's services sector is still an ongoing 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 is allowed in a range of business activities, such as brokerage services, wholesale and retail trade, construction, non-silk textiles, garments, footwear, hotels, beverage production and auction business. In addition, foreign investors are required to obtain necessary permissions from relevant ministries to be able to operate. 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.

In the past few years, Thailand attempted to tighten the law in some areas - which sets out a maximum of 49 per cent limitation on foreign ownership in all service businesses (with only company-by-company provisional exemptions) - by adding new criteria used to qualify companies as foreign referring not only to ownership limitation 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% and above to disclose the source of funding of Thai shareholders. Similar procedures are aimed at addressing the specific problem of the acquisition of land by foreigners. Concerns have been raised about new regulations that appear to impose criteria that could restrict foreign participation in telecommunications, insurance and logistics sectors.

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 several sectors⁷. Given 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 the past 46 years.

It is welcoming to learn that Thailand has been developing a long term strategy for the services sectors via AEC participation, which aims at improving 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)⁸ and the AEC Blueprint. All of the main services sectors namely business services, communication services, construction and related engineering services, distribution services, education services, environmental services, health related and social services, tourism and travel

⁷ e.g. communications, transportation, fiduciary functions, banking involving depository functions, exploitation of land and natural resources, owning land, and domestic trade in agricultural products

related services, recreation, cultural and sporting services and transport services, are included under the schedule of commitment. Further improvement of liberalisation, in terms of wider sector coverage and 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.

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 sectors. An increase in foreign participation will attract investment and transfer of technology and will be to the benefit of consumers (cheaper and better services). 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 sectors is strongly encouraged. EABC supports an **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 sectors and also to address real liberalisation**. Liberalisation and development of Thailand's services sectors 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.

There is competition for skills and capital – those economies which have a head start in liberalised services will have early-mover advantage in terms of building centres of competence (which form part of gateways or hubs). Arguably Thailand has not put in place the necessary changes to support the AFAS target of 51% foreign equity allowance in all service sectors by December 2010.

Foreign equity limits are only a part of key elements of liberalisation of services, but an important one. We emphasise four 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).

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

⁸ 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 at <http://www.aseansec.org/6626.htm>)

further restrictions on foreign ownership under current legislation, EABC aims to obtain a level playing field for fair competition in the services sector.

From the perspective of facilitating and encouraging greater foreign investment in Thailand, a review should 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% of usable space in a condominium building should be reviewed, together with technical rules requiring the purchase monies to be brought into Thailand rather than earned locally.

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 SME's, 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 the 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 as other than 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.

Employees with work permits are obliged to contribute to the Alien Out-of-Kingdom Repatriation Fund, and employers must make the appropriate deductions to effect such contributions, in each case in accordance with ministerial regulations. An alien leaving Thailand using his own funds may receive a refund of amounts contributed to the Alien Out-of-Kingdom Repatriation Fund; provided that the request for a refund must be made within two years of the alien's departure from Thailand. The Alien Out-of-Kingdom Repatriation Fund will be used, among other things, to pay expenses required to deport aliens who do not use their own funds to leave Thailand.

Thirty-nine occupations and professions are closed to foreigners in accordance with the Royal Decree Prescribing Works Relating to Occupation and Professional 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 services sectors 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 talents 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 that the 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 hospitality and healthcare, as well as 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.

25

Recommendation

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 need, EABC recommends 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 requirements should be publicly and readily available.

- 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 already have 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, EABC is keen to share lessons learnt from the free circulation of labour that has long been implemented in the EU. 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. EABC is ready to engage in the consultation process to achieve a mutually beneficial outcome on these issues.

Court system, resolution of disputes, 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

- Court system: There are several areas of concern that can be reviewed, including: trials on consecutive days, having one appeal rather than two, a system of pre-trial disclosure of documents and witness statements in order to encourage settlement of disputes, treating defamation as a civil rather than criminal matter, and improvements in the system of enforcement of civil judgments.

- Arbitration: Arbitration can be a quicker and cheaper method for the resolution of disputes and ought to be encouraged. However it is an area of concern that arbitration clauses may not be included in contracts with government authorities. This may well discourage foreign companies from becoming involved with, for example, mass transit and other infrastructure projects, and thus is detrimental to Thailand's need to develop its infrastructure. Where arbitration is chosen as a dispute resolution, the seat of arbitration is often other than Thailand.

STRENGTHENING THE LEGAL FRAMEWORK AND LAW ENFORCEMENT TO PROTECT INTELLECTUAL PROPERTY RIGHTS (IPR)

As an important requirement for the promotion of R&D, innovation, creativity and high-skilled employment, the protection of Intellectual Property Rights is crucial for the investment climate and competitiveness. During the past 20 years, Thailand has worked positively on many important developments in its intellectual property legal framework and environment. Among the achievements were the development of a dedicated IPR jurisdiction applicable in civil and criminal cases, the accession to the Paris Convention and Patent Cooperation Treaty (PCT), the enactment of the legislation on Geographical Indications, as well as the signing of various Memorandum of Understandings (MOUs) aiming to facilitate cooperation among enforcement agencies and the private sector in the fight against piracy and counterfeiting. In addition to important public declarations reaffirming the importance of the protection of IPRs for the country's development, a national committee on IPR has also been created chaired by the Deputy Prime Minister. Thai authorities have also regularly invested in various public awareness campaigns and initiatives on IP such as 'Stop Piracy', 'Rak (Love) Thai, Buy Genuine' and 'IP Spy' or the contests on 'IP Family Cartoon Characters Contest' and 'Creation of Copyright works Contest' conducted by both the DIP and relevant enforcement authorities.

Despite these developments, it is arguable that the general perception of the Thai IP system remains weak, both in the eyes of the Thai public and the international industry - as earlier noted in the Overview section of the Position Paper. Concerns have been raised not only on the country's existing legal framework, but also more importantly with respect to the implementation and enforcement as counterfeited products are still available in various well-known premises such as MBK and Phantip Plaza, etc.

Thailand and the EU have engaged in regular consultations on IPR matters. During the Second EU-Thailand IPR Dialogue held in Brussels, Belgium on 24 February 2012, at which the EABC was present, Thai authorities confirmed that they remain committed to having a strong intellectual property regime.

EABC is strongly determined to support and foster international cooperation with Thailand on various fronts in the field of IP. For effective implementation of a national IP strategy, it is important to strengthen not only Thailand's legal framework, but also the enforcement system, as well as other important elements such as raising public awareness and education on the importance of IP. The EABC wishes to support the Thai authorities in the reform of the country's IP legal regime and has identified some key issues where positive developments could have important benefits for the strengthening of IPR protection in Thailand:

Proposed regulatory reform aimed at combatting counterfeiting and piracy 27

Strengthening the Trademark Act to better address key concern on illegal refilling

The Trademark Act B.E. 2534 (1991) remains unchanged since it was amended in 2000 to include national treatment and extend coverage to coloured and three-dimensional marks. Reportedly, scent and sounds marks should also become available for registration in the amended Trademark Act. The confirmation that Thailand is aiming to join the Madrid Protocol by 2015 and is preparing to amend its legislation accordingly, is also a welcome development.

EABC has been advocating for the amendment of the Trademark legislation to also allow for better coverage of illegal refilling, which has been extensively taking place in the country and has caused legitimate concern among the business community. Currently, refilling is not considered as an IP infringement⁹ despite the serious threat to consumers'

⁹ The current Thai Trademark Act B.E. 2534 does not consider the use of a genuine trademark for such practices as a violation under the Act. The Act penalizes only a) a person who counterfeits a trademark; b) a person who imitates a trademark.

health and significant loss of revenue and reputation for legitimate European business operators in various industries, in particular food and beverages, cosmetics and perfumes, motor oil and lubricants, and printer cartridges. The current wording of the Trademark Act focuses very specifically on the trademark itself - rather than on the relevant product - leading to businesses bearing a high burden of proof in cases of potential trademark violation. Infringements and violations are therefore dealt with under Thai criminal law. Despite success in the court proceedings, damages awarded by the Court (if any) are generally considered to be too small, and therefore not effective deterrent against future illegal practice. It is therefore very important that tangible progress be made to effectively protect the legitimate interests of the business community as well as to ensure that the consumer is protected against potential harmful or inferior products.

28 As a comparative-law study shows, various legal provisions¹⁰ to fight illegal 'refilling' and/or illegal 'recycling' or 're-labelling' practices infringing genuine IPRs, are already in place in Europe and China - underlining the importance of having Trademark legislation with clear criteria on what constitutes illegal refilling practices. The case law in France and Europe has identified four main components to qualify the practice of illegal refilling, namely: (1) registration of a trademark (or recognized well-known trademark); (2) use of the registered and/or well-known trademark without consent of the legitimate owner for packing goods identical or similar to those designated by the registered trademark (or actually used in case of a well-known trademark); (3) use in business spheres; and (4) likelihood of confusion. The comparative study also emphasises the possible use of

other legislation to fight against illegal refilling such as unfair competition law¹¹ or consumer protection legislation¹².

Recommendation

We urge Thailand to work without delay on developing a carefully delineated definition of illegal refilling acts which could be used as reference for the on-going legislative amendments, as well as in relevant regulations and enforcement agencies' manuals and procedures. A well-balanced definition is highly recommended. Too narrow a definition could be inadequate as it may only be relevant to specific situations; it is important that the definition of illegal refilling practices be broad enough to encompass fundamental issues related to illegal refilling and provide adequate protection to non-traditional marks such as packaging protection, i.e. 3D trademark and trade dress protection.

It is also vital that efforts be made in parallel towards strengthening enforcement under current legislation and regulations, particularly in respect of unfair competition and passing off offences (section 46 of the Thai Trademark Act) to address this illegal refilling issues.

EABC welcomes the opportunity to cooperate and work closely with the relevant authorities towards making meaningful progress in this regard. We also stand ready to provide technical support, both in terms of case studies and analyses, to concretely justify the need and appropriate ways to protect trademarks; which should also benefit Thai products and activities.

¹⁰ Article 5 par 1 b) of EU Directive 89/104, Article L 713-2 of the French IP Code, Section 14 Markengesetz in Germany and Art.52 par1 of the Chinese Trademark Law 2001

Case law in France and Europe has identified 4 criteria to qualify illegal refilling:

1/ registration of a trademark (or recognized well-known trademark)

2/ use of the registered and/or well-known trademark without consent of the legitimate owner for packing goods identical or similar to those designated by the registered trademark (or actually used in case of a well-known trademark)

3/ use in business spheres

4/likelihood of confusion

¹¹ In France and Germany: where unfair commercial practices are illegal when misleading for the consumer and when tangible impairment of the interest of competitors, consumers and/or other market participants may occur or in China. In China, where article 5 par. 2 of the antitrust law should be applicable to illegal refilling practices, as soon as the design of the packaging is distinctive and the product is famous enough. Such ground of action is quite efficient in case no strong trademark right can be opposed, and protects for example distinctive trade dress features.

¹² In France: Art. L217-2 and L221-1of the Consumer code, or in China: Article 50 of the Law on protection of consumer and interest (1993).

Extended protection for IP right holders towards enforcing Landlord Liability provisions for the infringements of IPRs

Arguably, counterfeit products are easily and broadly available to consumers in Thailand. Despite various efforts of relevant enforcement authorities to suppress the counterfeiting problem, large quantities of counterfeited products are still accessible to local and international consumers at many well-known premises. The IP legislation in Thailand (including the Trademark Act, Copyright Act and Patent Act) does not provide any specific provisions which directly address landlord liability in the case of IP infringement.

Existing enforcement regulations¹³, in the view of IP advocates, are not sufficient to take direct and adequate action against landlords and do not place them under sufficient duty to prevent infringing activities taking place on their premises. Legislation in some other countries however does provide for consideration of landlords as secondary or contributory infringers in cases of IP violation. The definition of 'landlord' is also developing over time and is often thought to cover online marketplace websites since they rent their space to market sellers. It is the notion of vicarious and contributory liability that enables us to define online marketplace websites as landlords. It is therefore important that well-known online marketplace websites (including various local Thai forums) be classified as "landlords" and be accountable accordingly.

With reference to international practices, the Trademark Law of the People's Republic of China (PRC) Article 50(2) stipulates that contributory infringement is an offence, making third parties (i.e. the landlord) liable. In 2006, a European company took action against the landlord of a Brisbane market in Australia arguing that lack of participation in the prevention of counterfeit sales at the market rendered the landlord guilty based on contributory infringement and vicarious liability. Reportedly the said company put forward the argument - with which, interestingly, the court agreed and ordered - that the landlord had to include specific

terms in the tenancy agreements prohibiting the sale of counterfeit goods, making it a terminable offence to do so. More recently, the Court of Justice of the European Union (CJEU) gave a judgment in favour of a European company against a well-known online marketplace website which had been actively involved in optimizing the position of sellers of counterfeit goods, regardless of the procedures put in place by the website to take down counterfeit sellers.

In view of the aforementioned examples, Thailand faces problems in respect of the sale of counterfeit goods and landlord's involvement to a similar degree. It therefore would be very useful for Thai and European brand owners, authorities as well as IP practitioners, to have a codified IP law covering landlord liability provisions. The rise in popularity of online marketplaces in Thailand also means that consumers are moving very rapidly, and in great numbers, to trade in counterfeit goods online. Therefore clarification is needed on what actions can be taken when it comes to online marketplaces - including group buying sites and possibly, in certain limited situations, Internet Service Providers.

29

Recommendation

In accordance with the evolution of technology and international development, it is important for Thailand to be able to address efficiently the problem of landlord liability by including specific mention of such liability in the IP laws. The provisions should be broad enough to cover all landlords or parties in control of the 'space', such as online marketplace websites. For the online space, a first degree of protection could consist of a 'cease and desist' notice with the right of complaint or ex officio to the relevant authority given to the IP right holder. More specific provision in the Copyright, Trademark and Patent Acts should be inserted on contributory infringements, instead of having to rely on broader and sometimes less reliable (and harder to prove) laws on vicarious criminal liability, or broader common design civil laws. In addition

¹³ Section 86 of Thai Criminal Code B.E. 2499 (1956) as amended B.E. 2547 (2003)

to relevant provisions in the revised Act, the Department of Intellectual Property should continue its efforts to coordinate with relevant government agencies and IPR right holders to consider other current available courses of action under existing laws, including the deployment of administrative measures against uncooperative landlords - including those on the Internet environment. A possible best practice is probably one where an online marketer (including group buying sites) has a duty to take down material which it knows to be breaching laws. Thus it should be recommended to establish some mechanism/procedure whereby such online marketer can be advised in order to cooperate with right-holders and competent authorities in order to stop the online availability of IP infringing materials. In certain limited situations that could be extended to the ISP as well.

