



European Association for Business and Commerce

2017 EUROPEAN BUSINESS POSITION PAPER

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



www.eabc-thailand.eu

PUBLISHED 9 JANUARY 2017
Version 1.0109



The European Association for Business and Commerce is supported and funded by the European Union

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Message from the President

Bangkok, December 2016

The European Association for Business and Commerce (EABC) representing the interests of the European business community in Thailand proudly presents our Position Paper for 2017.

This 2017 Position paper is a compilation of recommendations derived from the European Business community in Thailand intended to help Thailand overcome economic challenges and promote the country as an attractive partner for trade and investments. It is a new Position Paper compared to the one published in March 2016 in that there are important developments in our Positions for all of our 10 Working Groups.

The EABC Position Paper is the unified work of 10 working groups covering Automotive, Cross Sectoral issues (CSI), Energy and Energy Efficiency, Food and Beverages, Healthcare and Pharmaceuticals, Information and Communication Technology (ICT), intellectual Property Rights (IPR), Insurance, Rail and Road Infrastructure and Transport and Logistics.

Six years have passed since we first started establishing a "European Chamber of Commerce" which became EABC. It was sometimes a bumpy ride with many adjustments, reviews and a long learning curve. Despite this we could establish ourselves as a trusted partner to help the Royal Thai Government to become more competitive, transparent and more business oriented. As the first Chamber of Commerce, EABC has been invited by Government agencies to participate in working groups to tackle the many obstacles that prevent a further growth of the Thai economy. Never before has any Government taken such a bold step to involve the private sector at such scale. For the benefits of our members EABC has taking up this challenge and is ready to work with various government agencies to make business easier for European companies in Thailand.

Our activities in 2016 have extended greatly and our recognition among our members, in particular within our working group partners, has grown steadily. Our connections at government levels are strong and we could deliver values for our members more than ever before. We had over 100+ meetings with the government or at working group level. That means every 2.5 working days we have delivered on our main activity - ADVOCACY.

Our positive achievements do not only benefit large corporations but also small and medium sized companies. To cater even closer for their needs we have established a SME Working Group that will tackle their particular problems. We believe that in particular European SME's will greatly benefit from these activities and the cooperation we have established with the Thai Government.

On behalf of the European Association for business and Commerce I would like to thank our Board, the Working Groups Chairpersons and their members. Without their voluntary hard work and many unpaid hours to prepare our Position Papers we would not have achieved that strong recognition among the business community. My sincere thanks also goes to our staff, the European Union Delegation to Thailand and everyone else related to EABC in support of our Position Paper 2017.

Yours sincerely,



Rolf-Dieter Daniel
President, EABC

About the European Association for Business and Commerce (EABC)

The European Association for Business and Commerce (EABC) was established in 2011 as a platform representing interests of the European business community in Thailand. The overall objective of the EABC is to contribute to improvement of business and investment climate in strengthening Thailand toward a competitive and attractive investment destination as well as a potential gateway to ASEAN. The EABC aims to facilitate investment and further diversify market opportunities and access for European companies in Thailand, in parallel to promote Thailand as a high potential trade and investment markets for European business.

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

The EABC consortium contains business organisations and chambers of commerce, both in Thailand and Europe. A combined membership base of EABC and Consortium partners represents more than 2,000 companies in Thailand. The EABC interacts as the unified voice of European businesses in Thailand. Ten Advocacy Working Groups have been established to facilitate constructive policy and regulatory dialogues among European businesses toward improvement on market access and robust business cooperation between Europe and Thailand. These transversal as well as sectoral Working Groups - chaired by representatives of prominent European enterprises from respective sectors are:

- Automotive
- Food & Beverages
- Healthcare & Pharmaceuticals
- Cross Sectoral Issues (CSI)
- ICT and Digital Economy
- Insurance
- Intellectual Property Rights (IPR)
- Transport & Logistics
- Energy & Energy Efficiency
- Rail & Road Infrastructure

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

EABC Board Members



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

EABC Working Group Chairs

- | | |
|--------------------------|------------------------------------|
| • Stefan Teuchert | Automotive |
| • Kaan Baral | Food & Beverages |
| • Thavirap Tantiwongse | Healthcare & Pharmaceuticals |
| • Nicholas Bellamy | Cross Sectoral Issues (CSI) |
| • Robert Fox | ICT and Digital Economy |
| • Jerome Kelly | Insurance |
| • Nirut Kunnawat | Intellectual Property Rights (IPR) |
| • John Quarmby | Transport & Logistics |
| • Tanguy Moulin-Fournier | Energy & Energy Efficiency |
| • Georg M. Wolff | Rail & Road Infrastructure |

Executive Summary

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

The EU is Thailand's third largest trading partner. Despite Thailand's internal challenges, in 2015, total trade exceeded 30 billion Euro. EU imported goods from Thailand were valued at 18.5 billion Euro, while EU exports to Thailand were valued at 13.4 billion Euro, resulting in a positive trade balance for Thailand of more than 6.2 billion Euro. The EU is also the second largest source of foreign direct investment (FDI) to Thailand.

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

Being considered a 'upper middle income' country, the nation remains an efficiency-driven economy, while moving beyond this means opening up the economy to partnerships and innovation, and significantly advancing policies that promote economic openness and competition, which will drive efficiency and allow new technology to the country. Recognizing mutual economic gains and political will in regional leadership will further enhance Thailand's prosperity, through organizing and maintaining an authorization body supporting centralization for trade and logistics in ASEAN.

The vibrancy of Thailand and its intellectual and friendly Thai workforce draws partners from around the world. Being open to investments requires more than temporary trade promotion; safeguarding and ensuring the success of existing industries will expand the Thai economy further.

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

Thailand has grown in number with aging population. It will become increasingly difficult to remain as a contracted-manufacturer country due to shortage of labour. This has happened in Europe and developed countries around the world. To step out of poverty, developed countries focus on developing competitiveness for services sector. This includes liberalization of services and ease of employment to support the sector. Services also come in complementarity with manufacturing as well.

Expertise and business partners also equip Thai businesses with necessary resources to compete in the global economy. Thailand will benefit from foreign business partners in the areas of technology,

engineering and life sciences, which many industries require. Foreign partners for Thai SMEs need supportive policies and friendly regulatory frameworks.

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

Seamlessly connected with ASEAN should be an aspiration for Thailand to achieve. Logistics costs relate to storage, time, energy, and changes for various transportation methods. Additional logistics costs include packaging, security, materials handling, paperwork, tariffs and duties. The Royal Thai Customs is very import authority to ensure transshipment hassle-free for businesses.

A looming energy crisis attracts international attention to Thailand's ability to provide sufficient energy for businesses. Thailand must ensure the country shall not face energy security issues by continuing to explore for new energy and renewable energy. This should also include developing a stronger interconnection in the ASEAN power grid to ensure readiness for transmitting power coming from alternative sources of energy. Large cities consume a huge amount of energy through city lights, and they can be modified to reduce energy consumption, as well as to improve cities' safety and attractiveness as a tourist destination.

FTA's enhance wealth and efficiency. It is essential to support free trade and compliance to WTO agreements. This will benefit Thailand as a respected nation and will help conclude multi-lateral FTAs, as FTA obligations generally derive with respect to WTO agreements.

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

The EABC, as a voice of the European business community in Thailand, has adopted Policy Advocacy Working Groups in its structure. The main goal is to create a policy and regulatory platform where industries can participate and propose their business issues of interest as well as recommendations to the Thai authorities. The Working Groups consist of Cross Sectoral Issues, Intellectual Property Rights (IPR), Automotive, Food and Beverages, Healthcare and Pharmaceuticals, Information and Communication Technology (ICT), Insurance, Transport and Logistics, Energy and Energy Efficiency, and Rail and Road Infrastructure. Fundamentally, the EABC Policy Advocacy Working Groups work to generate positive contributions for Thailand's further competitiveness within the spirit of EU-Thailand: partnership for growth.

Continuing on from our previous Papers, European businesses still emphasize enhanced transparency, improved efficiency, an enabling economic and regulatory environment, and liberalization of the services sector as key priorities for tangible improvement in Thailand's position. The 2017 Position

Paper is also intended to be a source of information for EU and European Member States to assist in their engagements with Thai policymakers and authorities. We are hopeful that Thai businesses, media, and academics will find this Position Paper useful for their trade-and-economic related future use.

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

ISSUES AND RECOMMENDATIONS

Overall Trade and Investment Policy

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

Cross Sectoral Issues (CSI)

1. Ease of Doing Business

- Competitive tax regime
- Draft Excise Tax Act and Customs Tax Reform
- Improve investment climate in Thailand
- Clarification of interpretation of BOI investment privileges
- Role of court system, resolution of disputes, litigation and arbitration
- Enforcement of competition law
- Removal of cumbersome and unnecessary laws and regulations
- eGovernment take up and accelerated on-line penetration, more details in ICT

2. Creating an Enabling Economic and Regulatory Environment

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

3. Enhancing Transparency

- Tackling Corruption

Automotive

1. EU-Thailand FTA Negotiations

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

2. Technical Regulations

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

3. Taxation

- We recommend the Thai authorities simplify the CO2 approval process and recognize and fully accept the relevant UN certificates.
- Thailand shall safeguard existing investment in CFZ as well as promote foreign investment.
- We reiterate our recommendation from last year that privileges offered by the CFZ scheme are preserved after the new Excise Tax Act.
- Excise tax rate of the tax base shall be lower. We expect to see the Royal Thai Government keeping its promise of neutral revenue in both Free Zone and CBU imports as this will improve investor confidence in Thailand.

Automotive

- Business operators shall be offered a sufficient transition (grace) period for abrupt and critical changes to policies and regulations. Business planning for the automotive sector is prepared at least 2 years in advance; hence, operators shall have an adjustment period of at least 2 years in order to ensure the viability of their business in Thailand.
- The EABC supports the Royal Thai Government's actions to tighten control on grey market vehicle imports through close monitoring of declared customs value, ECO-Stickers submission process, and technical testing requirements.
- We welcome the Customs Department working closely with brands in setting up a system to detect illegal practices and stricter vehicle registration.

4. Labour

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

5. Investment

- The EABC recommends that the Royal Thai government must ensure transparency and monitor effectiveness of the licensing granting process. Enforcement on LFA is needed.
- Thailand should not only focus on attracting new investments, but also safeguarding existing investments is necessary to foster the growth of Thailand's automotive hub. This requires long-term support and commitment from BOI, where clarity to investment promotion is needed to avoid unnecessary delays for investment decisions.
- Thailand should continue to raise standards for safety and environmental requirements in the automotive sector to help attract green technology and new investment.
- The EABC recommends the Royal Thai Government continue dialogue with the EABC Automotive working group for improving ease of doing businesses. The EABC automotive working group consists of industry experts that can provide policy recommendations to boost Thailand's competitiveness.

6. Electric Vehicle (EV)

- We recommend the Royal Thai government to start with Plug-in Hybrid vehicle to help bridge technology to full electric drive.

Food and Beverages

1 Excise Tax

- Elimination of tax discrimination to ensure fair competition and encourage foreign investments.
- Setting of tax rates should be realistic to current economic and business situation.
- Needs to clarify on RRSP computation to prevent double taxation.
- Timeline for moving to specific taxation regime to optimize tax revenue.
- Consistent law enforcement to reduce illicit trade and tax evasion activities.

2. Labelling Notification, Trademarks and GIs on Alcohol Products

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

Food and Beverages

1 Excessive Graphic Health Warnings

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

2 Lack of Industry Participation and Consultation in Policy Development

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

Healthcare and Pharmaceuticals

1. Fostering investment attractiveness for innovation and research collaboration

- The EABC encourages constructive dialogues between the Royal Thai Government and multi-stakeholders including industry in the regulatory reform which may involve new draft or revision of Law and regulations to enhance transparency, involvement and practical resolutions.
- Price inquiry/ control should not be compulsory in regulatory process which will be in alignment with international regulatory practice.
- Thailand must support prevention of patent infringement by generic drug companies. With the disclosure of patent information, adding a condition for generic drugs to notify patent status could be specified in Ministerial Regulations.