30

Strengthening IP enforcement

Despite recent efforts to strengthen the implementation and enforcement of both foreign and domestic IP rights - in particular an increase in suppression actions against trademark counterfeiting and copyright piracy in key distribution areas, as well as in raising public awareness - the situation has not much improved from the IPR holders perspective. The common perception being that the number of premises selling fake goods is increasing; despite the organisation of large destruction ceremonies jointly involving several enforcement agencies. The expected amendment of some major IP laws (in particular trademark and copyright laws), and other enforcement actions, such as IPR-related prosecutions, or the imposition of deterrent penalties for IPR infringements, will be closely monitored in order to assess Thailand's progress in this field.

According to the EU IPR Enforcement Survey of 2009, Thai civil procedure represents less than 5 % of the total number of actions filed with the Central Intellectual Property and International Trade Court (CIPITC). Reportedly, the temporary protective measure/injunction is rarely granted due to the difficulty in proving the 'emergency' of the case to the judge. In comparison to the criminal case, the prima facie case in civil procedure even takes considerably longer than obtaining a search warrant under criminal procedure.

Having stated that, the search warrants which are required in order to conduct a raid are very difficult to obtain. Criminal procedures however are reported in the abovementioned survey - as well as in other surveys, such as the 2011 Special 301 Report conducted by the U.S. Patent and Trademark Office (USPTO) - to be available in law, but not implemented. Ultimately, convictions and sanctions for infringing national IP laws are the strongest deterrent. An efficient and effective IP judicial system is crucial for the successful enforcement of IPRs.

As regards administrative measures, the lack of training, non-deterrent liabilities imposed on infringers, and the general leniency in enforcing IPRs, currently limit the actions of enforcement officers in Thailand.

In relation to border measure enforcement¹⁴, at present the procedures and the competent authorities for border measures are available merely against counterfeit trademark and copyright goods, but not, unfortunately, for infringement of industrial designs, patents and geographical indications. Although the right owner may attempt to file a petition to the CIPITC requesting the Court to issue an injunction to stop the importation or exportation of the goods, such injunctions are rarely if ever granted.

¹⁴ The Customs Act B.E. 2469 (1962) on Examination of Goods and Prevention of Smuggling addresses IPR enforcement on exports, through its Chapter 4, empowers customs officers to search, inspect and seize exported goods from Thailand. This Customs legislation has also to be read in conjunction with the Export and Import of Goods Act B.E. 2522 (1979) which, in its Section 5 (1) gives power to the Minister of Commerce to issue notifications in the Royal Gazette specifying goods to be prohibited from export and import. The Ministry of Commerce has issued several notification and regulation accordingly to prevent importation of trademark and copyright infringing goods.

Protecting intellectual property rights is an essential instrument to promote investment, creativity, employment and technological progress. In short, it is vital for the development of a modern society and should be a 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.

IP enforcement is becoming an increasingly important issue at the border, including for transshipment of infringing and pirated goods, from China to Europe and other countries, through Thailand. In order to strengthen border enforcement, the Customs Department has proposed to amend the Customs Act B.E. 2469 (1926) to empower customs officers to inspect goods in transit, and transshipments, and to broaden the scope of border enforcement to protect further IP rights, such as designed and patented goods. Current protection is provided only against trademark and copyrights infringement. The proposed amended law is now under the consideration of the Council of State.

Also on the legislative front, in relation to copyright and related rights protection, major developments are currently expected within the general amendment to the Copyright Act, currently under the consideration of the Council of State, and the insertion of anti-camcording provisions, adjustment of provisions concerning penalties and possibly provision on landlord liability, including in the internet space. Furthermore, an amendment to the Computer Crime Act has been advocated so as to broaden the scope of the Act to cover all IP online crimes or internet piracy. This will enable the process of blocking websites selling IP-infringing goods, or facilitating copying and sharing of copyrighted works.

In addition, provisions to allow for the establishment of Collective Management Organisations (CMOs) of Copyrights are also foreseen as there is currently no governing law for directly controlling the operations of collecting societies. Therefore the current 24 collecting societies present in Thailand operate independently, without specific central organization responsible for collective management. This

has caused some problems for example: song users such as hotels, pubs, restaurants, supermarkets, and karaoke bars have continuously faced the problem of overlapping collections of royalty fees by different collecting societies, as well as unlawful collection by unscrupulous people who falsely claim to be copyright owners. EABC believes that Thailand is in need of a direct governing law on collective management which would both facilitate the collection of legitimate revenue for Thai and foreign copyright and related rights owners and facilitate enforcement procedures.

Thailand also has a strong need for an IP database to help the Court to keep track of repeated offenses in a trial as it appears often difficult to pursue repeat offenders due the unavailability of such database. Within the EU-Thailand Dialogue on IPR, the DIP recently stated that such a database was about to be developed; as well as a linkage project where the DIP, as focal point for various counterparts, has assigned a group of officials to closely work with competent agencies (DSI, the Royal Thai Police, the Customs Department and the Office of Attorney General) to develop a database system that systematically collects and links key information in relation to infringements, arrests and court decisions. This database is foreseen to be able to compile all information and statistics on suppression efforts and will be accessible by all enforcement agencies to track the status of infringement cases and relevant information on court decisions and repeated offences. The project is expected to be completed by the end of 2012.

Recommendation

EABC strongly supports the development of key Thai legislation to allow Thai Customs officials to act ex officio to inspect both goods at the border, including in transit and transshipments, and to broaden the scope of border enforcement to cover all intellectual property rights.

EABC encourages the project of the IP cases database which could allow the tracking of multiple offenders, and to issue more deterrent sanctions, and is ready to

study possibilities for EABC members to contribute to this database through regular exchange of information, monitoring or designing of the system and its future implementation.

EABC commits to help monitoring the various enforcement-related provisions to be proposed in new IP legislation and in particular provisions on landlord liability (including ISP), more deterrent penalties and the creation of CMOs.

EABC also recommends Thai authorities conduct an audit or evaluation of the MoUs signed between DIP, enforcement agencies and right holders, to be able to list strong and weak points and considers possible adjustments in their implementation.

32

A lack of IP awareness and trust by the general public and consumers is considered an important source of weakness for the protection of intellectual property rights in Thailand. Should IP awareness campaigns not gain momentum and discourage consumers from purchasing counterfeited products, it would be advisable for Thailand to review its policy regarding the purchase of counterfeited products as not punishable by law. To strengthen the law may help the population to more strongly consider IP infringements, as well as give more confidence to the potential users of the Thai IP system.

On all of the above, EABC is willing to invest in a regular dialogue and exchange of information with Thai authorities to support the strengthening of the IP regime.

Enhancing the IP system towards sustainability

Protection of innovation and data exclusivity

Under the Trade Secrets Act B.E. 2545 (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 in the control of the information owners who have taken steps to keep it secret. Yet the law does not give data 'exclusivity' that guarantees additional market protection for originator pharmaceuticals by preventing health authorities from accepting applications for generic medicines during the period of exclusivity relying on costly data generated by such originator pharmaceuticals.

In 2007, implementing Ministerial regulations of the Trade Secrets Act of 2002 were issued by the Thai FDA. While aiming to protect the physical disclosure of confidential information, the official regulations fail to expressly prohibit the Thai FDA or generic drug applicants, for a fixed period of time, from relying on the originator's regulatory data to approve generic versions of the originator's product. The Thai authorities have emphasised their compliance with commitments under TRIPs Agreement which require 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.

Currently, the status quo may tilt further away with recent acquiescence by the Council of State on the new draft of the Drug Act as proposed by the FDA. If legislated, the Act may require mandatory disclosure of the patent status for new regulatory approval submissions; the nature and number of patents inherent in each product, as well as mandatory disclosure of the price structure of each product. One provision in the draft clearly empowers the FDA to refuse regulatory approval in the event the agency deems the price of a product supra normal or not cost effective. The latter subsumes due consideration of the quality, safety and efficacy consideration in a new product approval process to the determination of permissible product price. In the absence of Regulatory Data Protection (RDP), such foretasted disclosures leave the innovative industry open

to extensive IPR challenges in addition to de facto non-tariff market access barriers.

Thai authorities have clarified that the Thai FDA does not use undisclosed test data submitted for market approval of a pharmaceutical product by the owner for the marketing approval of a generic version of another company in accordance with the Ministry of Public Health Regulation on the Protection of the Trade Secret of Pharmaceutical Data B.E. 2550 (2007). However, the number of industrial and commercial trade secrets notified to the Department of Intellectual Property (DIP) tumbled from 1,801 in 2005 to 254 in 2010. The reasons for the low uptake are unclear, although officials say it could be because of different perceptions about notification and its value in protecting secrets.

Recommendation

EABC underscores the importance of the dialogue between relevant agencies in the field of pharmaceuticals in particular regarding the Data Exclusivity for pharmaceutical products and the rationale behind it. The regular and efficient communication on pharmaceutical matters between the authorities and right holders is also crucial. EABC congratulates the DIP for having held an industry-wide consultation on 17 January 2012, chaired by the Deputy Minister of Commerce where an opportunity was provided to express concerns of industry and civil society and gather views from various angles. EABC supports such initiative and recommends that such forum could be established on a regular basis.

Improving patent pendency

Despite significant efforts by the DIP and international technical assistance regularly received from various development partners, the patent backlog and duration for

patent registration in Thailand remain areas of high concern for the European Industry as Thailand has arguably one of the longest patent pendency rates out of any PCT¹⁵ country.

Lack of human resources in the DIP is often pointed out as one of the main bottlenecks. As a consequence, patent examinations may take over five years, and despite attempts to speed up approvals, the department was quoted as having a backlog of over 18,000 patent applications in late 2010. As an illustration, of recent patents which have been granted within one or more EABC member company (ies) in the last 3 year period, the patents have purportedly been pending for an average of 12.6 years. It is also worth noting that the number of applications allocated to each patent examiner is the highest in the Southeast Asia region.

Intending to improve the situation, the DIP's current initiative is to amend its internal patent manual for the examination of pharmaceutical inventions and draft recommendations (early 2011) which are based on the impact of 'Ever greening Preventive Measures' - a pejorative term that reflects a bias against incremental innovation in the pharmaceutical sector. The first draft provided a list of inventions by subject matter such as combinations, with the foregone conclusion that they 'should be deemed non-patentable since there is no inventive step'. Without specific positive and negative examples, the draft recommendations leave many questions unanswered. Given the long pendency rates described above, the draft Manual in its current version may be seen as an additional burden for patent registration and could have negative consequences for possible patent prosecution.

In addition to the issues and improvement measures, it is also important to underline the need, in order to have a properly functioned patent system, for Thailand to require well-qualified IP professionals, including patent attorneys able to assist applicants and patentees, and industry in general, in obtaining, defending and advising on IPRs in that

¹⁵ Referring to the Patent Cooperation Treaty (PCT) in which Thailand acceded on 24 September 2009 and it came into force on 24 December 2009. Thailand is 142th contracting state of the PCT.

country and to advise domestic applicants in relation to the rights in other countries. Regulation under the current Thai Patent Act, in accordance with regulations of Thai attorneys in general, is the only classification and legal recognition of 'Patent Agent'¹⁶. Thailand has expressed its interest to build-up training and examination structures for patent attorneys, but the official qualifying and examination process for Patent Agent in Thailand does not exist yet, resulting in a very large scope of private "expertise" available in the country to support patent applicants in their application.

Recommendation

The industry refers to the long and time consuming process before the patent approval is made and proposes that DIP established a "start clocks, stop clocks" practice to fairly compensate right holders given the backlog. The DIP mentioned that it has been in consultation with stakeholders on proposed legislation amendments on patent term adjustment, on which EABC is keen to follow-up and provide contribution.

Besides working on the expediency of new patent applications, it is also important to have the necessary clean-up of the backlog of patent applications in Thailand to provide relief to the system. The need for an established qualification system for Patent Agents has been urged by different development partners on IP to Thai authorities to cover the area of patent to allow for the implementation of overall standardised practice, evaluation, and examination and ultimately improve the quality of patent drafting.

On the human resources issue, it is recommended that Thai authorities conduct an audit, as done in other IP offices around the world, to analyse the additional resources needed, and how to access/generate these

resources or how to simplify examination procedures, including through possible use of other IP offices/organisation capacities (i.e. search report).

EABC recommends that the issues of importance be given high-level priority in the Sub-Committee on the Prevention and Suppression of IPR Violation and the Sub-Committee on the IPR of Pharmaceutical Products chaired by the Minister of Public Health. Stronger coordination between the Ministry of Commerce and the Ministry of Public Health, in cooperation with representatives from the Pharmaceutical industry, requires constant dialogue. A similar forum for compulsory licensing issues could also be beneficial.

Finally, EABC advocates that support in the form of best practice patent examiner training, and training in the fields where sophisticated technologies play a dominant role should also include training on incremental innovation, as well as provide legislative consideration for accepted international norms.

¹⁶Patent Act B.E. 1979 (amended 1992 and 1999), Announcement of the Department of Intellectual Property (DIP) concerning Patent Agent Registration B.E. 2552 (2009), and Ministerial Regulation No. 21

Section Two: Sectoral Issues

AUTOMOTIVE

The automotive industry significantly contributes to Thailand, not only in terms of economic growth but also via employment and the development of skills and technology. Current global and regional changes however could threaten the further growth of the Thai Automotive industry. To enhance investment attractiveness and sustain long-term competitiveness of the industry, Thailand is encouraged to:

- Dismantle redundant Approval/Homologation Standards
- Put in place a harmonised, technologically-neutral, taxation on automobiles based on CO₂ emission for all types of powertrain
- Improve fuel quality standards and emission regulations
- Harmonise automotive product standards
- Address policy inconsistencies, 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 the availability of a skilled and non-skilled workforce
- Expedite progress on the Thai-EU Free Trade Agreement (FTA) negotiations

35

Thailand has achieved a prominent position as the leading automotive manufacturing hub in the ASEAN region along with Malaysia and Indonesia. Thailand gracefully plays host to a number of global automotive manufacturers, boasts a well-developed and integrated supply base, and growing export orientation. Industry capacity is estimated to reach more than two million units in 2012, according to the Federation of Thai Industries, and 45% of vehicles output in Thailand are for domestic sales and 55% are for export. The automotive industry is Thailand's third largest sector, contributing 10.2% to National GDP¹⁷, and employing more than 700,000 workers across a vast and integrated network of OEMs, parts makers, service providers, dealers and other related industries such as steel, rubber, petro-chemicals and glass. Thailand's ability to bridge manufacturing capabilities with an advanced industrial infrastructure has positioned the country to serve as the main entry point into ASEAN.

Current global and regional changes however could threaten the further growth of the Thai Automotive industry. Globally, the automotive industry is undergoing rapid changes – both in terms of the business model and government oversight of the auto sector. The changes stem from the emergence of new high-growth markets, shifting consumer preferences, the use of new technologies, growing focus on the environment and safety, and increasing rationalization of business operations. This in turn is compounded by acceleration of regional trade liberalisation which increases the attractiveness of other ASEAN members as investment destinations, providing competition to Thailand. These international challenges and domestic realities create a need for the Royal Thai 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

¹⁷ After Electronics at 13.3% and Agro-manufacturing products at 12.6% in 2011 (Source: Bank of Thailand)

commitment to Thailand, EABC has identified key areas we recommend the Thai Government to focus on with the end objective of enhancing investment attractiveness, sustaining the long-term competitiveness of Thai automotive industry, and promoting the welfare and well-being of society.

These priority areas include:

Dismantling redundant Approval/Homologation Standards

The Thai Industrial Standards Institute (TISI), under the Ministry of Industry, is responsible for developing national standards, certification, monitoring the quality of products and services, international cooperation, and establishing a national single network of standardization. Compliance with non-compulsory standards entitles the manufacturer of the product to affix a label indicating that the product meets the appropriate standards. In developing standards and technical regulations, TISI works with other government agencies and private-sector organisations. Products subject to compulsory standards are required to comply with the standard and show the mandatory certification mark. Producers and importers of products subject to mandatory standards require a licence to indicate compliance with the standard and sell the product in Thailand. For export, TISI maintains a list of organisations certified as competent to provide export certificates and those accredited as competent to certify quality systems (ISO 9000); environmental management systems (ISO 14000), inspection services (ISO/IEC 17000), laboratories (ISO/IEC 17025), and personnel and training registration.

Thailand's approval/homologation standards as implemented by TISI have become more onerous for automotive manufacturers over the years. For example, imported vehicles and certain components will 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.

Recommendation

To improve efficiency and avoid unnecessary duplication of processes, EABC 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 and dismantle redundant approval/homologation standards as has already been done in some ASEAN countries.

CO2 emission based taxation

Environmental issues are playing an important role in the development of many economic sectors, including the automotive industry. Many countries, including ASEAN countries, have been contemplating introducing schemes and measures to promote the use of clean energy and energy-efficient vehicles. A long term plan to develop the automotive industry in accordance with sustainable development objective, including reduction of CO2 emission, is recognised as crucial.

As a major automotive producer with large domestic markets, Thailand has envisaged a plan to revise its current excise tax regime on automobiles by moving away from the excise tax based solely on engine capacity, towards a tax based on vehicle carbon emissions. The CO2 emission based excise tax should encourage the use of low CO2 emission vehicles. This positive development should also stimulate both the production and use of clean and efficient vehicles - consistent with current trends in the global automotive industry. We understand that the proposal by the Ministry of Industry has already been agreed in principle by the Cabinet. The proposal however could be delayed as there have been calls for further study and more discussions to be held with relevant parties.

Recommendation

To promote the production and use of clean fuel and energy-efficient vehicles, Thailand is encouraged to put in place a harmonised, technologically-neutral taxation based on CO₂ emissions for all types of powertrain including petrol, diesel, hybrid, compressed natural gas (CNG), ethanol and electric vehicles. This should also be promoted at the ASEAN level to encourage the use of greener vehicles in the local markets of ASEAN.

Improvement of fuel quality standards and emission regulations

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. The introduction of higher fuel quality standards, together with more stringent emission regulations, would help in lowering emissions and promoting more efficient fuel consumption in the country. This at the same time should also help lessening Thailand's reliance on crude oil imports and the impact of fluctuating world crude prices.

Recommendation

We welcome Thailand's effort to ensure the availability, and promotion, of high quality fuel. 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 higher internationally-accepted fuel quality standards or that of the European standards. 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.

Harmonising Automotive Product 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 Regulation based on United Nations Economic Commission for Europe (UNECE) for automotive industry in ASEAN, is implemented by its local members of the Automotive Product Working Group (APWG) under the ASEAN Consultative Committee on Standards & Quality (ACCSQ). APWG had been formed specifically to eliminate trade barriers through harmonisation of standards, technical requirement and regulation. Nineteen priority UNECE standards have been selected for implementation by 2015. Current progress is unclear as ASEAN countries 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 the same level of standards. The Mutual Recognition Agreement (MRA) in ASEAN needs to be established based on a type approval system covering parts, system and components. ASEAN countries should recognise test reports and certificates on UNECE 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 for below standard automotive products. Accession to the 1958 Agreement and ASEAN presence of WP29 remains to be developed. While Thailand and Malaysia signed the agreement, other member countries are still observing. Having all ASEAN members on board on the Agreement would significantly benefit trade and development of the ASEAN automotive industry.

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 ASEAN's automotive industry, EABC supports Thailand to encourage ASEAN to adopt UNECE regulations, based on the same version and working closely with member countries in the region, to align the 19 priority UNECE standards to achieve a single regulatory regime in ASEAN by 2015. We would also welcome ASEAN's implementation of identical testing procedures using the same metrology methods or standards.

Customs Free Zone (CFZ)

38

A Customs Free Zone is a designated area for the industry, for commerce and other activities that will benefit the national economy, and allows goods brought into this zone to be eligible for customs privileges as defined by the Customs Law, e.g. being exempt from import duties and taxes. The qualified manufacturers have to operate their business in accordance with the objective of the free zone establishment. CFZ is not only intended to support export activities, but also to provide business operators - who import goods for manufacturing in CFZ and then sell to the domestic market - 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 CFZ in order to increase competitiveness in the current global trading situation and to increase local content to support local auto parts suppliers. By removing certain disincentives associated with manufacturing in Thailand, CFZ offers benefits and provides viable opportunities for businesses to operate in Thailand as a competitive production base for the ASEAN market. Certain problems nevertheless exist.

European automakers encourage enhancement of transparency and policy consistency in respect of rules and regulations on CFZ. 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 policy, laws and tax collection methods which are responsive to changes and impact from globalization and regionalism, the Excise Department has planned to revise the excise law based on results of the research conducted by Thammasat University. A key issue of concern, in respect of the proposed amendment, relates to the vehicles produced in CFZ being treated in a similar way to the ones produced outside of the CFZ¹⁸.

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 the Customs legislations. 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. EABC therefore prefers no change to the current Excise Legislation and recommends that the calculation and collection of the excise tax on automobiles be in line with customs legislations. To promote Thailand as the regional production hub for automotive products, it is important that the Government's policies are not only supportive to foster the industry growth, but also provide for a consistent, transparent and accountable regulatory framework.

¹⁸ 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 in recognising the difference between vehicles produced in the CFZ vs. ones produced outside of CFZ as there is no specific provision on tax collection method for the goods produced in the CFZ in the proposed amendments.

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

The Free Zone Scheme 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. CFZ operators usually face several audits by various governmental agencies such as the Excise Department, the Customs Department, or even the Department of Special Investigations (DSI). Generally, there is also a risk of customs post audit when the operator is suspected of low local content production.

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 addition, practices such as the 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.

Recommendation

EABC calls for the clear and consistent application of rules and regulations in respect to 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.

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 strong development of the industry.

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 innovations in the competitive automotive industry and related industries. Although the Board of Investment (BOI) has been a great supporter towards strengthening the automotive industry in Thailand, many other countries and regions have also been striving to attract foreign direct investments by broadening the range and level of incentives of their investment promotion schemes over the years. Arguably, this impacts the industry decision-making as they benchmark the investment incentives.

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. The 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 a new or improved powertrain technology.

Labour and skilled workforce

Despite an increase in the number of graduates and qualified engineers, ASEAN - including Thailand - continues to experience shortages of labour as there has been an increase in the requirement for higher-skills and technological-intensive manufacturing.

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.

EABC looks forward to working 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. Thailand is recommended to set up incentive schemes and encourage 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 the industry production sites.

Lack of Progress on Thai-EU Free Trade Agreement (FTA)

While the Thai-EU FTA is still lacking progress, the Japan Thailand Economic Partnership Agreement (JTEPA), which is currently in place, has already given Japanese automotive manufacturers a significant advantage by providing for tariff

reduction, for the Completely-built up (CBU) exceeding 3,000 cc, to 60% - and possible elimination of the tariff subject to a conclusion to be reached by both parties. In the view of European automotive manufacturers, this privilege could lead to market distortion when Japanese cars of over 3,000 cc could be sold at a very competitive price against European cars with 1,800 to 2,500 cc engines. This would severely erode the competitiveness of EU vehicles in the Thai market. More importantly, this tilted playing field would affect the product strategies and long term investment plans of European automotive manufacturers. The attractiveness of Thailand as an investment destination, and a regional production base of choice, might also need to be reviewed from the European business perspective should the prospect of the FTA negotiations with Thailand continues to lack progress; unlike those with other ASEAN peers.

In regard to this, the Thailand Development Research Institute (TDRI) study showed that a bilateral FTA with the EU would create tremendous benefits for Thailand. Not implementing such a pact would see Thailand lose its competitiveness to Vietnam, Malaysia or Indonesia. Thai-EU FTA should also provide for a balanced, broad-based policy initiative in effectively promoting the automotive industry in Thailand.

Recommendation

EABC strongly supports the expedient launch of the negotiations on a Thai-EU FTA to further strengthen trade and investment relations between Thailand and the EU and to improve market opportunities for the automotive and automotive parts industries. EABC would welcome the reduction of import duty on automotive products for the EU - to be on a par with the JTEPA framework agreement - and to apply rules of origin with the regional value content (RVC) of 40%. EABC also encourages Thailand to request the EU to set up a mutual recognition agreement, especially on vehicle standards, and safety regulations and parts, with the aim to further facilitate trade between two business partners.

FOOD & BEVERAGES

Food & 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 for the industry, Thailand is encouraged to:

- 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 alcoholic beverages
- Review the Alcohol Advertising and Beverages Control Act with a view to enhance 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 alcoholic beverages
- Prioritise legislative amendments to address unauthorised use of trademarks regarding refilling practice
- Expedite progress on the Thai-EU Free Trade Agreement (FTA) negotiations

Playing a key role in the world trade in agricultural products, food and beverages, the European Union is the world's largest exporter and importer of food and beverages worldwide. 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% of manufacturing overall). Comprised of over 310,000 companies (99.1% of which are medium and small-sized enterprises: SMEs), it is also the leading employer in the EU with approximately 13.5% 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 a significant market for Thai food and agriculture products.

Even though the overall trade volume (including trade in agriculture, food and beverages) between Thailand and the EU has been increasing satisfactorily, European Food & Beverages businesses still have challenges and concerns on many of Thailand's trade measures.

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.

EABC duly acknowledges the need to exercise caution and due care in the registration of food & 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 prospect of the AEC, improving predictability and consistency in the areas of technical standards will however promote trade in

food & beverages and significantly lessen companies' delays and additional costs. This undoubtedly will further promote trade development between Thailand and the EU.

Recommendation

EABC therefore wishes to see FDA product registration and certification being streamlined to minimise delays and food standards are comprehensively reviewed to ensure full compliance with Thailand's international trade obligations. EABC also proposes to establish discussions between businesses and authorities to ensure better understanding and streamlined implementation of policies and regulations.

Discriminatory excise taxation and licensing fees on alcoholic beverages

42

Excise duties on alcoholic beverages are regarded as an important revenue source for the Royal Thai Government. The current tax structure is however complex with the rate of excise varying from one product to another and may be ad valorem or specific (based on alcohol content) depending on which pays the higher amount. The applied rates are bound by ceiling rates which set the maximum ceiling that rates may increase without parliamentary approval. The alcohol excise structure has caused serious concern to the European industry as imported spirits are unjustifiably taxed higher than similar local products, including Blended Liquor and Thai white liquor (or Lao Kao)¹⁹. Discriminatory tax treatment between domestic and imported spirits is non-compliant with WTO rules.

Apart from the differential tax treatment, the Thai Liquor Act also discriminates against imported spirits in favour of local

ones with respect to licensing fees. There are concerns that Thailand maintains a differentiated licensing system for sellers of local spirits and sellers of all spirits (which include both local and imported), with the license fees charged for selling domestic spirits being lower than those for all (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 unfortunately not yet forthcoming.

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.

Lack of certainty in the Alcohol Advertising and Beverages Control Act

The Alcohol Advertising and Beverages Control Act (ABCA or the 'Act') was introduced in 2008 to govern the sale and advertising of beverage alcohol. To comply with the legislation, the industry (including traders/distributors/outlets) has experienced great difficulty in the interpretation of ABCA and has consequently faced a number of actions

¹⁹ All domestic Blended Liquor beverages are subject to an applied specific rate of 300THB per litre of pure alcohol (lpa), and all Lao Kao products are subject to an applied specific rate of 120THB per lpa. In contrast, all imported spirits fall under the 'Special Liquor' category and pay no less than 400THB per lpa with premium spirits (taxed under the ad valorem rate) being subject to significantly higher effective excise rates. Similarly, this discriminatory treatment has been experienced by wines compared to other fermented beverages. Grape wines are subject to an ad valorem rate of 60% rate or a specific rate of 100 baht per litre of pure alcohol, whichever is higher; whereas, other local fermented beverages, including fruit wines, under the heading "traditional fermented liquor" are only subject to an ad valorem rate of 25% excise duty rate or a specific rate of 70 baht per litre of pure alcohol, whichever is higher.

by government bodies/individuals²⁰.

From a business perspective, ABCA includes terms which are unnecessarily restrictive. Arguably, ABCA seems to favour 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

EABC is concerned with the lack of transparency and uncertainty in the application of alcohol-related legislation including ABCA. The Government is encouraged to comprehensively review 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.

Pictorial warnings on alcoholic beverages

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. bloody road accidents, suicides, domestic violence, etc.) to cover up to 50 percent of the total product packaging area along with text warnings stating that alcohol consumption per se will lead to the harms portrayed.

EABC recognises Thailand’s right to regulate beverage alcohol and we fully support targeted initiatives to reduce alcohol-related harm. However, we are concerned that the

proposed labelling requirements are quite extreme and disproportionate measure which no other country in the world has mandated. Unlike the World Health Organisation’s (WHO) Global Alcohol Strategy, the proposal does not make the very important distinction between the harmful use of alcohol and alcohol consumption per se. There are other alternative approaches which are less trade-restrictive to achieve the same objective. Extreme imagery of the proposed labels could also project a negative and distasteful portrayal of Thai society.