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

- The EABC encourages constructive dialogues between the Royal Thai Government and multi-stakeholders including industry in the regulatory reform which may involve new draft or revision of Law and regulations to enhance transparency, involvement and practical resolutions.
- Price inquiry/ control should not be compulsory in regulatory process which will be in alignment with international regulatory practice.
- Thailand must support prevention of patent infringement by generic drug companies. With the disclosure of patent information, adding a condition for generic drugs to notify patent status could be specified in Ministerial Regulations.

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

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

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

- The EABC encourages more industry consultation or regular dialogue to ensure transparent procedures and to enhance access to medicines.
- We support transparent procedures for the pharmaceutical listing, pricing and tendering process, considering the value of innovation to therapeutic outcomes and clinical needs rather than cost savings.

Healthcare and Pharmaceuticals

- Thailand should exercise open competition in order to best serve consumers and patients.
- It is essential that legislation, in procurement and regulatory frameworks, as well as the Trade Competition Law, must be reviewed for further liberalization to allow competition on an equal basis.

ICT and Digital Economy

- Telecoms networks underpin the digital economy. The structure and operation need to be effective, efficient and innovative; reform is needed to include an effective wholesale market
- SOEs must evolve to be licensed, competitive operators, not instruments of policy. Policy vision should be about the industry as a whole and how it can play a more effective role in the national economy. This is a major gap in Digital Economy policy and law.
- SOEs should not compete with the private sector and should focus on fixed line wholesale services and infra provision.
- All commercial operators licensed by NBTC; all commercial spectrum should be allocated by auction.
- Laws should respect and encourage the role of civil society, not be all 'top down'. They must engender trust in the use of the internet. The recently amended Computer Crimes Act for example does not do this.
- Thailand needs a Rule of Law based cross border regime for data. The 2016 Position Paper has details.
- Higher expectations about service quality – especially mobile broadband
- Security should start with network and operational security, all parties have a role.
- Continued liberalisation of International Internet Gateways – a strategy for lower cost international capacity; private sector-led sharing and pooling / peering
- National security should be run according to law (cybersecurity and revised computer crimes act) using an overlay platform, by a government agency not involved in network operation, not being mixed with an SOE operator. Trust is essential
- The multi-stakeholder model of internet governance (now accepted by a majority of the world's economies), with any necessary adaptations, is the only workable model. A top-down model will not work. A Trusted Internet is vital. This model includes civil society governance and multi party responsibilities for security.
- Funds for innovation for start ups and later stage development by enabling the market not by government run VC funds. Removing the regulatory burden would be a major achievement.
- Free movement of skills, education change and re-skilling
- A range of other enabling factors such as the personal data protection law, eGov penetration, better standards for eCommerce.

Insurance

1. Liberalisation of insurance industry

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

2. Enhancing the development and competitiveness of the insurance industry

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

Insurance

3. Other recommendations

- Promote insurance knowledge to create well-informed and empowered consumers as well as qualified insurance professionals
- Promote higher standard of ethics within the insurance industry
- Promote tax incentives for health insurance
- Remove constraints to allow health insurance policies to be sold in foreign currencies

Intellectual Property Rights

1. Amendments to IP-related legislation

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

2. IP Policies

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

3. Intellectual Property Rights for ICT

Transport & Logistics

1. Strategic goals for customs facilitation

- Improve Transparency and Predictability in the drafting and implementation of policy, rules and regulations through the involvement of all stakeholders and affected parties in a fair and open consultation process.
- Clearly state the service commitments of Thai Customs vis-à-vis the trading community and likewise the expected commitments from the trading community to Thai Customs.
- Clearly indicate ways in which companies can comply with regulations and accept the concept of “reasonable care”. Thai Customs to accept voluntary disclosures from importers / exporters / agents / any other concerned parties of errors and breaches of regulations with reduced / waived penalties. Customs to publish guidelines for Compliance to aid much needed transparency.
- Set up an external, impartial legal channel to settle disputes between Thai Customs and importers / exporters / agents, bonded warehouse holders and any other concerned parties.
- Limit the application of Customs Penalties (up to 4 times cargo value) to cases where Intent to defraud or evade duties can be proven (Burden of Proof on Customs). Administrative faults or simple errors with no intended gain to be subject to much smaller administrative fines. This ruling to apply not only to cargo imported or exported but also to stocks held in Bonded warehouses.
- Align regulations and processes with international and regional best-practice as well as with international agreements already signed by Thailand. In particular Thailand to ratify the ASEAN Framework Agreement of the Facilitation of Goods in Transit and on Interstate Transport including all Protocols and transpose both into Thai Law. This to provide the basis for implementation of the ASEAN Customs Transit System (ACTS) where Thailand, together with Singapore and Malaysia is charged with a pilot role.

Transport & Logistics

- Transit of goods under Customs Bond by an authorised ASEAN Authorised Economic Operator (AEO) between Customs-free zones of any type, on the borders or inland, be free of restrictions as to routeing, type of vehicles to be used, transshipment, tracking and tracing, sealing of vehicles, or loading together of goods having differing Customs status. The only obligation of the Cargo Owner or his Agent to be the delivery, intact and correct, at the specified destination Customs-Free zone within a reasonable period, of the goods listed on the manifest. Penalties from non-observance of this obligation to be charged against the guarantee lodged by the AEO with Customs
- Again in line with ASEAN rules, change the requirement that all documents required for Customs clearance of cargo into Thailand, especially Import Licences, be present immediately when goods enter Thai sovereign territory. The requirement to become that the documents must be presented if and when the cargo move from a Customs-free area in to duty-paid free circulation in Thailand.

2. Individual measures in customs and trade facilitation reforms

- Thailand to raise the “de minimis” level and the threshold for low-value, dutiable (Cat. 3).
- Customs declarations in Thailand to be either in Thai or in English language but not in both languages
- The Thai Customs Department to allow in principle that consolidated shipments be break-bulked within Customs-free areas as a matter of policy. Operational details to be worked out with the logistics service providers.
- The Thai Customs Department should follow their own regulations and revert to paperless clearance at Suvarnabhumi airport customs and drop the re-introduced manual clearance procedures.
- The Thai Customs Department to revise Customs Notification 79/B.E. 2554 and allow submission of data for outbound shipments 30 minutes before flight departure in line with international best practices, to promote higher exports.
- Thailand to separate tariff codes for controlled (needing an import licence) and non-controlled items to facilitate the import of non-controlled items. This is particularly important for products with the Life Sciences Industry.
- Thailand to reduce delays in the application process for free zone licenses by providing more clarity to the guidelines especially in terms of process and requirements.
- Thailand to improve its e-Paperless procedures. Manual handover of original ID or passport to customs brokers for several days when processing the registration should be eliminated and replaced by a more streamlined process.
- Operating hours of Customs and related offices at orders and Free-zones to be widened to a standard 24/7 at strategically important points including Suvarnabhumi, Laemchabang and the major international road crossing points such as Sadao, Mae Sot, Nong Khai, Mukdahan and Aranyaprathet. Second-level border crossing points to move to 12/7 and no overtime to be charged within these opening hours.
- Suspended goods in customs custody should be allowed to collect within 2 months

3. Rules on foreign direct investment

- We recommend that Thailand open the postal market to competition.
- We encourage Thailand to review its regime for foreign investment, in particular in the services sector and the Logistics industry in line with ASEAN policy. World-class Service industries play a critical role in supporting the growth of strategic manufacturing sectors.

Energy and Energy Efficiency

1. Energy Security

- We encourage the government to stick with the timeline on Petroleum Act (PA) and Petroleum Income Tax Act (PITA), as well as the target date to conclude the process for the expiring concessions.
- A great opportunity for Thailand lies in development of the Overlapping Claims Area with Cambodia. The gas reserves there could play a significant role in meeting Thailand's energy needs.
- We encourage Thailand to diversify its energy mix and to develop renewable energy sources, in combination with gas, which is a low-carbon fuel.
- EABC recommends that Thailand enhance the power transmission and distribution sector and speed up related investments.
- EABC recommends that smart grids are a perfect support for the energy transition and will reinforce the energy security

2. Energy Efficiency and Energy Saving

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

3. Alternative/Renewable Energy

- EABC supports Thailand's efforts to diversify energy sources in renewable energy, which is clean and abundant in this region.
- We support Thailand's efforts to increase transparency, adhere to global standards and ensure accountable management of natural resources.
- EABC recommends a set of measures and incentives to accelerate the development of the solar energy in Thailand, which is a real chance for the country.

4. Lack of Industry Participation Automotive Energy Development

- EABC recommends close consultation between the government and private sector on an automotive fuel development plan as well as providing advance notice and clear timeline of transport fuel portfolio.
- EABC recommend an EV roadmap should be developed (for cars and 2 wheelers) in order to coordinate the initiatives and the efforts of both State, companies and communities. This roadmap could be part of the Environmentally Sustainable Transport System Plan 2013-2030

Rail and Road Infrastructure

- Thailand shall implement the Central Railway Authority to improve efficiency and transparency for railway infrastructure projects.
- Thailand shall consider European expertise for railway systems regarding standards, life cycle cost, interoperability, tender supervision, financing and civil engineering.
- Thailand shall start Thai Industry for Rolling Stock and Railway Systems with European support to supply ASEAN market.

Acronyms and Abbreviations

ACCA	Asia Cloud Computing Association
ACFS	National Bureau of Agricultural Commodity and Food Standards
ADB	Asian Development Bank
AEC	ASEAN Economic Community
AEDP	Alternative Energy Development Plan
AFAS	ASEAN Framework Agreement on Services
AFTA	ASEAN Free Trade Area
AHN	ASEAN Highway Network
APG	ASEAN Power Grid
ASEAN	Association of Southeast Asian Nations
BSA	Business Software Alliance
CAP	Certificate of Approval for Protection
CBI	Confidential Business Information
CEA	Comité Européen des Assurances
CEPEA	Comprehensive Economic Partnership for East Asia
CEN	European Committee for Standardization/ <i>Comité Européen de Normalisation</i>
CJEU	Court of Justice of the European Union
CMO	Collective Management Organisation
DBD	Department of Business Development
DEDE	Department of Alternative Energy Development and Efficiency
DIP	Department of Intellectual Property, in MOC
DIW	Department of Industrial Works
DoE	Department of Employment, in Ministry of Labour
EAFTA	East Asian Free Trade Area
EEDP	Energy Efficiency Development Plan
EFTA	European Free Trade Association
EGA	Electronic Government Agency
EPO	European Patent Office
EPPO	Energy Policy and Plan Office
ETDA	Electronic Transactions Development Agency
ETSI	European Telecoms Standards Body
EU	European Union
FBA	Foreign Business Act B.E. 2542 (1999)
FDA	Food and Drug Administration
FDI	Foreign Direct Investment
FEL	Foreign Equity Limits
FIDF	Financial Institutions Development Fund
FTA	Free Trade Agreement
FTI	Federation of Thai Industries
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade

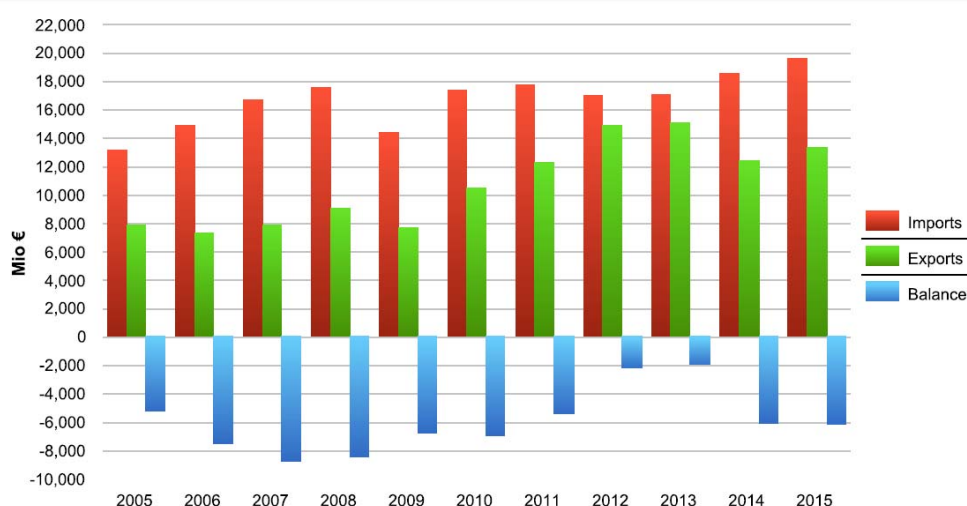
GCI	Global Competitiveness Index
GDP	Gross Domestic Product
GDP (PPP)	Gross Domestic Product at purchasing power parity
GIs	Geographical Indications
GIPC	Global Intellectual Property Centre
GMS	Great Mekong Sub-region
GSMA	The GSM based industry association for mobile operators
GSP	Generalised system of preference
IEA	International Energy Agency
IEAT	Industrial Estate Authority of Thailand
IEEE	US based standards body, publishing standards for WiFi for example (802.11)
IHQ	International Headquarters
IMD	International Institute for Management Development
IMF	International Monetary Fund
IPR	Intellectual Property Rights
ISO	International Standardisation Organisation
ITC	International Trading Centre
ITIL	IT Infrastructure Library
itSMF	IT Service Management Forum
ITU	International Telecommunications Union (UN agency)
JFCCT	Joint Foreign Chambers of Commerce in Thailand
JSCCIB	Joint Standing Committee on Commerce, Industry and Banking
JTEPA	Japan-Thailand Economic Partnership Agreement
LTE	Long Term Evolution – the 4G standard in the GSM world
LWP	Last Wholesale Price
MB, GB	MegaBytes, GigaBytes (a size)
Mbps	Megabits per second (a speed)
MEPS	Minimum Energy Performance Standards
MFN	Most favoured Nation
MHz, GHz	Typically used to refer to wavelengths or parts of the spectrum
MICT	Ministry for Information and Communications Technology
MOC	Ministry of Commerce
MOF	Ministry of Finance
MOPH	Ministry of Public Health
Mbps per MHz	A measure of spectral efficiency – speed per amount of bandwidth available
MRA	Mutual Recognition Arrangement
MSC	Manufacturer Self-Certification
NBTC	National Broadcasting and Telecommunications Commission
NECTEC	National Electronics and Computer Technology Centre
NEPC	National Energy Policy Commission
NESDB	National Economic and Social Development Board
NLEM	National List of Essential Medicine
NSTDA	National Science & Technology Development Agency
NSW	National Single Window

NTBs	Non-Tariff Barriers
NTC	National Telecommunications Commission, the predecessor to the NBTC
OECD	Organisation for Economic Co-operation and Development
OIC	Office of Insurance Commission
OPDC	Office of Public Sector Development Commission
PDP	Power Development Plan
RBC	Risk-Based Capital
ROO	Rules of Origin
SFIs	Special Financial Institutions
SIPA	Software Industry Promotion Agency, under MICT
SOE	State Owned Enterprise
SPS	Sanitary and Phytosanitary Measures
SRP	Suggested Retail Price
TAGP	Trans-ASEAN Gas Pipeline
TBA	Telecom Business Act
TBT	Technical Barriers to Trade
TCC	Thai Chamber of Commerce (one of constituent bodies of Trade)
TDRI	Thailand Development Research Institute
TFP	Total Factor Productivity
Thai IOD	Thailand Institute of Directors www.thai-iod.com
TISI	Thai Industrial Standards Institute
TRIDI	Telecommunications Research and Industrial Development Institute (part of NBTC)
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UNECE	United Nations Economic Commission for Europe
VAT	Value-Added Tax
WEF	World Economic Forum
WHO	World Health Organisation
WTO	World Trade Organisation

Introduction

The EU is Thailand's third largest trading partner. Despite Thailand's internal challenges, in 2015, total trade exceeded 30 billion Euro. EU imported goods from Thailand were valued at 19.5 billion Euro, while EU exports to Thailand were valued at 13.4 billion Euro, resulting in a positive trade balance for Thailand of more than 6.2 billion Euro. From 2004 to 2015, the total value of imported Thai products to the EU increased by 30 percent.

Figure 1: Total goods: EU Trade flows and balance, annual date 2005-2015



Source: Eurostat Comext - Statistical regime 4

While the world economy started to slow down after 2013, Asian countries reliant on exports and private investment suffered greatly. Thailand's net investment reduced drastically as a result of political turmoil in 2013 and 2014. Net exports are projected to increase less and become less impact to raise Thailand's GDP. The country is expected to grow around 3.2 percent in 2017, while the neighbouring countries such as Vietnam and Malaysia are growing at 5 percent. Thailand is losing its attractiveness for new investments, and higher labour costs make Thailand less competitive – exacerbated by Thailand's reliance in exports, which account for 70 percent of Thai GDP. Thailand must refresh its attractiveness for new investments from abroad, increase technology and efficiency, deeper trade integration (FTAs), and fostering innovation particularly in services sector. Currently, Thais could be considered in the upper middle income bracket. To break free from the middle income trap, Thailand needs to welcome research and development (R&D) through collaboration between universities and the private sector. R&D can also come from the private sector bringing in expertise and knowhow to the country. This requires Thailand to create an environment that is suitable for a creative and innovative economy. In addition, availability for both quality and quantity workforce is also important.

Figure 2: East Asia and Pacific GDP growth projections

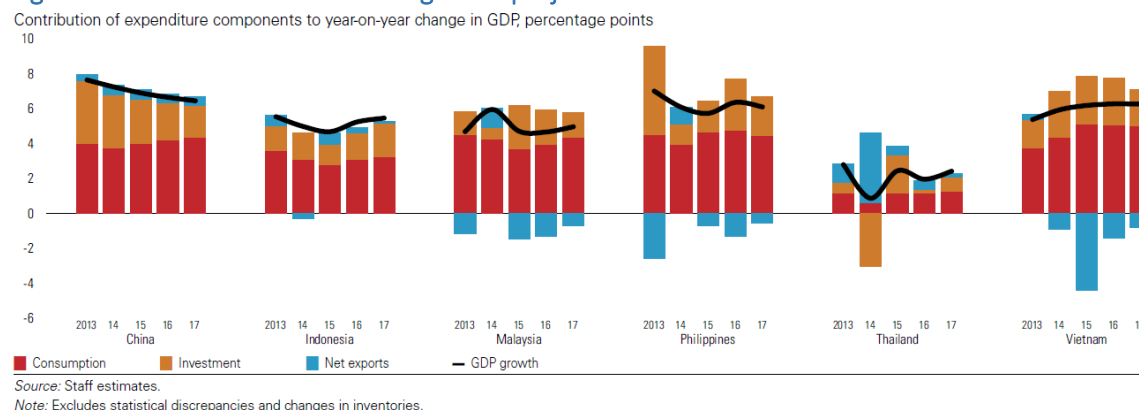


Figure 3: GDP Forecast for East Asia 2015-2007

Percent change from a year earlier, unless otherwise noted

Percent change from a year earlier, unless otherwise noted

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

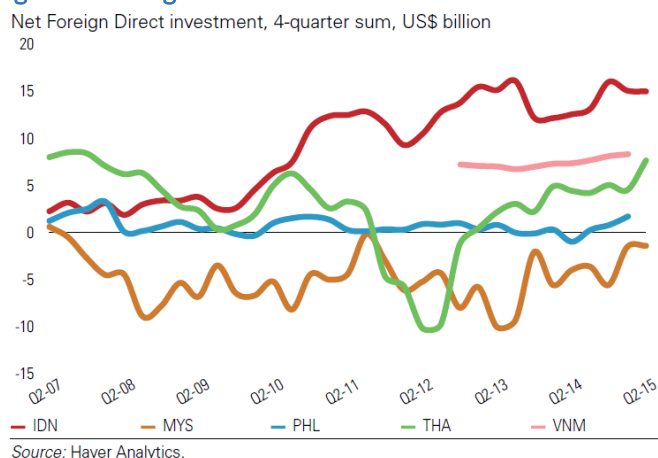
* World Bank, "East Asia and Pacific Economic Update: Adjusting to a Changing World," April 2015.

** Developing East Asia + NIEs + Korea.

Source: World Bank East Asia and Pacific Update October 2015

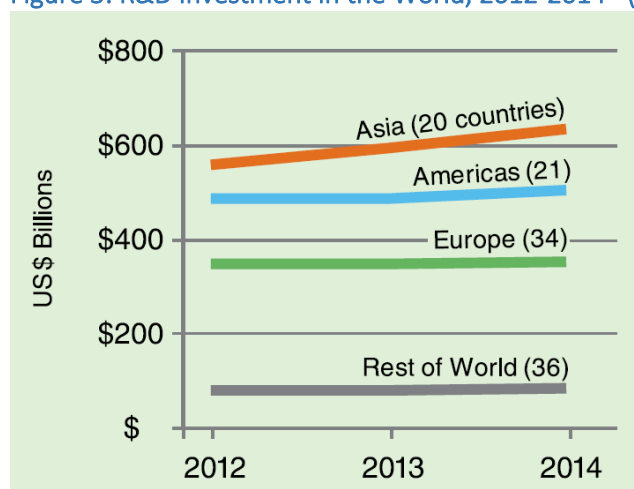
Positive Foreign Direct Investment (FDI) has been strongly recorded in Thailand. Frequent changes in Thai leadership, resulting from political unrest, shattered investor confidence. This was especially the case in 2012, when net FDI declined by over US\$10 billion. Positive net investment had returned by 2013. To increase new investments, in 2015, the BOI launched investment promotions to support new cluster development. Businesses were promised highly competitive promotions for the 10 new industries that are necessary for Thailand's future economic growth. However, serious measures to safeguard existing industries have not taken place, in order to prevent businesses moving out. Keeping existing businesses in Thailand has become challenging. Cooperation between Thai government agencies must occur, and policies must be strengthened. Doing so will not only open doors to new investments but also reinvestments in existing industries, as the BOI: Thailand Moving Forward scheme is based on existing industries reinvesting in future development.

Figure 4: Foreign Direct Investment 2007-2015



Steering Thailand towards more prosperity requires taking initiative in research and development. R&D is a source of innovation and the right step to move toward an innovation-driven economy. Taking advantage of Asia's economic growth, big developments and improved education, many countries already consider Asia to be a suitable environment for R&D. Asia is projected to spend 2 percent of GDP in R&D, while Japan maintains consistent R&D spending at 3.4 percent. R&D in Thailand remains at less than 0.5 percent. To improve Thailand's competitiveness, the country needs to catch up with the rest of Asia in R&D. To improve R&D as a percentage of GDP, the Royal Thai Government cannot fund public research institutions alone - the country needs to work with the private sector to bring in more investments and expertise. Generally, R&D is in the field of life sciences, engineering and ICT, where expertise is limited in Thailand. Collaboration with foreign institutions and the private sector will help bring knowhow and expertise to improve the country's R&D as a percentage of GDP. Investment in human capital is the key driving force to improve the country's competency. The additional effect is knowledge spill-over in to key clusters and tier 2 and tier 3, where major suppliers are dominated by Thai ownership. This requires Thailand to improve regulations and incentive schemes.