EABC looks forward to engaging in constructive dialogue with the Thai government through the National Alcoholic Beverage Policy Committee to develop more appropriate and effective targeted programs to reduce alcohol-related harm in Thailand. EABC would also kindly request Thailand to keep the Technical Barriers to Trade (TBT) Committee under the WTO informed about any further discussions regarding this issue.

Recommendation

Graphic health warning labels on alcoholic beverages are not introduced and that 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

EABC is concerned about the lack of effective application and enforcement of the Trademark Act B.E. 2534 in respect of food & beverages sectors, as well as the lack of deterrent

²⁰ For example, section 32 of ABCA stipulated 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 inducement other persons for consumption directly or indirectly. However, there are no clear definitions of “product quality assertion” or “inducement other persons for consumption” given under the Act. Based on this fact, the government bodies/individuals, who have been authorized under the Act, have interpreted the law only from their own perspective, and, take unfair actions against the alcohol beverage companies and their customers from time to time, and, as a result, causing massive damages to those entities/individuals. 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.

finances/penalties against whiskey counterfeiting (i.e. the use of genuine bottles and packaging of European liquor refilled with non-genuine content and resold). 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 the 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.

The challenges we face should not be underestimated and our pressing priority is timing. According to an investigation by many approved operators across the country, it has been recognised that this practice has been widespread and ongoing for a long period of time. Lack of punishment has led to repeated practices of refilling, covering a broad range of products and resulting in damages to the trademark holder's revenues 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. Alarming, based on information collected by the industry, there have been more than 800,000-1,000,000 bottles of violated products sold each year in Thailand.

EABC understands that the recently proposed amendments to the Trademark Act, as approved by the Cabinet and currently presented to Parliament, do not, regrettably, address the problem of illegal refilling.

Recommendation

Thailand is strongly encouraged to push for necessary amendments to the current Trademark Act at the earliest opportunity. Details as to our recommendation on proposed amendments to the Trademark Act can be found in the earlier section of Cross Sectoral Issues in the Position Papers. EABC is ready to provide all necessary evidence as well as to contribute our extensive technical/legal analyses to the Department of Intellectual Property (DIP) undertaking to address the real problems that industries are facing in respect of intellectual property rights.

Lack of Progress on the Thai-EU Free Trade Agreement (FTA)

EABC fully supports an EU-Thailand Free Trade Agreement (FTA). 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. 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. 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 for long term growth in government revenues 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.

Recommendation

EABC encourages the EU and Thailand governments to accelerate progress towards launching the FTA negotiations ensuring that all key areas are included in the scope of the FTA with the aim towards elimination of high import tariffs (including on spirits and wine).

HEALTHCARE & PHARMACEUTICAL

Enhancement of the existing development and regulatory framework will attract investment and mutually beneficial partnerships from the EU pharmaceutical industry into Thailand. With innovation, access to technology and transfer of knowledge, Thailand's healthcare capability can be meaningfully strengthened to respond to health and economic development challenges. To create favourable conditions for investment and growth in the innovation-dependent sector such as the Healthcare and Pharmaceutical sector, Thailand is encouraged to enhance the policy and regulatory framework to promote the following key aspects:

- Viable and accessible local market
- Political stability and good economic governance
- Clear development priorities
- Effective regulations
- Availability of skilled workers
- Adequate capital markets
- Strong intellectual property rights (IPR) and effective enforcement
- Sound and sustainable working relationship between the industry and government authorities.

Supporting a sustainable growth agenda, EABC calls for an undistorted market mechanism, not only to ensure the viability of knowledge based economy but also the enhancement of public welfare with vibrant cooperation in R&D and IPR development in partnership with the European innovative sector.

45

Technology plays a central role in the economic and social transformation of countries. The wide use of technology in an economy tends to lead to improvement in the quality of production; generation of new knowledge; and improvement in living standards, productivity and efficiency of exports. The resultant growth, jobs and opportunities created are essential for economic prosperity, social justice and sustainable development. Critical to achieving such outcome is an open market which supports fair competition, innovation, education, research and development, gainful employment and social cohesion. As with other economic sectors, yet to a greater degree, the healthcare & pharmaceutical industry is reliant on a viable and sustainable development strategy - at both the business and policy levels - to formulate an integrated, coherent approach, targeting the inherent risks and challenges faced by the industry.

Specific to an upper-middle income nation like Thailand is the confluence of the need to respond to both the health

challenges, and the competitive economic pressure to rise up the value chain of production and services. Existing communicable diseases and rising non-communicable diseases brought on by growing prosperity strains the health system, while adoption of new technology and innovation to overcome the middle-income trap and reliance on scarce cheap labour requires a paradigm shift in productivity valuation and national preparedness.

Globally, successful technology adoption in the healthcare and pharmaceutical industry among rapidly developing economies is well evidenced in Singapore and Brazil. Inherent to their success is openness to global trade and investment, which subjects the domestic economy to competition. This resultant pressure serves to stimulate innovation, promote effective adoption of new technologies and increase incentives for investments. Conversely, protectionism raises prices and limits choices of consumers and businesses, as evidenced in several previously closed states now seeking to

liberalise markets for survival and growth in the globalised world. As a matter of policy choice for Thailand, the healthcare and pharmaceutical sector affords a sustainable development path to a knowledge-based economy and evolution up the production and services value chain. Thailand's competitiveness can no longer depend upon cheap labour as more economies open up and competition intensifies in ASEAN and the global economy with China and India is ascendant.

The hallmark of Europe is the application of knowledge, innovation, intellectual property, services and the efficient use of resources to attain competitiveness. As important in this mix is the need for, and the industry's specific commitment to, global health. The European research-based pharmaceutical industry strives not only to devise sustainable ways to bridge the research-and-development gaps which serve medical needs, but also to increase availability of the resultant vaccines and medicines in the developing world where they are most required. This is evidenced by the strong track record of sustaining programmes to: improve the health of patients in low and middle income countries; strengthen local healthcare capacity; educate patients and populations at risk; and undertake research and development (R&D) in diseases of the developing world.

Thailand can benefit from the existing strong base of healthcare personnel and world class medical expertise by ensuring a vibrant and viable cutting-edge healthcare and pharmaceutical sector. Notwithstanding, to successfully attract imported technology and to build the necessary pre-conditions for adapting those imported technologies to strengthen domestic R&D capabilities and commercialisation of the knowledge and know-how gained, the country needs a supportive environment that also includes strong intellectual property protection and enforcement. For Thailand to become an attractive investment destination and to foster strong partnership with the research-based pharmaceutical industry, the following key aspects of the existing policy and regulatory framework need to be augmented.

Implementation of strong market mechanisms to address distortion and improve access

More and more newly industrialized countries and middle-income countries are increasingly competing for technology transfer to advance their domestic healthcare and pharmaceutical R&D capabilities. To this end, countries benefit from ensuring that their markets are accessible to both domestic and international enterprises and that access is not unfairly hampered by differential treatment.

The arrival of the AEC makes ASEAN/Thailand a highly promising partner for European companies. Commercial opportunities are paramount - both from the national and business perspectives - when considering technology transfer; and many countries are already well positioned for R&D pharmaceutical technology transfers, including Thailand. The competition however will be intense. By having in place appropriate market conditions, Thailand can position itself to competitively attract investments of world-class, research-based pharmaceutical companies. Through regulation and investment, governments can help create the right conditions for technology markets to function. Reliance on 'non-market' mechanisms for the research-based pharmaceutical sector is unlikely to provide a sustainable platform for economic growth or business development as the region rapidly integrates into a common market and trade barriers are circumvented. With tariffs being dismantled as economies pursue a trade liberalisation and integration agenda, non-tariff barriers including unnecessarily trade-restricting regulations and procedures will become key challenges. While regulating trade is necessary, the regulation must be done in a transparent and non-discriminatory manner.

Public procurement represents a major market mechanism to ensure a viable and sustainable business investment by the European healthcare and pharmaceutical industry. The absence of open competition and implementation of state aid rules limit access to the public healthcare market and raise barriers to substitute for tariffs or traditional non-tariff barriers. The Prime Minister's Office procurement regulations

B.E. 2535 (1992) gives a state enterprise, the GPO a strong advantage and distorts the market mechanism. Adoption of a less market restricting regulation which provides equal access by all suppliers will remove the limitation of choice not only to the healthcare practitioners but also to the government and the patients.

Recommendation

With a view to enhancing long-term development and competitiveness for Thailand's pharmaceutical industry, EABC encourages Thailand to remove restrictions on the procurement regulations which put other pharmaceutical firms at a disadvantaged position. Providing for competition on an open and transparent basis should improve productivity and promote innovation, to the long term benefits of consumers with better access to quality medicines.

Cooperation and partnership on IPR development

To create favourable conditions for investment and growth in an innovation-dependent sector such as Healthcare and Pharmaceutical, Thailand is encouraged to enhance the policy and regulatory framework to promote the following key aspects:

- Viable and accessible local market
- Political stability and good economic governance
- Clear development priorities
- Effective regulations
- Availability of skilled workers
- Adequate capital markets
- Strong intellectual property rights (IPR) and effective enforcement

- Sound and sustainable working relationship between the industry and government authorities.

As one of the key elements of an enabling platform to promote a competitive Healthcare & Pharmaceutical sector, the strong intellectual property rights and effective enforcement should be given policy priority. EABC has already outlined key issues and recommendations towards that overarching objective earlier in this Position Paper in the part on 'Strengthening legal framework and enforcement to protect intellectual property rights' of the Cross Sectoral Issues section. Below are the issues and recommendations towards strengthening vibrant cooperation in R&D and IPR development in partnership with the European innovative sector.

Innovative Medicines Initiative (IMI) & the Seventh Framework Programme for Research and Technological Development (FP7)

A sound IPR framework and sustainable development of the pharmaceutical industry are interrelated. It is important to have in place a balanced policy perspective on IPR protection by taking into account the interests of both the users and innovators in order to promote innovation, with the emphasis placed on the public-private partnership concept as positively contributing towards cooperation and IPR development.

Two prime partnership initiatives worth mentioning, in respect of cooperation and partnership on IPR development, are the Innovative Medicines Initiative (IMI)²¹ and the Seventh Framework Programme for Research and Technological Development (FP7)²². These initiatives provide for opportunities for strengthening of cooperation between public as well as private sectors towards development of the pharmaceutical industry in Thailand.

²¹ IMI is Europe's largest public-private initiative - with available annual funding of approximately 2.7 billion euros - aiming to speed up the development of better and safer medicines for patients. As a joint undertaking between the European Union and the pharmaceutical industry association EFPIA, IMI supports collaborative research projects and builds networks of industrial and academic experts in order to boost pharmaceutical innovation.

²² FP7 allows for research support to be provided to international cooperation projects across the European Union and beyond to promote the progress of knowledge and technology. Research will be supported and strengthened to address social, economic, environmental, public health and industrial challenges, serve the public good and support developing countries - with Thailand as one of the beneficiaries.

Recommendation

As previously raised on a number of occasions - including in the EABC courtesy meeting with the Deputy Prime Minister and Minister of Finance H.E. Kittiratt Na Ranong on 26 April 2012 and in the high-level technical discussion with the DIP Director General on 2 May 2012 - EABC proposes to hold dedicated dialogues towards exploring possibilities for Thailand and EABC, representing European businesses, to discuss a way forward towards strengthening cooperation on future development of the pharmaceutical industry in Thailand and for effective and fruitful cooperation in view of potential mutual benefits.

Cooperation on anti- counterfeiting

48

The growth in production and availability of counterfeit medicines has also become a serious problem in Thailand as production, packaging and distribution of counterfeit medicines have been consistently reported in many parts of the country. Counterfeit medicines pose a major health risk to patients. They also do serious damage to the reputation and earnings of pharmaceutical companies and reduce the potential tax revenues of government.

Although the FDA and other enforcement agencies in Thailand have committed to pursuing counterfeiters, the problem seems far more serious than current resources employed to tackle the problem would suggest. Effective prosecution and suppression of counterfeit supply chains remain to be achieved through coherent actions and coordinated enforcement by different authorities. It could be argued that the penalties for counterfeiting are too low to effectively deter production/sale of fake medicines. Historical tolerance towards and lack of awareness/understanding among the general public and some officials potentially leads to the worsening of the situation. Industry efforts by a number of drug companies to assist in the clamping down on counterfeits seem to be hindered by rigid interpretation of drug advertising laws by the Thai FDA officials, which has prevented drug owners effectively warning patients

and pharmacists as to potential threats and availability of counterfeit medicines.

Recommendation

The Thai government is encouraged to ensure adequate availability of resources to allow the enforcement agencies to effectively deal with counterfeits. Stricter penalties should also be imposed on medicine counterfeiters.

EABC earnestly looks forward to strengthened cooperation between drug companies and the relevant authorities with the aim of improving anti-counterfeiting efforts. Tougher actions against counterfeiters, together with effective public awareness activities, are considered necessary to address the potential harm of counterfeiting practices. EABC stands ready to support initiative/actions in this respect.

INFORMATION & COMMUNICATION TECHNOLOGY (ICT)

The ICT sectors represent about 10% of GDP. The ICT sectors are regarded as strategic - their good functioning can have a multiplier effect on the economy. Thailand is currently lagging well behind in telecoms infrastructure and ICT facilities. Thailand's GDP, capacity for innovation and other aspects could be greatly enhanced if telecoms were reformed and broadband policies implemented. The ICT Position paper is divided into Telecoms and IT. Recommendations are summarised at the end of this ICT section

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

Telecoms: The sector has a dual role in the economy but in Thailand the sector underperforms; some services available in many other markets are not available in Thailand. Thailand lags and continues to drop back further in relevant rankings such as Networked Readiness Index. Service and innovation competition is lacking, although price competition has taken hold in the mobile area. The root cause of the challenges is about structure. Global norms have not been used; the evolution of the SOEs has stalled.

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

IT challenges 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. But there are barriers. A review of work permit and visas regime is needed to ensure free movement of the necessary skills, and again broadband services are needed. IT Procurement issues, 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 attractiveness of Thailand as a regional centre. Recommendations are summarised at the end of this ICT section.

49

A. Role of ICT

The ICT sectors in Thailand are overall important parts of the wider services sector. The ICT sectors are strategic sectors in that they enable and can strengthen the economy; well-functioning, efficient, effective and innovative ICT sectors has a multiplier effect on the economy.

For convenience we cover Telecoms (info-comms) and IT separately. A summary of our recommendations appears at the end of the ICT section.

B. Telecoms

1. The Data and trends

While 2G / 2.5G mobile penetration is now over 110% (a simple measure of number of post-paid and prepaid subscriptions divided by population), other measures show less impressive results. Fixed line broadband penetration is low at around 5% and mobile broadband is in its infancy in Thailand. While price competition has taken hold for 2G mobile services, there is little service and innovation competition. Broadband penetration will continue to lag until there is a more conducive industry structure, with a wholesale market and regulated access to base infrastructure and services.

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

The advent of the 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 telecoms

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

- (i) An industry in its own right, contributing often as much as 10% to a nation's GDP; and
- (ii) a support sector for the rest of the economy. For example, to have aspirations as a financial services or logistics sector hub, sound telecoms infrastructure and services are needed.

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

Within a certain band from example, an increase in 10%

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

No part of the telecoms 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. The industry works best when well structured; this industry is currently not appropriately structured.

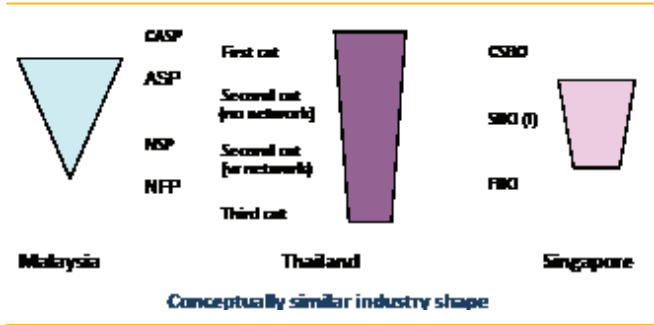
For a very long time the effects of vested interests and the lack of an over-arching and well supported vision for the industry have combined to frustrate real progress. In some respects Thailand has an almost unique history in this regard, but the issues are by no means novel or unique. Thailand has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



Thus it is not the basic legislation in this respect which is the cause of concern; it is the next level of rules (or lack of them), industry governance and operational practices which are the concern.

The telecoms industry is arguably the most interdependent industry in the world. It cannot work without interoperability,

without interconnect and thus standards. It cannot work efficiently if every operator has to build and operator infrastructure and services at every level, which is not the intention behind this design. For example, mobile operators should not have to build out anything like the level of backhaul infrastructure which is currently required. It 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, appropriately and well. Industry structure and a range of predictable rules of engagement in support of access, free and fair competition are paramount.

We believe it is now becoming most urgent for Thailand that the sector functions properly in making this dual 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 2012 Networked Readiness Index (NRI) published by WEF and INSEAD as part the of the Global IT Report, shows Thailand slipping from 59th place (2011) to 77th place (2012).

"Coming in at a low 77th rank, Thailand presents a number of shortcomings in all dimensions of the NRI. Thailand ranks in the top 50 of just one pillar, affordability (33rd), and as low as 107th in infrastructure and digital content. Indeed, there are only 2 indicators out of 53 in which the country ranks better than 50th: the number of procedures to start a business (28th) and mobile cellular tariffs (14th). ICT usage (83rd) remains scant by international standards. And, unlike other economies in the region, ICT development does not seem to be a priority for the government, witness Thailand's 86th rank on government usage"- p.23 of the full 2012 report.

According to the National ICT Policy Framework 2011-2020 (ICT: 2020), Thailand has a goal to strengthen the IT/ ICT industry competitiveness to support the country's economic growth particularly when the ASEAN Economic Community (AEC) fully emerges by 2015. However, according to the latest IT Industry Competitiveness Index conducted by the Economist Intelligence Unit (EIU) to benchmarking IT industry competitiveness, Thailand achieved a position of 50th in the world in the 2011, a drop from 49th in 2009²³. This is mainly due to deterioration in performance in the area of government support for IT industry development.

Such is the environment where the lack of political will to change and evolve seems to hold back the necessary developments.

Thailand has laws which provide, in their terms, 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). Establishing 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.

While we have gotten by 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 Thailand has started following other countries in the region with plans to issue 3G spectrum. But large inefficiencies from non-shared infrastructure and non-shared basic services remain. A value-added resale market is almost non-existent. The industry sector structure is not currently optimal to support 3G.

In moving to 3G, and 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 the structural changes are also an essential ingredient.

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.

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 here. The only thing exceptional is that basic reforms of the telecoms industry were never put in place – the industry is 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. Certain concession-based contracts will expire in 2013 and the last in 2018.

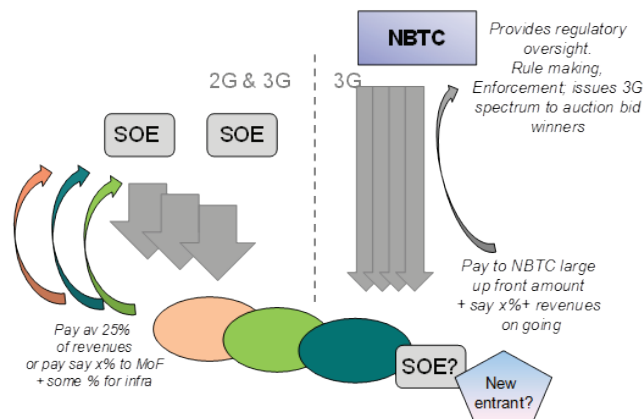
These issues have already been the subject of lengthy debate.

²³ <http://www.nationmultimedia.com/technology/Thailand-slipped-one-spot-in-IT-industrys-competit-30171143.html>

The history of the sector, globally, shows that such reforms are not easy, but are necessary. We do not now believe that, on balance, new 3G licences will work to maximum advantage without a properly structured industry. 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 will result in quite different licensing regimes:

2G + 3G regime in Thailand - simplified and aggregated



Thus there would be (absent a proper resolution of issues) 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.

But based on experience the task to convert or terminate concessions prior to new 3G spectrum issuance may be impractical. 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 SOE's 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 revenues 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?

Global experience has also shown that 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 mandates free and fair competition, including in the telecommunications sector.

For market enhancement and to promote an efficient and effective industry, we again note the benefits, based on global experience, of the evolution of the SOE. We observe that on-going difficulties to do with retail mobile models (and even MVNO models, which are different to wholesale arrangements) are symptomatic of wrong strategy and inappropriate investment. We question why the SOEs are adventuring into retail mobile services at all and recommend that the SOEs be guided towards playing contributing and constrictive roles as network operators, especially fixed line network operators.

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

(1) A bold vision backed by the necessary political will to put in place reforms in the industry including mandated **wholesale** access at non-discriminatory, cost-oriented rates. Wholesale services should 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 (where the transport would include but not be limited to copper, optical fibre and microwave)

(2) The **evolution of the SOE** not to pursue retail mobile but to become network operators and play a sound role in wholesale services

(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)

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

(5) Incentives to support **infrastructure sharing** on open access, non-discriminatory terms. Licence permissions for operation of telecom tower and site infrastructure (passive infrastructure) should be granted by NBTC independently and separately from licences to operate a telecom network.

Active infrastructure should also be possible as part of the sharing regime.

(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

Spectrum issuance based on historical events has resulted in some controversial outcomes, with the SOEs having had 3G spectrum for some years. Broadly, spectrum is or is to be deployed currently under three regulatory models:

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

The NBTC is commended for its five year spectrum master plan and the holding of one public hearing (although as recommended elsewhere we recommend a two-four stage process with good quality inputs). 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 as follows:

- i) Short term plans (six month): 2.1 GHz auction (which should not be limited to IMT-2000 even if it unlikely to be used other than for 3G) and 1800 MHz re farming (whereby the spectrum should go back to the NBTC, not to the SOE)
- ii) Within 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.

6. International Gateways (IGWs)

CAT had provided Thailand's sole IGW, other than for routes to neighbouring countries where TOT has 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, 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. A local operator may use less expensive IP bandwidth purchased in Singapore or other places. As some put it, due to monopolistic-type prices, revenue is 'leaking' out of Thailand. Monopolistic-type pricing is a key cause of this leakage.

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.

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 corporates.

7. Broadband development

Broadband development in Thailand has been slow with access limited to major cities and town and many parts of the country rely on dial up connections to the Internet. We believe that the government does recognise the importance of a Broadband infrastructure and services for the future prosperity of the country. Following are the key policy objectives previously endorsed:

- Develop broadband network that covers at least 80% of the population by 2015, and at least 95% by 2020, as well as providing high-speed broadband service through fibre optic cable in cities that are economic centre of each region with the speed of at least 100 Mbps by 2020.
- People are able to receive universal and equal service through broadband network in the aspect of education, public health, disaster monitoring and warning, and other public services to reduce differences in accessing information and knowledge which:
 - (1) Sub-district schools are able to access quality broadband service by 2015.
 - (2) Sub-district health promoting hospital or all health stations are able to access broadband service that has the same quality as provincial hospital 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.
- Share access to infrastructure.
- Reduce the overall cost of broadband service.
- 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 operation to increase competitiveness.

Master plans (including the proposed next five year ICT Master plan of the MICT) do need to address these. Planning on implementation of the above can be greatly assisted by the foreign business community, including the European business community.

56 In order to achieve this kind of policy objective, comparative studies conducted by the JFCCT and other parties into various NBN-type structures with a view to assessing the benefits of such structures found that they can, if appropriately structured and managed, accelerate broadband rollout and take-up. They can also bring 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, in operation in Singapore for example) 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.

We recommend the following principles be used:

- i) The development of a wholesale market and services should not wait for an NBN style deployment.
- ii) A PPP model is likely to be most appropriate. 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.

- iii) Infra owners can vend or lease in.
- iv) Structural separation between infra owner and retail service provider.
- v) A range of wholesale services should be available at non-discriminatory, cost-oriented rates.
- vi) Facilities based competition should continue and not be terminated.

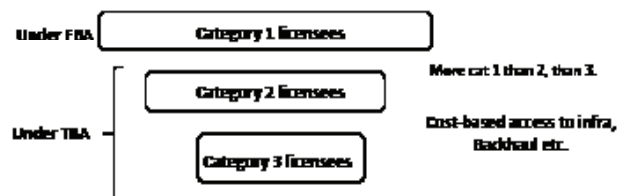
8. Foreign Equity Limits in the Telecoms Sector

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

Building blocks in the telecommunications industry

li

Foreign equity limits



Up to 100% 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% 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 the potential 100% foreign equity. MNCs and larger

corporates are the clients of such service and providers seek to provide high standard one-stop solution for seamless global coverage. Effective control of the entire operation will achieve deliver better results. Restricting ownership makes Thailand a less attractive choice as a hub in this area.

(i) Category one and category two operators

Category 1 licences allow for 100% 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% 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% 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 three, 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% 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%, with the aim of stimulating participation by local companies.

9. Liberalisation of the services sector

Within ASEAN, the service sector accounts for 40% to 70% of each economy's GDP, 48% 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.

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. Unemployment starts to be a problem where there is no vibrant services sector.

Further, 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).

Another reason for this is that out of the leading six ASEAN economies, Thailand has slipped in terms of commitments to liberalisation of the services sector.

Service sector liberalisation is not just about relaxation of foreign equity limits (even though that may be all AFAS requires), we see its elements as being:

- 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 telecoms and in other FTAs with telecoms chapters
- other sector specific reforms or mandates (eg structural changes in a sector to make it competitive and innovative, such as recommended for the telecoms sector)

The strategic importance of some parts of the services sector cannot be emphasised enough. For example, gains in efficiency and effectiveness of the telecoms sector will have a multiplier effect on the economy overall. But a lagging sector disappoints the rest of the economy.

58

10. Foreign Dominance Notification

We have made separate submissions on foreign dominance; which has had a long gestation period since 2006. EABC, JFCCT and many of Thailand's trading partners have made policy recommendations over this long period.

The Notification, which became law in August/September 2011, 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). 'Dominance' simply means influence. If the NBTC determines that the total effect of the influence level is over 50%, 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 (and the proposed removal of inappropriate 'national security' assessments, a proposed revision explicitly introduces elements of control (via voting rights or via power over board members).

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

- 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 flies in the face of normal investor practices in the sector.
- It is a sound principle of investment in all sectors that some kind of non-passive activity be allowed. Investors in the telecoms sector are **not passive investors**; No-one has complained that the level of skills and useful talent contributed by foreign investors is too much.
- 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 with the Notification will have is contrary to the recommendation of the World Bank and ADB for example to increase productivity by building skilled capacity.
- The Notification will have the effect of **reducing effective competition** in the sector. By reducing the skills in the sector, effective competition is impeded.
- 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% and allow for a number of aspects of investment and operation which the Notification undoes; the Proposed revised 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 flies in the face of 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 fora 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 of 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 executive thus will 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.

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 transactions 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. In 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**:

- 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 telecoms sector in the context of AFAS and in particular the foreign equity limit targets applicable to the telecoms sector (e.g. 51% by December 2010 and 70% 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 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. Special focus - mobile banking and mobile payments

There are many applications and tools which the on-line 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 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. Many operators have developed mobile banking solutions.

In Kenya, according to a recent Credit Suisse report, revenues from mobile money contribute 16% 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% of Safaricom subscribers and 37% of Kenya's population. In the six months between April and September 2011, US\$3.5bn worth of transaction were made via M-Pesa. This is the equivalent of approximately 20% of Kenyan GDP. As of September 2011, there were 32,000 M-Pesa agents, far outnumbering the less than 1,000 Kenyan banks.

The CS 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 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.

General benefits: We note the dual role, the multiplier effects and thus wish to see a thriving, innovative, attractive telecoms sector where free and fair competition will take hold and which contributes to other sectors of the economy in greatly enhanced ways.

C. IT

Thailand is the second largest IT market in the ASEAN region. National PC penetration rate is about 18%. Unlike the telecoms sector, industry structure is not the key issue for IT.

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.

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 in English language training.

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-11) 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 administrative 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 have been addressed 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.

e Auction 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.

SW Customs Duty / import duty on SW: Duty on software imports is hard to administer. We recommend 0% 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

Approach via Phases of development:

- Step 1: within own agency
- Step 2: with citizens, users
- Step 3: interoperability – government wide

We note that a less than ideally co-ordinated approach by different ministries appears to be in train. This is an area where the foreign business community (including the European business community) could offer experience and insights. We also note that ATCI (Association of Thailand ICT Industries) has launched a plan for eGov take up / use ICTs in local government. We greatly support the development of eGovernment rollout and solutions.

6. On line commerce

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

7. Creative Economy – IT focus

Creative Economy (here IT focus) represents new areas 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 nation-wide)
- Diversifies the economy and creates new clusters of economic development and job creations; 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 creative economy (IT focus and relevance):

1. Policies and regulation which makes 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 & resolution of industry structural issues. Currently we are moving in the wrong direction.
4. Availability of funding including grants - especially private equity and VC; 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 & immigration roadblocks; liberalise service sectors
7. Education - Teach IT soft and hard skills, national or regional IT competency framework. 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 – industry – (teaching and research dimensions); peer-to-peer collaboration; regional collaboration; massive 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.