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

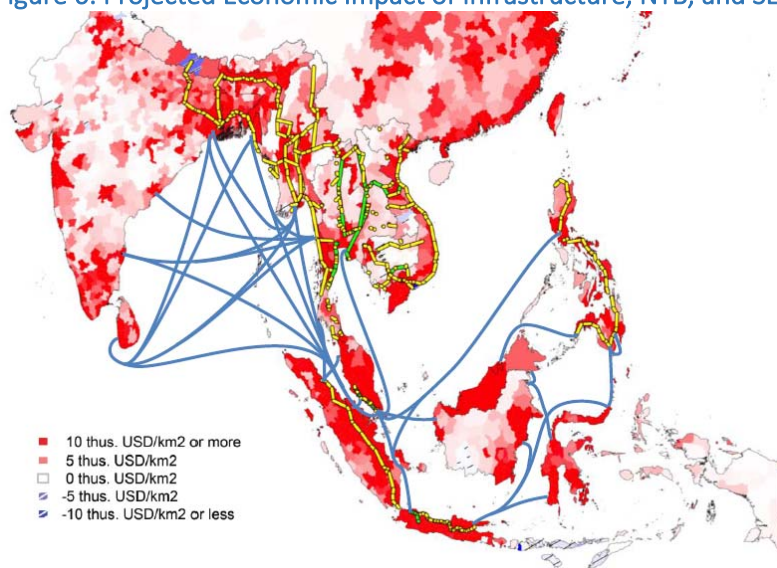


	2012		2013		2014	
	GERD PPP Bil. US\$	R&D as % GDP	GERD PPP Bil. US\$	R&D as % GDP	GERD PPP Bil. US\$	R&D as % GDP
Americas (21)	485	2.5%	489	2.4%	504	2.5%
U.S.	447	2.8%	450	2.8%	465	2.8%
Asia (20)	561	1.8%	596	1.9%	633	1.9%
China	232	1.8%	258	1.9%	284	2.0%
Japan	160	3.4%	163	3.4%	165	3.4%
India	41	0.9%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

GERD=Gross Expenditures on R&D; PPP=Purchasing Power Parity.
Source: 2014 R&D Funding Forecast, December 2013)

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

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



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

Figure 7: Thailand Logistics Performance 2014

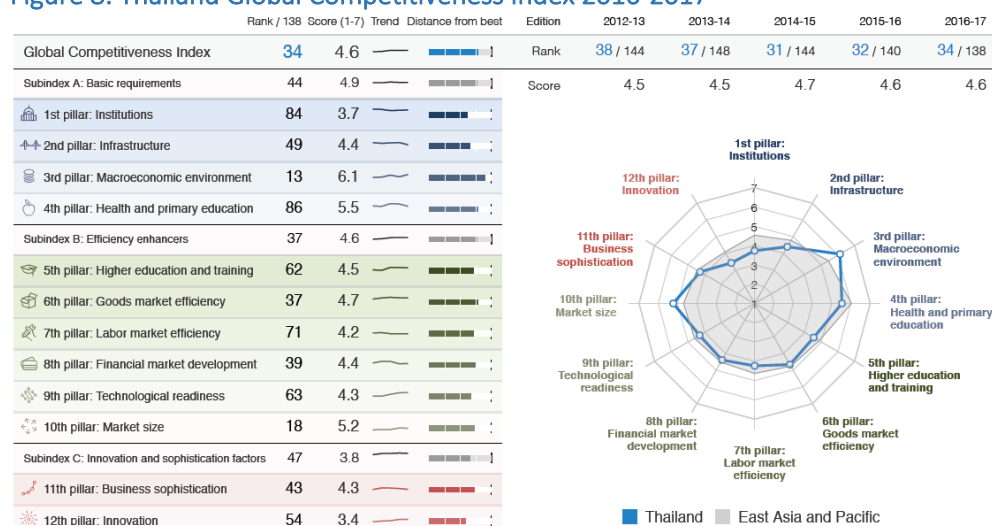
Economy	Rank / 160	Overall	Customs		Infrastructure		International Shipment		Logistics quality and competence		Tracking and tracing		Timeliness	
			Rank	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score
Thailand	35	3.43	36	3.21	30	3.40	39	3.30	38	3.29	33	3.45	29	3.96

Source: Logistics Performance Index 2014

Enhancing Thailand's Competitiveness: Strategy for Prosperity

The world economy is entering a “new normal” phase of lower economic growth. This requires countries to make a great effort to improve their competitiveness. Thailand's ambition to improve its ranking for Global Competitiveness showed declining progress from last year, 32th to 34nd in GCI 2016-2017. Very slow progress has made in relation to the governing body, emphasizing legal and administrative procedures that are not fostering business competitiveness in the world economy. It is important for the Thai government to ensure investor and consumer confidence and support transparency for business operators.

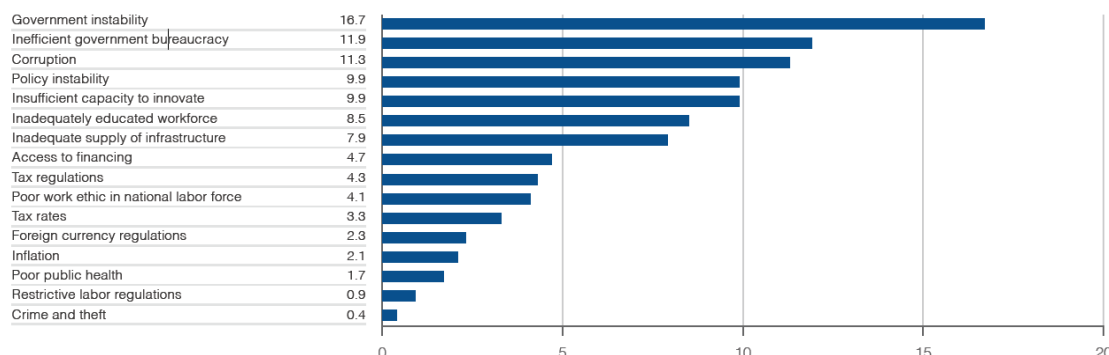
Figure 8: Thailand Global Competitiveness Index 2016-2017



Source: World Economic Forum (2016)

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

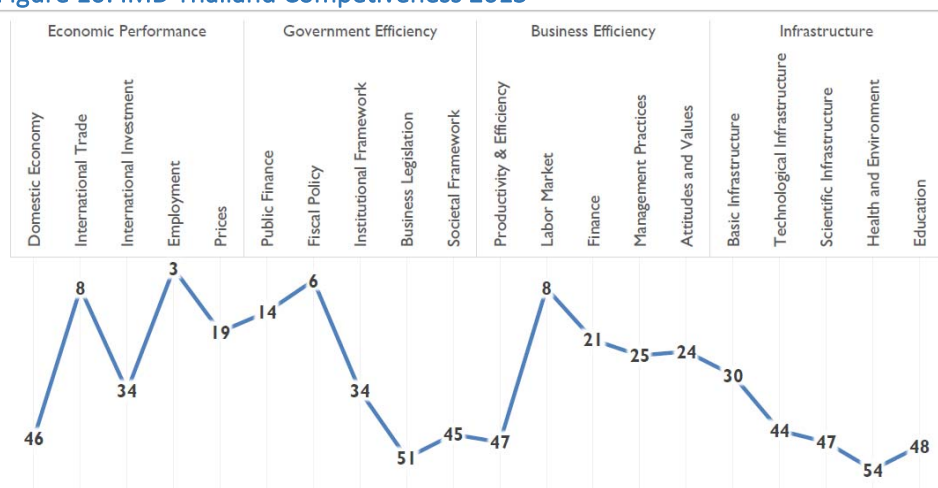
Figure 9: Thailand's most problematic factors for doing business



Source: World Economic Forum (2016)

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

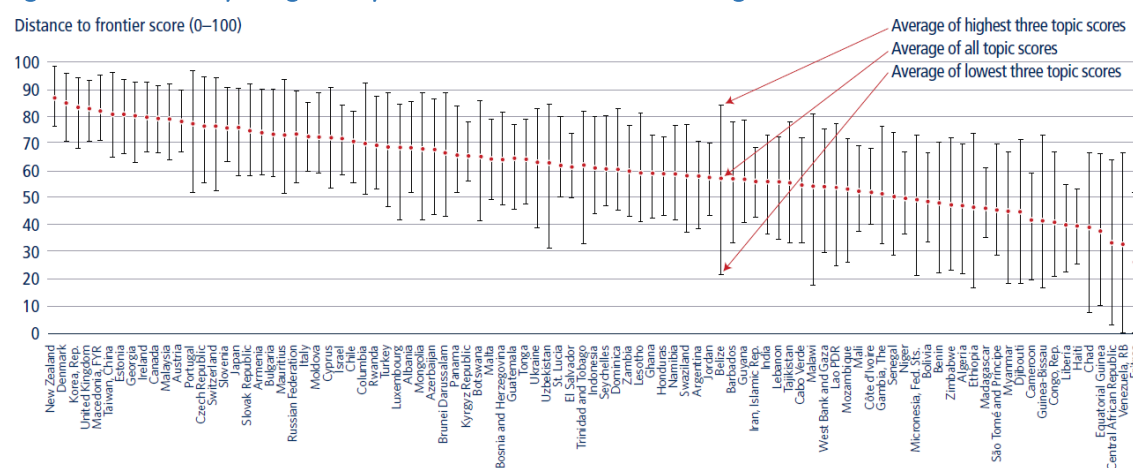
Figure 10: IMD Thailand Competitiveness 2015



Source: IMD, 2015

The ability for Thailand to create attractiveness for businesses to open and run their operations in compliance with regulatory frameworks is as important as the country's ability to compete in the world economy. Thailand's regulatory environment for ease of doing business increased drastically from 49th to 46th in 2016. Comparing to most middle-income countries, Thailand's Ease of Doing Business is relatively good. However, it dropped from 18th in 2013. Thailand still must create an environment that is easy and cheap to start a business and ensure finance credit is available not only for large corporations but for SMEs as well. SMEs are the source of job creation and wealth to the country. Getting out of the 'middle income trap' requires Thailand to increase its competency, creativity and ability to innovate in business. Improvement to ease of doing business will benefit Thailand from expertise as well as business partners abroad, which are the foundation for an innovation-driven economy.

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



Source: World Bank, Doing Business, 2017

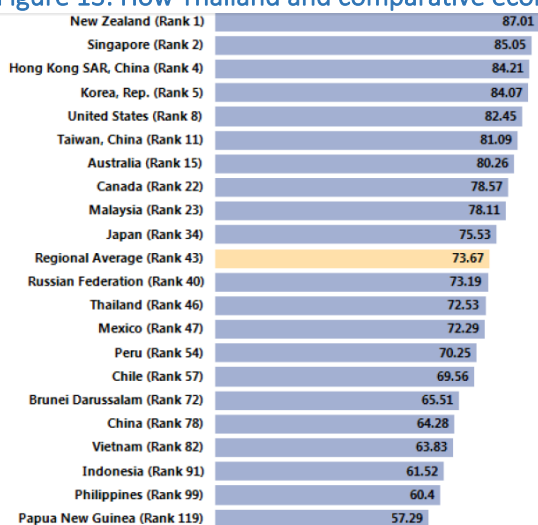
Figure 12: Thailand's ease of doing business compared to the world

THAILAND		East Asia & Pacific		GNI per capita (US\$)	
Ease of doing business rank (1-190)		Overall distance to frontier (DTF) score (0-100)		Population	
				5,620	
				67,959,359	
✓ Starting a business (rank)	78	✓ Getting credit (rank)	82	Trading across borders (rank)	56
DTF score for starting a business (0-100)	87.01	DTF score for getting credit (0-100)	50.00	DTF score for trading across borders (0-100)	84.10
Procedures (number)	5	Strength of legal rights index (0-12)	3	Time to export	
Time (days)	25.5	Depth of credit information index (0-8)	7	Documentary compliance (hours)	11
Cost (% of income per capita)	6.6	Credit bureau coverage (% of adults)	53.0	Border compliance (hours)	51
Minimum capital (% of income per capita)	0.0	Credit registry coverage (% of adults)	0.0	Cost to export	
				Documentary compliance (US\$)	97
Dealing with construction permits (rank)	42	Protecting minority investors (rank)	27	Border compliance (US\$)	223
DTF score for dealing with construction permits (0-100)	75.65	DTF score for protecting minority investors (0-100)	66.67	Time to import	
Procedures (number)	17	Extent of disclosure index (0-10)	10	Documentary compliance (hours)	4
Time (days)	103	Extent of director liability index (0-10)	7	Border compliance (hours)	50
Cost (% of warehouse value)	0.1	Ease of shareholder suits index (0-10)	7	Cost to import	
Building quality control index (0-15)	11.0	Extent of shareholder rights index (0-10)	4	Documentary compliance (US\$)	43
		Extent of ownership and control index (0-10)	5	Border compliance (US\$)	233
		Extent of corporate transparency index (0-10)	7		
Getting electricity (rank)	37	Paying taxes (rank)	109	Enforcing contracts (rank)	51
DTF score for getting electricity (0-100)	83.22	DTF score for paying taxes (0-100)	68.68	DTF score for enforcing contracts (0-100)	64.54
Procedures (number)	5	Payments (number per year)	21	Time (days)	440
Time (days)	37	Time (hours per year)	266	Cost (% of claim)	19.5
Cost (% of income per capita)	42.5	Total tax rate (% of profit)	32.6	Quality of judicial processes index (0-18)	7.5
Reliability of supply and transparency of tariffs index (0-8)	6	Postfiling index (0-100)	47.32	✓ Resolving insolvency (rank)	23
Registering property (rank)	68			DTF score for resolving insolvency (0-100)	77.08
DTF score for registering property (0-100)	68.34			Time (years)	1.5
Procedures (number)	4			Cost (% of estate)	18.0
Time (days)	6			Recovery rate (cents on the dollar)	67.7
Cost (% of property value)	7.4			Strength of insolvency framework index (0-16)	13.0
Quality of land administration index (0-30)	15.0				