Summary of Recommendations

Telecoms

1. General and structural:

- i) A bold vision backed by the necessary political will to put in place reforms in the industry including mandated wholesale access at non-discriminatory, cost-oriented rates. Wholesale services should 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 (where the transport would include but not be limited to copper, optical fibre and microwave)
- ii) The evolution of the SOE not to pursue retail mobile but to become network operators and play a sound role in wholesale services
- iii) 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)
- iv) Review of competition regulation to see that real, fair and effective (ie enforced)
- v) Incentives to support infrastructure sharing on open access, non-discriminatory terms. Licence permissions for operation of telecom tower and site infrastructure (passive infrastructure) should be granted by NBTC independently and separately from licences to operate a telecom network. Active infrastructure should also be possible as part of the sharing regime.
- vi) 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) Short term plans: 2.1 GHz and 1800 MHz re farming (to go back to NBTC, not the SOE)
- ii) A spectrum auction for 2.6 GHz within 12 months of that, and a plan for 2.3GHz
- iii) Digital dividend spectrum choice
- iv) 850 MHz / 900 MHz review and plan with industry consultation

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
- iii) Exploration of the right structure and solutions based on key guiding principles.

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 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) – ie 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 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.

9. Mobile banking

Mobile 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. 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

10. 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.

11. 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.

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

13. e Government

We support the take up of eGovernment solutions.

14. On line 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.

15. Creative Economy – IT focus.

Identified are a number of policy ingredients and measures designed to make this work. Creative economy particularly the promotion and protection of innovation with the focus on IT is new area of growth and productivity enhancement. A regional focus we believe will work best for many of these initiatives.

INSURANCE

Specific contributions of insurance to the economic growth process, as well as to the social well-being of population, have been consistently highlighted in several research studies. 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 be undertaken in the absence of risk management instruments.

Representing a cross-section of insurance businesses operating in Thailand, that have in one form or another European influence over them, this Position Paper of the EABC Insurance Working Group represents the collective views of members seeking a greater participation in the growing insurance markets of the ASEAN region. To create favourable conditions for investment and sustainable growth in the insurance market in Thailand, for the benefit of the economy and Thai consumers, it is the wish of the Insurance Working Group that the following issues are brought to the attention of the Royal Thai Government:

- Raise of capital to strengthen the industry base and real long term investment
- Review of current regulations/product approvals with a view to facilitate issuance of new products and minimise delays
- Building 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

66

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.

Empirical studies 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 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 more cheaply.

Representing a cross-section of insurance businesses operating in Thailand, that have in one form or another European influence over them, the EABC Insurance Working Group wishes to engage with the Royal Thai Government to create favourable conditions for investment and sustainable growth in the insurance market in Thailand. The following key issues and recommendations - representing the collective views of the working group members - aim towards enhancing the development and competitiveness of the insurance industry in Thailand amidst the growing insurance markets in ASEAN and beyond.

Capital

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 is more important today than ever before 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. Foreign reinsurers, who in the past effectively lent their capital to cover risk in Thailand, are currently not prepared to provide cover for natural catastrophe perils, leaving 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 benefit 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 regulations 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 the insurance companies to increase their capital.

Regulations / product approval

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 does 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.

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 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

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

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 it 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 specialized value added services and facilitates financial deepening through the provision of services in under-served segments of the markets (for example SMEs).

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.

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.

Recommendation

To successfully bring expertise into the insurance industry in Thailand, it is important to build the necessary pre-conditions for Thailand to become an attractive investment destination for foreign insurance investors and experts. EABC expresses its readiness to closely work with the Thai Government towards this objective.

Relaxation of foreign shareholding limits and progressive liberalisation

There are two restrictions limiting the majority ownership by European interests of insurance businesses in Thailand: the 25% shareholding limit in the Insurance Acts and the 49% shareholding limit in the Foreign Business Act. Although there have been pronouncements made by various Thai government officials that the 25% limit in the Insurance Acts

will be lifted there has been no formal notice issued that clearly states that these limits no longer apply from a certain date.

The efficient provision of insurance services and the institutional development of the insurance sector are regarded as positively related to openness. 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 the people who live here. In summary, removal of shareholding limits will encourage European investors who in turn will put new capital to work, improving the capital strength of the insurance sector. They will introduce new products and services and through their presence raise the level of expertise within the insurance market.

Liberalisation is therefore a win/win scenario for all concerned from the perspectives of the investor, employee, customer and the Royal Thai Government.

Recommendation

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. Naturally it would be expected that all participants in the insurance markets would have to meet all the criteria that govern the licencing of insurance businesses other than shareholder limits. It would also be expected that the regulators of the insurance sector would only permit investors who could demonstrate that not only were they fit and proper, but that they would bring benefit to the Thai insurance industry their customers and all its other stakeholders.

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 connectivity of ASEAN.

Despite the Government's efforts to actively promote the transport industries through fiscal and financial incentives and 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. Thailand will also have to move quickly to meet requirements for economic integration with ASEAN, set for 2015, with transport policy one of the key issues that will have to be addressed in the lead-up to the single market. 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:

- Market access
- Customs and compliance
- Air transportation
- Maritime transport and ports
- Domestic transport and warehousing
- Cross-border transportation

69

The overall quality of Thailand's transport infrastructure has been upgraded, but there is still room for improving logistics efficiency. According to the World Bank's Logistic Performance Index (LPI), which is a comprehensive measurement of a country's trade logistic performance, Thailand ranked 35th (of 155 countries) in 2010, behind Singapore (2nd) and Malaysia (29th), but ahead of other ASEAN countries. In terms of quality of transport infrastructure (ports, railways, and roads) and logistic services, Thailand ranked 36th and 39th respectively.

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 increased sourcing, producing and exporting among ASEAN countries, as well as export to other regions with greater ASEAN connectivity, Thailand has prioritised the policy to develop

logistics systems and facilities to support trade and tap into the benefits of ASEAN integration. Rail and water transportation have been given high priority in Thailand's logistics development strategy. The Ministry of Transport has also started to pave the way for development of sustainable transportation and will encourage more participation from the private sector by amending relevant laws and regulations that hamper imports and exports.

Despite the Government's efforts to actively promote the transport industries, the regulatory framework for the provision and management of infrastructure services is complex and restrictions on foreign investment apply in all transport subsectors. Restriction of foreign equity ownership of 49% 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:

Market Access

The Master Plan for ASEAN Connectivity clearly acknowledges that domestic legal regulations often constrain further liberalisation, leading to higher costs for users and compromises quality and service levels. Market access and foreign ownership restrictions hinder the inflow of trade and investment and limit the growth of the logistics industry. Restrictions on logistics providers not only adversely affect the efficiency of logistics companies but also undermine the country's economic competitiveness.

70 Logistics businesses covering domestic land, waterway, or 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 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.

It is important to note the objectives of the Master Plan on ASEAN Connectivity in contributing towards the ASEAN Economic Community (AEC) by 2015 through liberalisation and facilitation measures in the area of logistics services and the creation of an integrated ASEAN logistics environment. Current FBA restrictions are therefore not conducive to the economy or the growth of the services sectors, including Transport & Logistics which is considered a priority sector to improve connectivity and spur economic growth.

Recommendation

Thailand's commitment towards relaxation of foreign ownership restrictions in the transport & logistics sector - with clear targets and an ambitious timeline - is most welcomed to enhance Thailand's competitiveness amidst increasing regional integration process of AEC and interconnection amongst Asian economic centres.

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 and AEC Blueprint.

With the firm belief that effective public-private sector engagements in the policy formulation and implementation would be mutually reinforcing, EABC supports the establishment of regular dialogues between the private-sector, relevant business associations and government in ongoing policy discussions regarding this important sector.

Customs and Compliance

Trade facilitation is an important driver to expand trade by seeking to reduce transaction costs faced by exporters and importers. Reducing time to market is critical to be able to compete in today's globalised world and complex supply chains.

Key hindrances for economic integration are: unnecessarily complex customs, at or behind-the-border procedures and compliance (in particular special licensing regimes and restrictions on domestic transportation), inefficient transit arrangements, and underdeveloped trade-related infrastructure. Business operators at times face high compliance costs and difficulties due to lack of transparency and unpredictability, especially when the customs officers are left with large room to exercise discretion.

Recommendation

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 at lower cost, we encourage Thailand 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.

Formal customs entry in English

Thailand's National Single Window application, known as the Paperless clearance system, was launched in 2008. While the new system has enhanced the clearance process, the new system requires the import and export customs entry to be performed in both English and Thai languages.

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

We would like to seek the support of the Royal Thai Government to effect this critical improvement to the current Paperless clearance system.

Raising the de minimis level

A so called de minimis regime provides streamlined border clearance and exemption from customs duties and other taxes below a specified threshold. For low-value shipments, the cost of collecting duties/taxes may far outweigh the

revenue collected, 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 THB 1,000 (around USD 27).

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 Royal Thai Government to raise its de minimis level to a level comparable with regional standards.

Air Transportation

Air travel is one of Thailand's most important logistic sectors. The Suvarnabhumi Airport, with its capacity to handle 45 million passengers and 3 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 note that Thailand pursues a 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.

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% 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% limitation of foreign equity and nationality requirement in the air transport services in the foreseeable future. This policy is not conducive for the further development of Thailand as a logistics and aviation hub.

- 72 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. Restrictive aviation policies create inefficiencies and complexities in network operations for logistics providers. This also leads to higher costs for users and compromises quality and service levels.

Recommendation

Thailand is encouraged to take appropriate steps to progressively remove restrictions of foreign equity ownership and facilitate cross-border movement of shipment 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 the Kingdom'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% in maritime transport services could be considered as the most significant barriers for foreign operators. Thailand does not have any plan to relax such limitation of the foreign equity for Thai-flagged vessels engaged in international trade.

It is reported that Thailand is 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 cargo which constitutes 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 cargo are to be loaded on board.

Thailand is not a party to the United Nations Liner Code of Conduct and has no plan to become a party in the near

future. Since at present its merchant fleet can accommodate only about 10% 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 transports 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 logistics industry. 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 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 & logistics sector, the restriction of foreign equity ownership to 49% in road and rail transport services could be considered as the most significant barriers for foreign operators. Despite the fact that Thailand aims to increase foreign participation in road transport services - as specified in the AEC Blueprint - and considers amending concerned laws and regulations, at the moment, no company from another ASEAN member country is allowed to conduct domestic transport in Thailand, regardless of the general relaxation of restrictions on other non-ASEAN operators.

Recommendation

We recommend Thailand liberalise domestic transport and warehousing in order to allow for foreign participation in this sector.

Cross-border Transportation

Thailand uses various logistics technologies. Primarily, the National Single Window (NSW) facilitates Thailand's trade within the ASEAN region by allowing regulatory documents 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 not trade-friendly nor are aligned with the customs practices in major economies²⁴.

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 disease. 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

²⁴ Please refer to comments made in the earlier section on Customs and Compliance

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.

Recommendation

We welcome Thailand's initiatives on facilitating cross-border land and multimodal transport via effecting critical improvement to the current clearance system, including simplifying the preparation of customs entries and speeding up the trade-facilitating delivery process. Thailand is encouraged to ensure timely ratification and/or implementation of ASEAN transport agreements and other agreements related to trade facilitation.



Section Three: Way Forward

Europe and Thailand share a long history of friendship and cooperation, with broad and expanding bilateral relationships in many key areas. This has resulted in the creation of jobs, development of expertise and technology transfer, generation of tax revenues, introduction of cutting-edge and new technology, as well as provision of many new goods and services to the benefit of consumers.

European companies are proud to be in Thailand and to be part of Thailand's success story. Despite impressive statistics, however, it is our belief that current trade and investment relations between Europe and Thailand are significantly below their real potential. Representing the unified voice of European businesses in Thailand, EABC considers ourselves direct stakeholders in Thailand's past and present, and will continue to be so for the country's future success. As such, we are hopeful that our presence will continue to be welcomed and that European companies will be treated equally alongside Thailand's other trade partners.

EABC applauds the resiliency of Thailand's economy and its strong recovery from the global financial crisis, with trade playing a key role in the recovery. We also wish to congratulate Thailand on having managed to cope with the flood consequences, and increase growth in times of global economic difficulties. EABC is encouraged by Thailand's adherence to the principles of free and fair trade, transparency and good governance as part of the Government's strategy towards regional integration and sustainable development. Recognising the importance of an open trade regime for the shared benefits of businesses and consumers, we strongly support the Royal Thai Government in pursuing further trade and investment liberalisation. Undoubtedly, stronger trade and investment relations will create employment, open up opportunities and reinforce mutual benefits for both Thailand and Europe. We actively support further strengthening of trade and investment ties with the prompt negotiation of a European-Thai Free Trade Agreement. But our overture is not just about trade

and investment, more importantly, it is about contributing in a positive way to the Thai economy, in particular to its competitiveness.

To strengthen European-Thai economic relations towards a more competitive Thailand, EABC wishes to highlight the importance of ease of doing business and the opportunities to compete in the context of free and fair competition on a level playing field. As emphasised throughout this Position Paper, our priorities have been placed on enhancing transparency, improving efficiency, reforming certain sub-sectors and enabling an economic and regulatory environment, all of which are regarded as key factors to improving the trade and investment climate in Thailand. To strengthen Thailand's competitiveness, and its enviable position as a potential gateway to vibrant ASEAN, Thailand is encouraged to strive towards 'raising the standards' of its policy and regulatory framework in view of the intense competition and challenges of global dynamism. EABC strongly supports Thailand in making meaningful improvement and tangible progress on the following trade/investment issues and recommendations:

Enhanced transparency in policymaking and the application of rules and regulations.

Despite the commendable resiliency of the Thai economy, challenges exist in regard to the general perception of the policy and decision-making process, as well as the application of rules and regulations in Thailand. Transparency and predictability are regarded as the key foundations for a stable business environment in a modern economy. Unfortunately, the overall trade and investment climate, as well as the reputation of Thailand itself, is hampered by investors and business operators across economic sectors being faced with difficulties, such as redundant bureaucracy and red tape.

Calls have been made for enhanced predictability and transparency, both in the policy/regulatory framework,

and in the implementation/enforcement aspects in such key areas as: customs compliance and proposed legislative amendments on penalty and reward schemes; eradication of illegal '**grey imports**'; removal of redundant **certification and testing procedures**; **streamlining policy coordination among relevant authorities in the case of importation and operation of Free Trade Zones**; and dismantling of **discriminatory tax treatment and application of policies and measures on alcoholic beverages**.

We earnestly believe that tangible improvement in this regard would meaningfully strengthen Thailand's credibility and reputation in terms of its commitment to transparency and good governance, as well as help facilitating legitimate business operators. Therefore Thailand is encouraged to make enhancement of transparency and predictability in policymaking and the application of rules and regulations a high policy priority. On balance, this will significantly benefit both the economy and the country's consumers and general public.

76

Ease of doing business for improved economic and business efficiency

EABC welcomes various initiatives and efforts, as expended by the Government, to strengthen Thailand's competitiveness by way of improved efficiency. Commendable endeavours include the reduction of the corporate income tax to make Thailand's tax regime more competitive, especially in view of AEC development, and the introduction of trade facilitation measures such as the advanced ruling system for customs valuation and e-customs services. By reducing distortions and unnecessary operational hindrances, improved economic and business efficiency will bring about market opportunities and economic growth.

While we were encouraged by progress made on various fronts, burdensome and costly procedures still exist in many areas. To strengthen Thailand's competitiveness, in view of global dynamism and regional economic integration, concrete efforts should be geared towards **simplifying tax compliance methods** to improve economic efficiency and

enhance transparency in tax collection. Recognising the key role of **competitive investment promotion and free trade zone schemes**, Thailand is also encouraged to ensure that its tax and non-tax incentives remain attractive and effectively correspond to the needs of strategic investors when benchmarking against incentives provided by competing economies. In this respect, the **application/interpretation of relevant rules and regulations should be streamlined and consistent**, e.g. on licences, rules of origin and calculation of local content, in order to ensure that the benefits provided to the investors/business operators will not be unduly hindered by regulatory inefficiencies.

As Thailand embraces further liberalisation and connectivity in the AEC context, EABC supports Thailand's efforts to facilitate trade and enable exporters, importers and international trade operators to become more competitive in both the goods and services arena. Priority should be placed on **trade facilitation** and further improvement of administrative efficiency; particularly on regulatory compliance in respect to declaration forms and clearance. EABC takes this opportunity to encourage Thailand to promptly implement a revision of domestic regulations fully reflecting international conventions - particularly the Revised Kyoto Convention on the Simplification and Harmonisation of Customs Procedures - as well as international best practices.

In respect to standards and conformity assessment, adoption of international standards and best practices should help reduce unnecessary costs and hindrances faced by businesses, thereby allowing them to translate this into benefits for consumers.

Creating an enabling economic and regulatory environment

To strengthen a country's competitiveness, it is critically important to put in place an enabling economic and regulatory environment which fosters free and fair competition for both short and long term development. There are certain areas within Thailand's trade and investment policies which remain a concern to investors who are faced with many restrictions. Despite relatively open policies in the manufacturing sectors,

overarching restrictions are prominent in the services sectors, particularly foreign ownership limitations under the FBA, as well as sector-specific regulations on financial, insurance, ICT, transport & logistics, and modern distribution services. A level playing field is what European businesses would like to achieve.

Trade in services and the liberalisation of the services sector is another area that we have paid a lot of attention to. We note that services still make up a large part of the Thai economy and continue to contribute much to its employment, though the share in GDP has slightly dropped. We appreciate Thailand's efforts to liberalise the services sector in recent years; however, there remains a complex regulatory framework governing Thailand's services sector, especially in key sectors like transport, professional services and financial services. Increasing competition in those key sectors will enhance productivity and innovation as restrictions are not conducive to continuous growth of trade in services in Thailand, especially for the financial and telecommunication services sectors, where modernisation and greater competition is much needed for Thailand to remain competitive. We encourage Thailand to consider further opening up market entry and liberalising the trade regime for foreign investment, in particular, reducing, if not removing, foreign equity limitations for various sectors and incorporating national treatment elements into the commitment schedule. We urge Thailand to implement liberalising measures, in particular in investment and services, at an ambitious pace in order to realise gains without delay, and to make certain that progressive steps have been taken with the results applicable to all trade partners on a non-discriminatory basis.

We especially focus on the services sector as it is regarded as a foundation stone for a competitive economy. **Liberalisation of the services sector** is not just about relaxation of foreign equity limits. Key elements for comprehensive development include: relaxation of foreign equity limits (this should be done via use of the mechanism in List 3 of the FBA); facilitation of movement of skills by changes to work permit and visa rules; changes to sector-specific regulations by way

of relaxation of restrictions on permits, licences and other barriers to entry, and to mandate access to facilities; and other specific reforms or mandates in certain key sectors, e.g. structural changes in a sector to make it competitive. Education, skills upgrading and infusion of foreign skills (and the cross-learning which results) are key ingredients to promote a vibrant services sector and enhancement of the country's productivity which are the cornerstone of a competitive economy. In light of this, a review towards relaxation of the current rules on foreign ownership of land and condominiums, and the leasing of land and buildings, would be a welcome development. Improvement in terms of speed and efficiency in processing disputes, and issuing and enforcing judgments and arbitration awards would meaningfully strengthen Thailand's position in the eyes of foreign companies and investors.

Thailand's FDI framework is generally open in the manufacturing sector, but we note that significant **restrictions on foreign ownership** are maintained in agriculture and services. Such restrictions, together with other factors, have added to the impact of the global economic downturn and apparently contributed to the significant decline in FDI inflows (by 44% between 2007 and 2010).

There are also key issues related to **intellectual property rights** and European businesses continue to have serious concerns as to Thailand's existing legal framework and law enforcement. While acknowledging Thailand's efforts and recently established EU-Thailand Dialogue on IPR, stakeholders in Thailand continue to suffer from widespread counterfeiting and piracy while the lack of sustained, coordinated enforcement and prosecution remains a significant issue. We are interested to hear more about the recent developments in this area and to learn Thailand's further plans for improvement. We also hope that Thailand will continue to make intellectual property rights protection and enforcement a top priority as we keenly look forward to recognising various commitments made by Thai authorities to strengthen their legal framework for intellectual property rights protection and enforcement. Enhancement of the existing IPR development and regulatory framework will

attract investment and mutually beneficial partnerships from the EU industry into innovation-dependent sectors such as Healthcare and Pharmaceutical. In support of a sustainable growth agenda, this will not only ensure the viability of a knowledge-based economy, but also the enhancement of public welfare with vibrant cooperation in R&D and IPR development in partnership with the European innovative sector.

In conclusion, we encourage Thailand to continue its efforts to strengthen its competitiveness through enhancement of transparency, improved efficiency and by putting in place an enabling economic and regulatory environment. We strongly believe that pursuing an open trade agenda towards further liberalisation and development of key economic sectors will help by boosting investor confidence and strengthening Thailand's competitive position in view of globalisation and regional integration.

78

Last but not least, we wish Thailand great success with its initiatives and endeavours. The European business community stands ready to constructively engage in relevant consultation to achieve a mutually-beneficial outcome in the aforementioned trade/investment issues and issues which contribute to a competitive Thailand. In the spirit of cooperation and partnership, we look forward to fostering even stronger economic relations for the benefits of both Thailand and Europe, particularly on the prompt commencement of the EU-Thailand FTA negotiations.



Annex

OVERVIEW OF THE EUROPEAN-THAI TRADE AND INVESTMENT

Thailand is economically characterized by steady growth, strong exports and a vibrant domestic consumer market. Strategically located and serves as a gateway into the heart of Asia, Thailand offers easy access to ASEAN emerging markets with great business potential as well as convenient location on the trade route with China and India. With abundant natural resources and workforce, as well as sufficiently good infrastructure and modernized transportation facilities, Thailand is regarded as an attractive investment destination for foreign investors enabling businesses to prosper and the development of many world-class industries. Despite a number of economic and political challenges, Thailand continues to make impressive progress as the country's industrial production continues to grow and diversify. Since July 2011, Thailand has been recognised by the World Bank as an upper-middle income economy.

Thailand and Europe have long shared a vibrant history of friendship and cooperation which is broad and growing in many areas, including trade, investment, tourism, science & technology and education. Trade between the EU and Thailand is considerable. Thailand is an attractive destination

for European overseas investment and companies. The EU is also regarded as a key trade and investment partner of Thailand. In 2011, the EU was Thailand's third largest export market (after ASEAN and China); whereas, in terms of imports, the EU was Thailand's fourth largest supplier with the total trade amounting to EUR 32.565 billion or approximately 1.30 trillion baht. In 2011, exports from Thailand to the EU totalled EUR 18.726 billion (approximately 748.86 billion baht); while, Thailand imported from the EU with total worth of EUR 13.839 billion (approximately 553.42 billion baht). The strength of Thai exports has led to substantial trade surpluses with the EU.

Notably, more than half of Thai exports entering the EU receive preferential treatment either via Most Favoured Nation (MFN) or partial or full tariff elimination granted under the EU's Generalised Scheme of Preferences (GSP). The GSP granted by the EU to 176 countries and territories across the world, including Thailand, is regarded as very important for the Thai exports. The GSP provides Thai exporters with preferential access to the potential EU market at lower duties on some or all of what they sell to the EU which helps increasing Thailand's potentials in export, production, investment and economic growth. The EU-GSP Rules of Origin (ROO) have also been simplified to create

79

Table 2: Thailand-EU trade profile

Thailand-EU	Trade Volume				Change		
	2008	2009	2010	2011	2009	2010	2011
Total Trade	29,243.91	23,413.62	27,676.15	32,565.00	-19.94	18.21	17.66
Export	18,133.39	14,072.60	16,910.51	18,726.15	-22.39	20.17	10.74
Import	11,110.53	9,341.02	10,765.64	13,838.85	-15.93	15.25	28.55
Trade Balance	<u>7,022.85</u>	<u>4,731.57</u>	<u>6,144.88</u>	<u>4,887.29</u>	<u>-32.63</u>	<u>29.87</u>	<u>-20.47</u>

Source: Ministry of Commerce, Thailand (2012) http://www.ops3.moc.go.th/infor/menucomen/trade_sum/report.asp

better opportunities for the GSP export in the EU markets. Thailand is among the largest beneficiaries of the EU's GSP scheme together with Russia, Brazil and India. In 2010, Thailand utilised the GSP for goods exported to the EU worth over eight billion baht (approximately EUR 200.40 billion), or 60% of the goods eligible for the privilege. A wide range of Thai exports benefit from the extended GSP privileges, including in particular automotive products, logistics, eyeglass lens, and air conditioners. Provision of the Regulation (EU) No 512/2011 has extended the current GSP privileges to Thailand until the end of 2013.

As an open economy, Thailand continues to forge closer economic cooperation with other ASEAN members as well as with key trade partners. Given lack of progress in the Doha

Development Agenda negotiations under the World Trade Organisation (WTO), Thailand has - both unilaterally and through ASEAN, pursued a policy of negotiating regional and bilateral free-trade agreements of varying scopes. Bilaterally, Thailand has six free-trade or economic-partnership agreements with Australia, New Zealand, India, Japan, Peru and Chile²⁵. The network of ASEAN's extra-regional economic agreements covering trade in goods, services and investments, is also expanding. ASEAN - as a group including Thailand - has concluded agreements with China, Japan, Korea, Australia and New Zealand, and India. ASEAN is also considering broadening regional integration under the proposals of East Asian Free Trade Area (EAFTA) for ASEAN+3 countries and the Comprehensive Economic Partnership for East Asia (CEPEA) involving ASEAN+6 countries.

Table 3: Main Trade Partners of ASEAN (2010)

The Major Import Partners				The Major Export Partners				The Major Trade Partners			
Rk	Partners	Mio euro	%	Rk	Partners	Mio euro	%	Rk	Partners	Mio euro	%
	World (all countries)	686 384.8	100.0%		World (all countries)	768 697.3	100.0%		World (all countries)	1 455 082.1	100.0%
1	China	98 243.5	14.3%	1	EU27	87 300.7	11.4%	1	China	184 160.3	12.7%
2	Japan	88 380.6	12.9%	2	China	85 916.7	11.2%	2	Japan	166 185.9	11.4%
3	EU27	68 179.6	9.9%	3	Japan	77 805.2	10.1%	3	EU27	155 480.3	10.7%
4	United States	63 000.3	9.2%	4	United States	75 839.5	9.9%	4	United States	138 839.8	9.5%
5	Malaysia	47 360.1	6.9%	5	Hong Kong	56 174.3	7.3%	5	Malaysia	96 981.3	6.7%
6	South Korea	43 343.5	6.3%	6	Malaysia	49 621.2	6.5%	6	Singapore	88 073.1	6.1%
7	Singapore	43 193.3	6.3%	7	Singapore	44 879.8	5.8%	7	South Korea	77 292.2	5.3%
8	Thailand	32 449.6	4.7%	8	Indonesia	36 674.7	4.8%	8	Hong Kong	66 425.6	4.6%
9	Indonesia	27 527.0	4.0%	9	South Korea	33 948.7	4.4%	9	Indonesia	64 201.7	4.4%
10	Saudi Arabia	19 906.8	2.9%	10	Australia	28 543.9	3.7%	10	Thailand	58 420.4	4.0%
11	India	15 095.2	2.2%	11	India	27 846.9	3.6%	11	Australia	42 970.7	3.0%
12	United Arab Emirates	14 842.7	2.2%	12	Thailand	25 970.8	3.4%	12	India	42 942.2	3.0%
13	Australia	14 426.8	2.1%	13	Philippines	15 195.6	2.0%	13	Philippines	27 829.3	1.9%
14	Philippines	12 633.6	1.8%	14	Vietnam	14 917.2	1.9%	14	United Arab Emirates	24 438.4	1.7%
15	Hong Kong	10 251.3	1.5%	15	United Arab Emirates	9 595.7	1.2%	15	Saudi Arabia	23 846.1	1.6%
16	Switzerland	9 604.2	1.4%	16	Switzerland	6 627.4	0.9%	16	Vietnam	21 830.6	1.5%
17	Russia	7 303.7	1.1%	17	Panama	6 176.0	0.8%	17	Switzerland	16 231.6	1.1%
18	Vietnam	6 913.4	1.0%	18	Cambodia	4 917.6	0.6%	18	Russia	9 892.2	0.7%
19	Qatar	6 717.0	1.0%	19	Brazil	4 587.6	0.6%	19	Brazil	9 734.9	0.7%
20	Brazil	5 147.4	0.7%	20	Canada	4 532.2	0.6%	20	Canada	8 129.3	0.6%

Source: Eurostat statistics on EU-ASEAN trade, available as of and accessed in May 2012

²⁵ Talks with the United States, Bahrain and the European Free Trade Association (EFTA) have been "put on hold"; whereas the prospective FTA negotiations with the EU have been switched from "ASEAN" to "bilateral" talks with each ASEAN country.