Source: World Bank, Doing Business (Thailand), 2017

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

Figure 13: How Thailand and comparative economies rank on ease of doing business 2017



Source: World Bank, Doing Business 2017

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

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

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

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

Figure 14: EU-Thailand Trade in Service



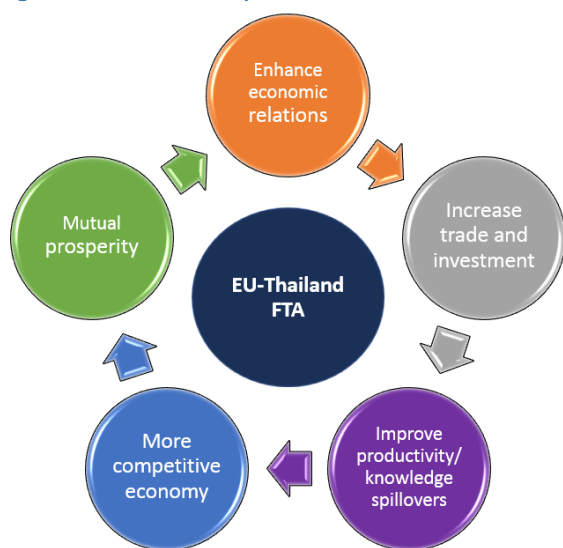
Source: EU Commission, 2016

The World Bank launched Thailand Economic Monitor: Services as a New Driver of Growth in December 2016. The report highlighted services sector can serve as a new driver of growth of growth to help Thailand achieve high income and new job opportunities to serve both domestic and global markets. It also emphasized that services sector is becoming increasingly important for Thai economy due to complementarity with manufacturing and source of innovation which is critical for Thailand

4.0. The report had also underlined the important for Thailand to improve regulatory environment for doing business, reduce policy restrictiveness and engage in deeper trade integration.

The manufacturing era has stopped growing and faces competition from other emerging markets. Today, Thailand no longer stands out – other countries have caught up in all dimensions. However, Thailand remains fundamentally strong for services sector. Although the sector lacks behind manufacturing in terms of efficiency, it accounts nearly 50 percent and employs over 40 percent of the workforce. Services sector is projected to grow 3.4 percent while industry remains at 2.8 percent due to weak export and low domestic demand. Therefore, Thailand must head start to liberalize services sector to growth further and reaps the benefits like past liberalization in manufacturing, merchandise trade and imports of capital.

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



Source: EABC, 2016

EU-Thailand: Partnership towards Mutual Prosperity

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

To gain more prosperity, certain things must occur. The country should not simply accelerate the nation without harmony among different interests, and improving international economic relations can serve as a lever towards higher growth and prosperity for Thailand. In the 2017 European

Business Position Paper, we cover recommendations to reduce trade barriers, improve the investment climate and ease of doing business, increase Thailand's competitiveness, amplify strategies to improve Thailand's position in ASEAN and on the world stage, and engage Thailand on the resumption of EU-Thailand FTA negotiations.

Cross Sectoral Issues

SUMMARY OF RECOMMENDATIONS

1. Ease of Doing Business

- 1.1 Competitive tax regime
- 1.2 Draft Excise Tax Act and Customs Tax Reform
- 1.3 Improve investment climate in Thailand
- 1.4 Clarification of interpretation of BOI investment privileges
- 1.5 Role of court system, resolution of disputes, litigation and arbitration
- 1.6 Enforcement of competition law
- 1.7 Removal of cumbersome and unnecessary laws and regulations
- 1.8 eGovernment take up and accelerated on-line penetration, more details in ICT

2. Creating an Enabling Economic and Regulatory Environment

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

3. Enhancing Transparency

- 3.1 Tackling Corruption

In our continued efforts to improve Thailand's services sector, this paper is a companion of the EABC 2016 Position Paper and should be read with it.

The EABC Cross Sectoral Issues Working Group praises the Royal Thai Government on its focus to improve ease of doing business in Thailand with objectives for transparency, efficiency and public-private cooperation. With the strategy to strengthen its core competitiveness towards innovation or so called "Thailand 4.0", trade and investment facilitation and transparent regulatory environment can help attract foreign investment and expertise to the country. ASEAN Member States (AMS) are also competing fiercely to improve similarly. Continuing from our last Position Paper in 2016, in this chapter, the EABC proposes policy recommendations with a focus to enhance Thailand's competitiveness and attractiveness for global investment in Thailand and South East Asia.

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

Competitive tax regime

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

Recommendations:

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

Draft Excise Tax Act and Custom Tax Reform

During our recent meeting with the Minister of Finance, Excise Department, Customs Department and other related agencies in late 2016, the EABC appreciates the Ministry's open-door policy for us to call for meetings. We also appreciate Ministry of Finance planning to form working groups with the EABC to improve foreign participations. We believe the Royal Thai Government is moving in the right direction. However, the Draft Excise Tax Act and the Draft Customs Act are, challenging investor confidence in Thailand.

We believe the new Excise Tax should continue to promote investments to Thailand, maintain existing competitiveness and facilitate businesses. The EABC appreciates the Ministry of Finance does not plan to create tax burden to businesses especially in time of recovery. Additionally, sharp increase the ceiling of excise's fees and rates would create a barrier to trade as well as hinder business competition, especially, between large businesses and small entrepreneurs.

Lastly, the disclosure of the price structure for businesses under the current Draft Excise Tax Act is significantly problematic for commercial and administrative for businesses.

Recommendations:

1. Reduce the Excise Tax Rate in compensation for any increased tax burden due to the changing tax base calculation
2. The EABC recommends consultation regarding Excise Tax's Fees and Excise Rates

Improve Investment Climate in Thailand

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

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

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

Recommendations:

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

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

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

2. Refunds of CIT overpayments

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

It would be mutually beneficial for both taxpayers and the Revenue Department where the taxpayer could elect to have the overpayment refunded or treated as a credit (similar to VAT), which could be applied to the CIT liability of the following year. Where the credit basis is elected, this would assist taxpayers who are 'out of pocket' as they are required to make payment of the current year's CIT liability whilst still awaiting a refund from the TRD for the prior year. Similarly, the TRD can continue to hold onto the overpayment of CIT without the requirement of a cash refund to the taxpayer.

3. Timelines for tax audits

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

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

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

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

5. VAT and withholding tax reporting obligations for SMEs

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

6. Binding advanced tax rulings

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

7. Consistent and accurate interpretation of legislation by Revenue Officers

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

8. Legislative incentives vs execution of incentives

There is a host of beneficial incentives from which taxpayers can take advantage, however, in certain instances, the execution and implementation of the incentives have impacted on their success. For example, in order to take advantage of the accelerated 300% deduction for R&D expenses, the project must be examined and approved by the National Science and Technology Development Agency (NSTDA). In practice, however, it is very difficult to obtain timely approval from the NSTDA and there are no clear guidelines on which projects the NSTDA will likely approve. On average, the NSTDA can take six months or longer before granting their decision. This is an example to illustrate that legislating an incentive is not enough to drive investment. Clear and reliable implementation and execution of such incentives is imperative, without which, the incentive will be futile.

9. Extension of loss carried forward utilisation

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

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

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

10. International Headquarter (IHQ) requirements

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

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

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

11. E-Tax invoices

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

12. International Trading Company (ITC) requirements

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

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

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

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

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

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

Clarification of interpretation of BOI investment privileges

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

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

Recommendations:

The EABC recommends BOI should be responsible for ensuring of interpretation of tax privilege and recognition across inter-government agencies to encourage transparency, consistency and sustainability

Court system, resolution of disputes, litigation and arbitration

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

Recommendations:

Litigation

1. General: In general, the civil and criminal litigation system needs to be made more efficient, sped up and made more user-friendly.
2. Pre-trial injunctions: There are occasions when it may be necessary to apply to the court for an injunction (in Thai this is referred to as a 'provisional remedy') prior to the issue of the substantive action. For example, to prevent the removal of assets out of Thailand, or to seize evidence, or to examine assets. In practice, it is often very difficult to obtain such an order. Rules should be adopted to make it clear in what circumstances the court would consider issuing such an order, and the conditions that might be imposed on a person who applies for such an order, for example requiring an indemnity where the person against whom the injunction is issued suffers loss.
3. Injunctions in general: As to injunctions in general, we make similar comments for pre-trial injunctions above. In practice, it is often very difficult to obtain an injunction, and the circumstances in which it might be successfully applied for should be considered and made clear.
4. Affidavits: At present, affidavits do not technically exist in Thai law. Affidavit evidence, meaning written evidence that has been sworn as true, is often useful where, for example, the evidence is admitted by all parties, and can then be read out at the trial, thus avoiding the need for the witness to have to attend court.

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

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

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

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

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

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

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

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

11. There should be a division of the Civil Procedure Code to deal with the issues that are highlighted

in this paper. If necessary, foreign legal academics can participate in this. The United Kingdom for example went through this procedure some 10 years ago (the so-called Woolf Reforms).

Recommendations:

Arbitration

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

Enforcement of competition law

Thailand's main legislation regulating anticompetitive practices is the Trade Competition Act B.E. 2542 (1999) ("the Act"). In addition to several other laws which may affect competition by seeking to protect the consumer, promote competitive practices and by affecting how businesses behave and interact¹, the Act is implemented by the Office of the Trade Competition Commission in the Department of Internal Trade (DIT) in the Ministry of Commerce (MoC). The Commission is chaired by the MoC and includes representatives of the Ministries of Commerce and Finance along with other members appointed by the Council of Ministers.

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

¹ Such as:

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

is more active (e.g. Securities and Exchange Commission) and such activity could be an example of more appropriate regulatory enhancement.

In general, the Act covers all types of business operations. It is; however, important to note that the Act does not apply to central, provincial or local administration, state trading enterprises, farmers' groups, co-operatives or co-operative societies, or businesses prescribed by Ministerial Regulations to have an exemption from the Act. There are several types of anticompetitive behaviour prohibited under the Act, including: abuse of a dominant position such as fixing buying or selling prices, applying conditions or restrictions to sales or purchases, or restricting supply of goods or services; mergers that may result in monopoly or unfair competition; agreements between businesses that amount to a monopoly, or a reduction or restriction of competition; agreements that restrict purchase of goods or services from overseas; and unfair business practices.

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

Recommendations:

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

Review of Unnecessary and cumbersome laws and regulations

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

Experience has shown that this needs to be done at a high level, not at line ministry level. It seems unlikely that the 2015 Decree Law, leaving it to line ministries to carry out reviews, will work.

The emergence of a 'guillotine' approach with Public – Private collaboration, would seem to have a far greater chance of success and every effort should be made to support this approach and ensure success. EABC appeals to government leaders at the very top to continue to support this effort.