ASEAN is now home to almost 600 million people with GDP in excess of US\$ 1.5 trillion and total intra-trade volume of more than US\$ 1.7 trillion per annum. ASEAN has long been an important trade and investment partner of the EU. According to recent statistics²⁶ on trade and investment between the EU27 and the ten ASEAN countries, the EU is a key trade partner of ASEAN and vice versa.

Since 2000 the EU has recorded deficits in trade in goods with the ASEAN countries. The EU's trade deficit with ASEAN in 2010 stood at EUR 25.8 billion, a substantial rise compared with the previous year; whereas the deficit slightly fell to EUR 24.8 billion in 2011. The main products imported from the ASEAN countries include electronic equipment, covering computers and consumer items, clothing and footwear, pharmaceuticals, crude rubber, palm oil and furniture. The EU exported mainly machinery and transport equipment including aircraft, alongside pharmaceuticals and medical equipment to ASEAN countries.

For trade in services, the EU has been in surplus for trade in commercial services (excluding Government services) with ASEAN countries. In 2010, the surplus stood at EUR 3.2 billion. Whereas the foreign direct investment (FDI) seems to fluctuate between years - varying from an outflow to the ASEAN countries of EUR 29.5 billion in 2008 to EUR 8.6 billion in 2009. In 2010 the outflow FDI stood at EUR 22.0, rendering the EU's stocks of FDI at EUR 192.7 billion - the largest foreign investor in ASEAN. Thailand emerges as the EU's third largest FDI partner among the ASEAN countries.

With the ASEAN Economic Community (AEC) coming to effect by 2015, deeper integration of economic and business activities - with lower tariff and non-tariff barriers as well as freer flows of goods, services, capital and labour - would provide a meaningful boost to the regional economic growth. Thai manufactured products and services will enjoy facilitated access to the markets of ASEAN countries as well

as other fast-growing trading partners in Asia. Thailand ideally serves as a potential gateway to this prospective market and active production base. The momentum of regional economic integration under the AEC puts Thailand into an enviable position with an even greater link to Asia which currently is the most vibrant economic region of the world.

²⁶ http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113471.pdf , accessed on 10 May 2012

THAILAND'S PROFILE ON COMPETITIVENESS

Table 4: Performance under the WEF's Global Competitiveness Index: GCI 2005-2011

Thailand	2005	2006	2007	2008	2009	2010	2011	+/-
No. countries	117	125	131	134	133	139	142	
Thailand's GCI ranking	33	35	28	34	36	38	39	↓
1. Basic requirements	34	38	40	43	43	48	46	↓
1.1 Institutions	40	40	47	57	60	64	67	↓
1.2 Infrastructure	37	38	30	29	40	35	42	↓
1.3 Macroeconomic environment	11	28	27	41	22	46	28	↑
1.4 Health and primary education	85	84	63	58	61	80	83	↓
2. Efficiency enhancers	41	43	29	26	40	39	43	↓
2.1 Higher education and training	43	42	44	51	54	59	62	↓
2.2 Goods market efficiency	-	-	34	46	44	41	42	↓
2.3 Labour market efficiency	-	-	11	13	25	24	30	↓
2.4 Financial market development	-	-	-	49	49	51	50	↔
2.5 Market size	-	-	17	21	21	23	22	↔
2.6 Technological readiness	49	48	47	66	63	68	84	↓
3. Innovation and sophistication factors	38	36	39	46	47	49	51	↓
3.1 Business sophistication	39	40	40	46	43	48	47	↔
3.2 Innovation	38	33	36	54	57	52	54	↓

Source: Global Competitiveness Report, WEF 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12

Table 5: Ranking on the World Bank Ease of Doing Business 2012

Thailand - Overall Ranking	DB 2012 Rank	DB 2011 Rank	Change in Rank
	17	16	↓ -1
Starting a business	78	97	↑ 19
Dealing with construction permits	14	14	No change
Getting electricity	9	8	↓ -1
Registering Property	28	18	↓ -10
Getting credit	67	64	↓ -3
Protecting investors	13	12	↓ -1
Paying taxes	100	94	↓ -6
Trading across borders	17	19	↑ 2
Enforcing contracts	24	24	No change
Resolving insolvency	51	47	↓ -4

Source: Global Competitiveness Report, WEF 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12

Table 6: Competitiveness rankings by IMD 2006-2011

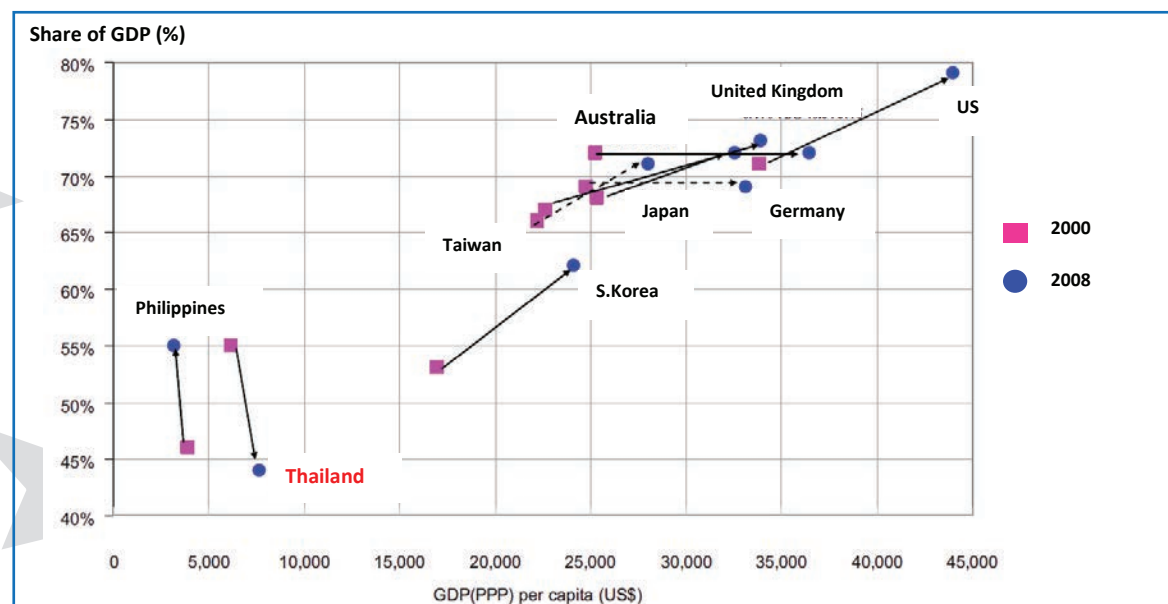
Thailand	2006	2007	2008	2009	2010	2011	+/-
Overall ranking	<u>32</u>	<u>33</u>	<u>27</u>	<u>26</u>	<u>26</u>	<u>27</u>	↓
1. Economic performance	21	15	12	14	6	10	↓
1.1 Domestic economy	55	47	48	48	35	27	↑
1.2 International trade	15	13	21	16	5	6	↓
1.3 International investment	47	45	47	46	38	34	↑
1.4 Employment	6	6	4	4	3	3	↔
1.5 Prices	9	6	4	5	4	23	↓
2. Government Efficiency	21	27	22	17	18	23	↓
2.1 Public finance	21	16	29	20	14	11	↓
2.2 Fiscal policy	4	6	5	8	7	7	↔
2.3 Institutional framework	25	45	40	26	32	35	↓
2.4 Business legislation	33	37	29	29	28	39	↓
2.5 Societal framework	39	40	36	26	33	47	↓

Table 6: Competitiveness rankings by IMD 2006-2011 (continued)

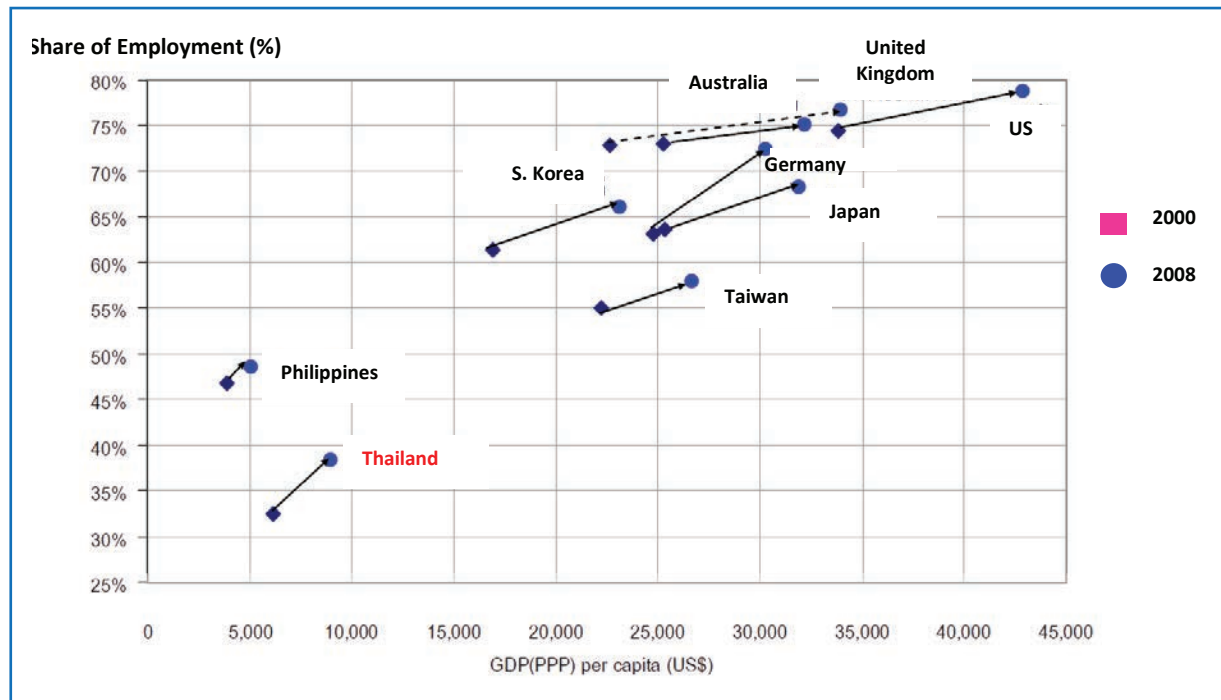
	Thailand	2006	2007	2008	2009	2010	2011	+/-
3. Business Efficiency		28	34	25	25	20	19	↓
3.1 Productivity		48	48	48	50	49	33	↑
3.2 Labour market		6	7	3	7	2	2	↔
3.3 Finance		41	44	31	22	18	19	↓
3.4 Management practice		26	35	19	15	13	16	↓
3.5 Attitudes and value		20	30	20	19	19	16	↑
4. Infrastructure		48	48	39	42	46	47	↓
4.1 Basic infrastructure		38	35	29	29	26	24	↑
4.2 Technological infrastructure		48	48	43	36	48	52	↓
4.3 Scientific infrastructure		53	49	37	40	40	40	↔
4.4 Health and environment		48	48	47	50	51	54	↓
4.5 Education		48	46	43	47	47	51	↓

Source: IMD Yearbook 2006, 2007, 2008, 2009, 2010 and 2011

Figure 3: Comparison of services sector contribution to GDP in selected economies, 2000 and 2008



Source: IMD. The World Competitiveness Yearbook 2001 and 2008 in NESDB (2011)

Figure 4: Comparison of services sector contribution to GDP in selected economies, 2000 and 2008

Source: IMD. The World Competitiveness Yearbook 2001 and 2008 in NESDB (2011)

In response, many Thai and international scholars therefore have consistently called for dismantling of key obstacles to facilitate the development and trade in the services which are considered as the vital part of modern economy. These key obstacles include in particular discriminatory practices and restrictions on foreign ownership, as foreign investment is recognised for their meaningful contribution not only in terms of employment but also on the skill development, knowledge transfer as well as technology diffusion and innovation. To cope with foreseeable challenges of global as well as regional dynamism, Thailand is also encouraged to strive towards overcoming competitive requirements on enhancement of skills, on-the-job training, technical development and technology transfer.

Technology and innovation are increasingly essential for firms to compete and prosper in a globalised world. It is important that the firms operating in the country have access to advanced technology products and blueprints and the ability to use them. In light of the figures indicated in table 7, it is as vital that Thailand steps up its efforts to come to par with other regional peers on competitiveness in respect of its technological and scientific infrastructure.

Similarly Thailand's Networked Readiness Index (NRI) rankings - part of the annual 'Global IT Report' published by INSEAD and World Economic Forum (April 2012) show Thailand slipping alarmingly (from 59th place in 2011 to 77th place in 2012). Thailand has slipped overall from 59th place (2011

ranking) to 77th place. The sub-indices and pillars paint a telling picture. Thailand has done well on affordability and price. But infrastructure, skills, general uptake and impact

are weak. Without more effective (impactful) ICT sectors, more real and realised innovation, Thailand will suffer from the middle income trap.

Table 7: Technological infrastructure competitiveness of selected Asian Pacific economies, 2005-2010

Country	2005	2006	2007	2008	2009	2010
<i>Technological infrastructure</i>						
Japan	9	10	20	16	16	23
Korea	2	6	6	14	14	18
Taiwan	5	4	15	5	11	5
China	32	29	27	32	21	22
Hong Kong	4	2	3	8	6	3
Singapore	3	3	2	2	2	2
Australia	18	18	21	22	23	25
India	36	37	37	41	37	38
Malaysia	20	19	18	18	17	19
Thailand	37	41	48	43	36	48
Indonesia	51	53	55	55	53	52
<i>Scientific infrastructure</i>						
Japan	2	2	2	2	2	2
Korea	13	10	7	5	3	4
Taiwan	8	5	6	4	8	5
China	18	15	15	10	6	10
Hong Kong	30	28	36	27	24	28
Singapore	16	14	13	8	12	12
Australia	23	21	20	18	18	16
India	26	24	26	29	32	34
Malaysia	35	32	31	28	33	27
Thailand	47	45	49	37	40	40
Indonesia	38	39	43	22	25	48
No. countries	51	53	55	55	57	58

Source: IMD. The World Competitiveness Yearbook 2001 and 2008 in NESDB (2011)



**The European ASEAN Business Centre
is supported and funded by the European Union**



The European ASEAN Business Centre in Thailand

The European ASEAN Business Centre in Thailand (EABC)

195 Empire Tower, 25th floor · Sathorn Road · Yannawa · Sathorn · Bangkok 10120 Thailand

Email: office@eabc-thailand.eu · www.eabc-thailand.eu · Telephone: +66 2670 0624 · Fax: +66 2670 0608