Recommendations:

The EABC urges the Royal Thai Government to make competition regulation (ie fostering a pro-competitive environment through the use of regulated competition) and to take steps to remove and revise unwanted and unnecessary laws and regulation. EABC values the regular consultations held and urges more. Our Cross Sectoral Issues working group welcomes the opportunity to support Thailand and to provide best practices in these areas. Engaging outside experts is often valuable and effective.

2. Creating an Enabling Economic and Regulatory Environment

Relaxation of Foreign Ownership Restrictions/Liberalization of Services Sector

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

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

European investors are at a disadvantage vis-à-vis U.S. nationals and companies which still benefit from national treatment provisions in the US-Thailand Treaty of Amity and Economic Relations (1968) with respect to establishing, as well as acquiring interests, in enterprises of all types for engaging in commercial, industrial, financial and other business activities, with the exception of seven specific sectors². Given the expiration of the WTO derogation from Article II GATS (MFN-clause) at the end of 2004, Thailand is urged to consider these legitimate concerns in its policy formulations and ensure a level playing field in investment applicable to all investor countries, duly aligned with its WTO obligations and expectations in ASEAN instruments.

The EABC has and will continue to support implementation of the existing review mechanism on List 3 in the FBA to duly remove restrictions and meaningfully encourage foreign investment in a broad range of services sectors and also to address real liberalization. The continual recommendations from the 2013 EABC Position Paper still remain (Annex I) and the 2016 paper.

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

Recommendations:

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

Immediately, activities and services that are incidental to main businesses of a majority owned foreign company need not be subject to foreign ownership limitations. In the longer term, we believe all services should allow 100% ownership.

In AEC's services liberalization, Thailand is yet to put in place the necessary changes toward the AFAS target of 51 percent foreign equity allowance in all services sectors since December 2010 or 70% by the end of 2015. We again emphasize five key elements we see for the meaningful liberalization of services which apply generally and not just to the AEC context:

- a) Relaxation of foreign equity limits
- b) Facilitation of free movement by changes to work permit and visa rules
- c) Sector-specific changes and mandates by way of relaxation of restrictions on permits, licenses and other barriers to entry, and to mandate access to facilities
- d) Other sector-specific reforms or mandates e.g., structural changes in a sector to make it competitive, including reform of the role of State-Owned Enterprises
- e) Improvement and greater efficiency in the licensing procedures to obtain majority foreign ownership.

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

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

7. International Headquarters (IHQ) and International Treasury Center (ITC) – We support Thailand to reduce minimum capital requirements for service businesses as services are delivered by people. This is to attract foreign expertise to the country, where Thailand will benefit from the knowledge spill over, especially in high technology sectors and innovation.

Foreign land ownership

It is not necessary to consider liberalisation of the foreign land ownership rules under the Land Act (1954) and the Condominium Acts (1979 as amended) if a longer lease is permitted. The issue can be solved by permitting a longer lease, for example of 99 years, for all types of property whether

residential, commercial, industrial or agricultural. This will allow lessors and lessees to determine the commercial terms of a lease without being inhibited by legal constraints. The Civil and Commercial Code would need to be changed to reflect this.

Recommendation:

1. More flexibility needs to be provided for residential and commercial leasing of land and buildings. The fixed maximum lease periods of 30 and 50 years limited the ability of commercial negotiations between landlords and tenants. A longer term of leasing is suggested by the EABC as well as a clarification of technical rules regarding the enforceability of options and assignment of leases.
2. The EABC would like to repeat our recommendation from the 2013 Position Paper on the establishment of a mechanism that allows ownership of commercial land by foreign companies. Although the BOI and the Industrial Estate Authority of Thailand (IEAT) can grant permission for land ownership to the majority of foreign owned Thai companies, not all are eligible for such investment privileges.
3. The current foreign ownership cap of 49 percent of usable space in a condominium building should be reviewed, together with technical rules requiring the purchase monies to be brought into Thailand rather than earned locally.

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

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

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

The legislation broadly defines 'work' to include any work involving physical exertion or application of knowledge, whether or not done for money or other consideration. Work by foreigners ('aliens') in Thailand may only be done in accordance with regulations issued by the Ministry of Labor and may only be done with a work permit, except when a standard 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 (where a WP-10 permit is needed). Whether a work permit (or WP-10) is required depends on whether 'work' is being done. Trying to support business engagement based on broad and nebulous principles and definitions which produce grey areas and artificial distinctions is time consuming and costly. Interpretation principles currently used are:

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

The EABC recommends a change to the law – a legislative change to redefine 'work' so that it only includes the kinds of activities associated with being engaged in employment, but does not include a

vast area of activities normally associated with 'doing business'. Thailand needs to make 'doing business' easy.

There should, in our recommendation, be an easy-to-obtain, new business visa, valid for 30 days and renewable for a range of business activities (for example, holding meetings of any kind, be they board meetings, regional management meetings and no matter how people participate, all kinds of activities at trade fairs, exhibitions, seminars, conferences etc) for 'business visitors' a term already agreed to in the APEC context. Alternatively, such cases could be 'visa free'

Work permits are normally issued for one year, but up to two years. In the case of work permits issued to companies with investment promotion under the Investment Promotion Act (1972) and in certain other cases where granted initially for two years may be renewed for additional two year periods, work permits have no effect on the duration of stay permitted under the immigration laws. A category B visa for an employment or business ~~visa~~ may be issued with a maximum of one year. An alien with a work permit is required to carry or keep the work permit at their place of employment during working hours, and may only carry out the work specified in the work permit and at the location specified.

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

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

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

In the current context of business interconnectedness, many business operations have become global. Particularly in many strategic parts of the services sector which are regarded as international, supply of jobs is outstripping the supply of local workers to fill these vacancies to ensure smooth business operations. This inevitably means foreign talent and business people are required to overcome the skills shortage. To strengthen Thailand's position as a competitive regional business

hub, restrictions on visas and work permits should be eased and immigration rules should not hamper – on the contrary, they should facilitate – the sustainable growth of the Thai economy.

It is also important to note that the consistently low unemployment rate in Thailand – whilst usually seen as a positive economic indicator – is restricting the potential for growth in several key sectors. As Thailand progressively develops, many industries are facing serious challenges in recruiting the local workforce to fill many unskilled or moderately skilled vacancies. This has already led certain manufacturers to move their investment away to other countries where labour availability is less of an issue. This prominent shortage of workers however continues to pose a significant challenge as the industries strive to offer quality services to customers. These include the hospitality, healthcare, and retail sectors, which are recognized as Thailand's strategic economic sectors. Most hotels and hospitals throughout Thailand are struggling to fill basic but essential positions such as maids, cooks, technicians or security guards. According to the EABC HR and Labour Planning Survey 2013, a shortage of skilled labour was identified as the biggest challenge, accounted for 67 percent of respondents.

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

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

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

Recommendation:

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

1. Eliminate the need for a work permit for foreigners who have already obtained a permanent residence visa. Additionally, redefine 'work' so that it only covers those situations where local paid employment is needed.
2. Redefine 'work' (ie change the law) to be about employment type activities, not about 'doing business' type activities. This is a change to the law. Have a business visa for all 'doing business' activities which needs no work permit (see below) or make it visa free. Abolish WP – 10.
3. Issuance of visas and work permits for longer than one year, particularly for BOI and regional

operating headquarters, is highly recommended.

4. Eliminate the 90 day notification of stay and replace it with a notification of change of work or residential address only; and put the process fully online. A secure password-protected website to be established to facilitate online reporting. Remove intrusive questions such as bank accounts, places frequented etc from the list of questions. See more on this below.
5. Cancellation of the requirement for foreigners to work only in a permitted province or area,
6. Elimination of registered capital and staff ratio as a metric for work permit issuance,
7. Eliminate Thailand's list of prohibited jobs for work permits, starting by reducing the list,
8. Ease rules governing the employment of foreign labour, particularly in respect of lower skilled labour.
9. Create a new and easy way to obtain business visa for the full range of activities which are normally associated with doing business. Move processes online, starting with streamlined versions of high volume licenses. The EABC can support Thailand to improve processes and increase ease of doing business.
10. Where a foreigner is willing to work without payment, this should be possible without a work permit subject to some anti-avoidance provisions. There are many who being over a certain age, and where teaching a foreign languages or IT skills, or carrying out socially useful volunteer work, a work permit would not be required.
11. Regarding employment regulations, the EABC is ready to engage in the consultation process to achieve a mutually beneficial outcome on these issues.

Visa, Work Permits and Reporting

In April 2016, the Immigration Bureau made requirements for applicants to supply additional information and to report in writing every 90 days. We recommendation to change the reporting requirements so that reporting only change of residential address or principal place of business requires less reporting such as name, address, date of birth, passport photo. Several key points in this regard are made below:

- (i) There is now a designated website whereby a foreigner may make his/her 90 day reporting of confirmation of address. But the website is not secured or stable and has not provided a good service experience.
- (ii) There needs to be a reduction in the vast quantity of documentation required, and a move away from the current policy of double policing. Why should the Immigration Bureau require to see the employer's returns for corporate tax, withholding tax, VAT, social security and workers' compensation, and the employee's income tax return? These matters should be policed by the respective government department concerned.
- (iii) A 'B' visa or work permit should be granted for one year initially, then should be renewable every five years.
- (iv) A work permit should be valid throughout Thailand, not limited territorially
- (v) A work permit should be valid for any occupation that is not prohibited by law to foreigners.

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

Recommendation:

1. Foreigners needs to report only when change to residential addresses.
2. To enhance credibility, the platform should be made stable and reliable, should be secured and protected with authentication.

Importance of English and other important language for the Thai workforce

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

Recommendation:

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

3. Enhancing Transparency

Transparency and certainty in policymaking and implementation of rules and regulations are crucial to ensure foreign businesses' confidence in the Thai economy. In order to achieve this, it is important that rules and regulations are aligned between departments and ministries as well as that timely public consultation takes place prior to rules, regulations and laws being enacted. Equally important, the policy framework and legal environment must be improved to serve fair market-based competition and relevant parties. When changes to the law are being considered, it is important that stakeholders should be involved in a fair and open consultation process on such changes. In regards to licensing agencies and enforcement, it is important to separate the functions of a licencing authority and the agency that enforces such obligations in order to avoid any conflict of interest. Enhancing transparency in policymaking and the application of rules and regulations will allow due protection of legitimate business interests and fair competition. This will then make it possible to ensure that the drivers of productivity, efficiency and innovation can be strengthened.

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

Tackling Corruption

Private sector set initiative to promote anti-corruption strategy. Some progress has been made, eg., customs rewards reduction. Transparency International, in their Corruption Perceptions Index 2015, ranked Thailand 76th out of 175 nations on the issue of public sector corruption, previously ranked 85th in 2014.

Why is this so important? Because corruption used as a dishonest means to avoid the law and to gain a commercial advantage by illegal means as well as presenting financial costs. It also disturbs investment decision in Thailand because many European companies have to abide by domestic anti-corruption to avoid transnational breach. It becomes an additional cost for business, and those who indulge in it gain an unfair advantage, over those who observe the law and who do not.

Recommendations:

1. Current law means only that the receiver of a bribe commits a criminal offence. This should be extended so that the offeror of a bribe/inducement also commits an offence. There needs to be much greater education and real, committed standards in order to reduce corruption.
2. To strengthen enforcement, the function of a licensing authority and the agency that enforces such obligations in order to avoid any conflict of interest should be separated. If the enforcement of law exists, it should be serious enforcement. Significant progress is still required.
3. The EABC supports the Royal Thai Government in having open dialogue with the foreign business community.

Automotive

SUMMARY OF RECOMMENDATIONS

1. EU-Thailand FTA Negotiations

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

2. Technical Regulations

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

3. Taxation

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

4. Labour

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

5. Investment

- 5.1 The EABC recommends that the Royal Thai government must ensure transparency and monitor effectiveness of the licensing granting process. Enforcement on LFA is needed.
- 5.2 Thailand should not only focus on attracting new investments, but also safeguarding existing investments is necessary to foster the growth of Thailand's automotive hub. This requires long-term support and commitment from BOI, where clarity to investment promotion is needed to avoid unnecessary delays for investment decisions.

5.3 Thailand should continue to raise standards for safety and environmental requirements in the automotive sector to help attract green technology and new investment.

5.4 The EABC recommends the Royal Thai Government continue dialogue with the EABC Automotive working group for improving ease of doing businesses. The EABC automotive working group consists of industry experts that can provide policy recommendations to boost Thailand's competitiveness.

6. Electric Vehicle (EV)

6.1 We recommend the Royal Thai government to start with Plug-in Hybrid vehicle to help bridge technology to full electric drive.

The EABC appreciates the Royal Thai Government's various policies and measures which have enabled the country's automotive industry to achieve its current position and we are very keen to strengthen and support the competitiveness of Thailand's automotive position in the regional and global market by underlining our long-term commitment to the country. The success of automotive industry contributes greatly to Thailand's GDP, promoting jobs and large arraying suppliers. In this chapter, the EABC continues its famous series of policy recommendations in 2016 Position Paper to strengthen Thailand's automotive industry.

Recommendations:

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

1. EU - Thailand FTA Negotiations

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

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

Recommendations:

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

2. Technical Regulations

Despite good intentions to improve the licensing process, significant progress in Thailand's implementation of the WP29 - 1958 Agreement could not be clearly observed in 2015 for automotive and automotive parts manufacturers. For instance, the industry has agreed to use UNECE for approvals/certifications, but it is still a requirement from TISI to conduct re-testing at its accredited laboratories. This requirement is inefficient, time consuming, costly, and most importantly it is redundant to obtain another test report when UNECE standards have already been widely and internationally accepted.

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

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

Recommendations:

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

ASEAN Mutual Recognition Arrangement (MRA) for Automotive Products

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

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

Recommendation:

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

Clarity on fuel plan, EURO standards and Implementation schemes

The energy industry significantly influences the vibrancy and sustainability of the automotive industry. It is important that the industry has clarity and certainty about the sustainable and alternative emission and energy development plan. This will provide automotive manufacturers and automotive parts manufacturers with investment clarity and time for adaptation to meet the emissions and energy regulatory demands.

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

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

Recommendations:

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

Road Safety

According WHO official statistics in 2015, Thailand has the second highest road traffic fatality rate in the world with 44 fatalities per 100,000 inhabitants (5.1 percent of Thailand's overall deaths) including 73% among motorcyclists. By contrast to passive safety systems such as helmets, airbags, and seatbelts which come into play once a crash has already taken place, modern vehicle technologies play a critical role in avoiding crashes and reducing the likelihood of injuries or fatalities in a crash. Nowadays there is an increase in new and inexperienced motorcycle riders and four-wheel drivers who benefit the most from improvements in vehicle safety technologies.

Recommendation:

EABC recommends that the Thai government investigates making a variety of vehicle safety measures mandatory. Most notably EABC recommends to investigate possible rulemaking for ABS for power two wheelers > 125cc, and for ABS and ESC for passenger cars of vehicle class M1. Given the fact that these systems are standard equipment in several vehicles already today.

3. Taxation

CO2 Approval Process

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

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

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

Recommendation:

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

Customs Free Zone's Rules

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

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

Recommendation:

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

Customs Custody

The EABC understands the intention of the Licensing Facilitation Act is to improve public services and administrative sector. The impact of the Act reduces time allowed for goods to be in the customs custody to 1 months, previously allows for 2 months. Shorter custody time has undermined the complexity of the automotive industry that often requires many documents. Furthermore, it also impact financial of the supply chain since business needs to place bank guarantee for the goods to be released from the custody before expiration date. Therefore, we recommend the Royal Thai Customs to reconsider customs custody procedures to facilitate the automotive industry.

Recommendation:

EABC recommends the Royal Thai Customs to reconsider customs custody procedures to facilitate the automotive industry.

Draft Excise Tax Act

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

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

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

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

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

Recommendations:

1. We reiterate our recommendation from last year that privileges offered by the CFZ scheme are preserved after the new Excise Tax Act.
2. We recommend the excise tax rate of the tax base be lower. We expect to see the Royal Thai Government keeping its promise of neutral revenue in both Free Zone and CBU imports as this will

enhance investor confidence in Thailand.

3. Business operators shall be offered a sufficient transition (grace) period for abrupt and critical changes to policies and regulations. Business planning for the automotive sector is prepared at least 2 years in advance; hence, operators should have an adjustment period of 1 year in order to ensure the viability of their business in Thailand.

Grey Market Control

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

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

The EABC appreciated Ministry of Industry's support in the development of the automotive industry and its conformity to the way global technology is developing, along with the new Excise tax structure, together with the information technology system related to the eco sticker, which is applied to help operators fill and submit all required documents for the system. While we understand that Thai authorities would like to reduce the burden on all business operators, vehicle inspection, registration, and information to submit for eco stickers should be processed as a set of guidelines so that everyone follows the same direction. EABC, therefore, urges the Thai authorities to establish equal treatment for eco sticker submission and data requirements between grey market operators and authorized manufacturers. This will provide Thailand's investment climate with fair competition for trade and, significantly, will ensure a level playing field for all importers.

Recommendations:

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

4. Labour

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

We support the Royal Thai Government's policy on promoting vocational training. Efforts to encourage public - private partnerships in engineering and technical training, in addition to government incentives for education, are commendable.

In addition, we call for the Thai Government to consider developing plans for the mid- and long-term to provide sufficient a workforce of qualified graduates to match industry requirements. Such a holistic approach would help raise Thailand's overall labour productivity in correspondence with wages/labour costs, and enhance Thailand's competitiveness, particularly in light of further AEC integration.

Recommendation:

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

5. Investment

Licensing Facilitation Act (LFA)

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

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

BOI Investment Scheme

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

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

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

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

Green Technology

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

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

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

foreign investors in environmental technology in the automotive sector. The EABC's recommendations aim to promote Thailand's competitiveness and to raise the public health of the Thai people.

Recommendation:

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

6. Electric Vehicle (EV)

The EABC welcome the Royal Thai government's policy to improve national energy efficiency and environment using electricity to power vehicles. The policy on Electric Vehicle Promotion will bring innovation and improvement to Thailand's environmental standards which the European companies upheld values for sustainability and social responsibility. In connection to successfully transform the automotive industry, the Royal Thai government's supports in infrastructure and market development are needed. Infrastructure development includes sufficient coverage for public EV charging stations while market development covers gradual transition from Plug-in Hybrid technology to full electric drive. To create a sustainable demand in the market additional tax advantages for the customers are required. And within the own fleets of the different Ministries Plug-in-Hybrid and full Electric cars should be used in a high share to get a daily experience of use and being a role model for the society. The import of full electric cars should be without import and excise tax to ensure a fast increase and development of full electric mobility in Thailand. If there is a demand from the customers the OEM's are able to start production of full electric vehicles in Thailand – but this takes min. 5 years of experience and customer education with the new technology plus of course establishment of an sufficient charging infrastructure in the cities.

For Thailand to become the next generation of automotive hub, Thailand will need to develop electric vehicle ecosystem. The EABC stands ready to assist Thailand on policy discussion and technical support. We recommend the Royal Thai government to start with Plug-in Hybrid vehicle to help bridge technology to full electric drive. Plug-in Hybrid technology is a progressing step that also does not require significant behavioral change from conventional vehicles, therefore, facilitating consumer's adoption to new technology. In addition, Thailand should also consider developing battery electric vehicle to make electric vehicles affordable for mass market.

Recommendation:

We recommend the Royal Thai government to start with Plug-in Hybrid vehicle to help bridging technology to full electric drive. Implementation of sufficient charging infrastructure, tax advantage for customers of full EV, no import and excise tax for EV, use of PHEV and EV in the state own fleet.

Energy and Energy Efficiency

SUMMARY OF RECOMMENDATIONS

1 Energy Security

- 1.1 We encourage the government to stick with the timeline on Petroleum Act (PA) and Petroleum Income Tax Act (PITA), as well as the target date to conclude the process for the expiring concessions.
- 1.2 A great opportunity for Thailand lies in development of the Overlapping Claims Area with Cambodia. The gas reserves there could play a significant role in meeting Thailand's energy needs.
- 1.3 We encourage Thailand to diversify its energy mix and to develop renewable energy sources, in combination with gas, which is a low-carbon fuel.
- 1.4 EABC recommends that Thailand enhance the power transmission and distribution sector and speed up related investments.
- 1.5 EABC recommends that smart grids are a perfect support for the energy transition and will reinforce the energy security

2 Energy Efficiency and Energy Saving

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

3 Alternative/Renewable Energy

- 3.1 EABC supports Thailand's efforts to diversify energy sources in renewable energy, which is clean and abundant in this region.
- 3.2 We support Thailand's efforts to increase transparency, adhere to global standards and ensure accountable management of natural resources.
- 3.3 EABC recommends a set of measures and incentives to accelerate the development of the solar energy in Thailand, which is a real chance for the country.

4 Lack of Industry Participation Automotive Energy Development

- 4.1 EABC recommends close consultation between the government and private sector on an automotive fuel development plan as well as providing advance notice and clear timeline of transport fuel portfolio.
- 4.2 EABC recommend an EV roadmap should be developed (for cars and 2 wheelers) in order to coordinate the initiatives and the efforts of both State, companies and communities. This roadmap could be part of the Environmentally Sustainable Transport System Plan 2013-2030

Preamble

Thailand's total energy consumption has grown continuously in the past decade due to domestic economic growth, demand for energy from increasing production, and demand for power generation, among other factors. Security of supply (vs depletion of hydrocarbons resources), environmental concerns (including based on Thailand commitments at COP 21), and impact on the competitiveness of Thai economy in an environment which is more and more competitive, are key issues for the country.

On the other hand, energy has entered a new era called “energy transition”, and Thailand should consider it at its new long term vision, plenty of opportunities for a better future.

The EABC Energy and Energy Efficiency Working Group was established to serve as a forum to discuss critical issues in this particular field, and to enhance the role of the European business community in dealing with Thailand's key energy challenges. We hope this 2017 European Business Position Paper can provide useful suggestions to the Royal Thai Government and relevant agencies to provide economic stability for Thailand and increase further industries' competitiveness,

Energy policy

Everywhere in the world do energy policies have to reach the optimum balance between 3 pillars: the availability of the energy, its affordability, and its sustainability. There is no “universal rule” on how to reach it, and this should be adapted to the specificities of Thailand in terms of foreseen long term needs, availability of resources, and commitments towards sustainability.

Thailand's Intended Nationally Determined Contribution (INDC) mentions, among others, the Climate Change Master Plan (CCMP) 2015-2050, which details general efficiency measures, plus emission mitigations, such as the REDD+ Readiness forestry program. Other key documents, like PDP 2015-2036, AEDP 2015-2036 and Thailand Smart Grid Master Plan 2015-2036, are paving the way to large changes in the energy landscape for Thailand.

1. Energy Security

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

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

We believe natural gas is a strong support to the competitiveness and the sustainability of Thai industry for coming decade, and to the State commitments to COP21.

To that extent, it is of essence that the related infrastructures will be developed accordingly, and that the economic actors, whether public or private, are incentivized to invest in safe, and strong assets. As the Government has been pushing for the implementation of a new legal and regulatory framework (regulated economics all along the value chain, Third Party Access, ...) it is of essence that

the regulation be both incentivising (with ad-hoc investments remuneration mechanisms) and stable in time.

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

Recommendations:

1. **Future of current licenses for major oil and gas fields, due to expire in 2022-2023** – Now that the government has decided to go ahead with a bidding process for the current licenses, we believe it is crucial that the government stands firm on the timeline. Any delays can potentially lead to a gap in supply profile which could be costly to manage.

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

2. **Resolution to the Overlapping Claims Area (OCA)** -- A great opportunity for Thailand lies in development of the Overlapping Claims Area with Cambodia. The gas reserves there could play a significant role in meeting Thailand's energy needs.

3. We encourage Thailand to diversify its energy mix and to develop renewable energy sources, in combination with gas, which is a low-carbon fuel

Power Transmission and Distribution

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

Recommendation:

The EABC recommends enhancing the Power Transmission and Distribution sector and speeding up investments in ageing infrastructure to improve power (energy) security and ensure readiness for transmitting power coming from alternative sources of energy. A stronger interconnection in the ASEAN power grid will also strengthen the strategic position of Thailand and will positively impact costs of power and the industrial development of the country.

Smart grid

The Royal Government has been mentioning many times the energy smart grids as an important part of both the energy policies and the S-curve that should drive the next decade for Thai economy.

Recommendation:

At EABC we believe the smart grids are a perfect support for the energy transition and will help reinforce the energy security.

2. Energy Efficiency and Energy Saving

The most available, most affordable and most sustainable energy is the one which is not consumed. This simple rule recalls how much energy efficiency should be the first axe of efforts of Thailand energy policy.

The Thai Ministry of Energy had published the “Thailand 20 - Year Energy Efficiency Development Plan (2011 - 2030)”, commonly referred to as the EEDP. This document states that “This 20-year Energy Efficiency Development Plan (EEDP) is formulated with a target to reduce energy intensity by 25 percent in 2030, compared with that in 2005, or equivalent to reduction of final energy consumption by 20 percent in 2030.” The Thai INDC suggests this has been superseded by the EEP 2015-2036 which targets reduction of emissions by 30% by 2036

Main areas of efforts are industry, transport, heating/cooling. Lightning comes to a lesser extent.

Recommendations:

1. **Energy efficiency in buildings** -- Thailand should consider creating and implementing energy efficiency policies for buildings and industries in order to incentivize progress in this domain.
2. **Energy efficiency in power generation** -- Thailand should also promote the efficiency of using fuel in power generation. Cogeneration should be encouraged.

Lightning

Lightning, whether in touristic areas or not, is a sector where energy efficiency could be implemented with success. Smart public lighting powered sensors and IoT could be installed in order to reduce electricity consumption (in line with smart cities development plans). Benchmarks show, that consumption can be reduced by up to 60% with smart LED lighting technologies.

Recommendations:

1. EABC appreciates any opportunities to provide benchmarks from European cities to Thai cities and support this positive development. We recommend that the Thai government enlists the help of experts in building and lighting to create environments that are assent to nation, attract tourists and act as a driver of economic growth for all sectors of the economy.
2. Thailand should consider creating and implementing a lighting master plan as part of the country's energy efficiency drive. The lighting master plan will help promote Thailand as a centre for tourism.

3. Alternative/Renewable Energy

As part of the worldwide energy transition, Thailand should focus on reaching on long term a decarbonised energy mix. This will request both significant time and financial effort. In the meantime, Thailand, will have to go on with existing energy mix, pushing on lower carbon content sources (see chapter “Hydrocarbons”).

We believe that a range of renewable energy sources can definitely play a key role in meeting Thailand's energy demand and environmental goals. An active public policy is of essence to facilitate a

range of such sources, including solar energy, wind energy, micro hydro, biomass, biogas and waste-to-energy. As leaders in green technology, European businesses can offer the best methods and practices to support this.

Solar PV

Solar technology has been facing recently significant innovations leading to important improvements of efficiency and significant reductions in costs. The size of recent projects awarded worldwide in 2016, as well as their price per kWh, has nothing to do with any references of previous years.

As well, solar generation has very significantly evolved when it comes to energy storage, whether with classical batteries, hydrogen cells, or other technologies. Solar which used to be considered as an intermittent power generation solution is slightly evolving towards stability all along the day.

This is a good piece of news for Thailand which is blessed with attractive sun conditions. We believe solar deserves a real part of the future electricity policies in the Kingdom, whether as large solar farms or as small, decentralised solar rooftop solutions.

To promote clean energy sources EABC recommends Government could use a wide range of support schemes:

- specific financial incentives like ad-hoc low rate loans Support Project Financing at favourable commercial terms & conditions, as it is available in other maturing RE/PV markets. Those loans should be also accessible to earmarked funds, e.g. fund for climate change mitigation, CO2 reduction, etc.
- reduced import duties for high quality solar panels and powering generating equipment
- a sensible regulatory framework for large scale / large scope RE/PV utilization, including sensible Net-Metering policies,
- Advanced framework for PPA's.

The European PV Solar industry has extensive expertise, know-how and experience in such systems. EABC and its member companies are more than happy to share the latest technologies, developments and research & development initiative in the PV Solar sector. Although Europe is mostly not in the sunbelt region our systems are therefore extremely efficient and cost effective. This knowledge can be shared with Thai companies and investors to upgrade the PV Solar energy in Thailand. Thailand with their high yield radiation environment could even profit more with such expertise and competence of the European Solar Industry.

Waste to Energy

Thailand's Intended Nationally Determined Contribution (INDC) mentions a Waste Management Roadmap (incl. promotion of waste-to-energy technology).

EABC supports this kind of initiative, both for its energy aspects and for the positive impact on our environment, including in some touristic places.

European business will be happy to provide its support, through benchmarking of European experiences and through activity of European companies.

Recommendations:

1. EABC supports Thailand's diversification of energy sources in renewable energy, which is clean and abundant in this region.
- 2. Further diversification of the energy mix for the generation of energy, including renewables and gas**

-- The diversification will help Thailand to respect its commitments that were made at COP21, to reduce its CO2 emissions and to enhance its competitiveness. We support Thailand's efforts to increase transparency, adhere to global standards and ensure accountable management of natural resources.

3. EABC recommends a set of measures and incentives to accelerate the development of the solar energy in Thailand, which is a real chance for the country.

4. Automotive Energy Development

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

Recommendation:

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

Electric Vehicle

Thailand has started to develop projects for Electrical Vehicle (EV). EABC supports this trend. EV is an efficient way to save on fuel and decrease air and noise pollution in cities.

Recommendation:

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

Food and Beverages

SUMMARY OF RECOMMENDATIONS

1 Excise Tax

- 1.1 Elimination of tax discrimination to ensure fair competition and encourage foreign investments.
- 1.2 Setting of tax rates should be realistic to current economic and business situation.
- 1.3 Needs to clarify on RRSP computation to prevent double taxation.
- 1.4 Timeline for moving to specific taxation regime to optimize tax revenue.
Consistent law enforcement to reduce illicit trade and tax evasion activities.

2 Labelling Notification, Trademarks and GIs on Alcohol Products

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

3 Excessive Graphic Health Warnings

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

4 Lack of Industry Participation and Consultation in Policy Development

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

Continuing the efforts from 2016 European Business Position Paper, a number of regulatory restrictions and impediments still remain, causing difficulties in conducting business in the industry. The current issues and challenges in the food and beverages sector are discussed as follows. EABC understands the Royal Thai Government's intention to reduce alcohol-related issues and appreciate their cooperative efforts with the private sector to resolve concerns under excise tax reforms.

1. Excise Tax

Excise taxes on alcohol beverages are an important revenue source for the Royal Thai Government. The current tax structure is however complex and discriminatory, making it extremely unfriendly to alcohol beverages trading. The last reform dates back to September 2013. Categories were reorganized and rates are now as follows:

Applied Rates for Wine & Distilled Spirits (2013)	
White Liquor	THB 145/LPA + 4% LWP
Other Spirits	THB 250/LPA + 25% LWP
Wine and Sparkling Wine made from fresh grapes	
Up to 15% ABV; 0-600 THB of LWP, excluded VAT	฿1000 per LPA + 0% on LWP
Up to 15% ABV; Above 600 THB of LWP, excluded VAT	฿1000 per LPA + 36% on LWP

The industry has been very concerned about the continued discrimination between locally produced Lao Khao and imported spirits as well as fruit wine and wine. Special category “local white liquor” was maintained, and discriminatory tax rates were imposed on imported spirits as compared to Lao Khao. The 2013 amendment also triggered a sharp increase in applied and ceiling rates for wine (which is mainly imported). The change of tax base from ex-factory/CIF price to Last Wholesale Price (LWP) with an unclear definition for wine allowed domestic operators to mix imported wines with fruit, therefore to sell local fruit wines at lower price with lower tax rates.

Thailand is currently working on a reform of Excise Tax Act. Another switch of tax base from LWP to Recommended Retail Selling Price (RRSP) is expected. Categories ‘White Spirits’ and ‘Other spirits’ would be maintained, which the risk of discriminatory tax exists.

The current version of the draft contains unnecessary ambiguity. First, the calculation of RRSP needs clarification. To prevent double taxation and ensure fair competition, RRSP should not include VAT, other taxes and fees collected from goods. Second, RRSP shall not be less than actual selling price to general end-consumers in the normal market. Businesses should also have the right to determine selling price for their products on a competitive basis; and Director-General should not have unilateral power to disregard and intervene market mechanism. Third, business operators should not be required to disclose confidential business information such as manufacturing costs, administrative expenses, and standard profits.

EABC urges the Excise Department to reconsider the primary objective and intent of the draft and ensure it conforms to World Trade Organization (WTO) obligations and international standards with no discriminatory tax rates on local and imported spirits. In addition, an efficient tax structure should be simplified towards a single, specific tax on a per-litre-of-pure-alcohol (LPA) basis, consistent with international best practices as recognized by the World Health Organization’s (WHO) Global Alcohol Strategy. We therefore fully support the objectives of the Excise Tax Act in seeking to harmonize and simplify the excise tax law in Thailand, which is currently subject to numerous separate pieces of legislation and subsidiary laws/regulations.

Recommendations:

1. **Currently existing discrimination should be eliminated** between local white spirits/imported spirits and fruit wine/grape wine. The applied rates should be set at a level that would not result in further tax increase on imported spirits.
2. In setting the applied Liquor Tax rates in the new Excise Tax Code, there should be **no increase in taxation burden** to businesses. It is significant to highlight in compensation for any increased tax burden due to the changing tax base calculation. The EABC supports the Excise Department to review license fees and tax rates to be more practical and realistic to the current economic and business situation. This is essential to minimize the non-tax paid trade, encourage foreign investments and support consumer confidence in branded products.
3. The **definition of RRSP as a tax base should be clarified** in new Excise Tax Code to prevent double taxation and ensure fair competition.
4. There should be a clear timeline for moving towards a **uniform and fully specific taxation regime**. Such regime will benefit tax management, improve transparency and ultimately contribute to increase in the tax revenue.
5. There must be **adequate and consistent enforcement** to help address tax evasion and illicit trade practices.

2. Labelling Notification, Trademarks and GIs on Alcohol Products

The EABC supported Ministry of Public Health initiatives to lower alcohol consumption among adolescents and drinking and driving responsibility efforts in 2016. Stricter driving enforcements showed a good example of how creativity and enforcement can reduce accidents during the New Year period.

The industry is fully committed to the responsible consumption of alcohol and respects the role of regulation. We do, however, have strong concerns with the notification approved by the Policy Committee regarding labeling changes. Therefore, we encourage the Royal Thai Government to consult with the industry at an early stage to explore a more pragmatic way to reduce alcohol consumption.

Labelling Notification/Trademarks

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

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

Specifically, the government approved restrictions on the content of beverage alcohol labels for containers (e.g. bottles, cans), packaging (e.g. IBC boxes) and associated materials (e.g. neck tags). The notification is intended to remove any words or images from labels that could induce a consumer to purchase beverage alcohol and prohibit the use of celebrities and cartoon images.

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

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

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

one trader from another. Only in limited circumstances may Thailand invalidate, cancel or prohibit the use of trademarks. For example, if the trademark in question is deemed to be misleading or deceptive, goes against public morals or violates public order.

Geographic Indicator (GI)

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

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

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

Recommendations:

1. Thailand must comply with WTO, Article 22 TRIPS with respect to indirect indication to the GI.
2. Thailand must notify WTO TBT to ensure that technical regulations, standards, and conformity assessment procedures are non – discriminatory and do not create unnecessary obstacles to trade.
3. The EABC recommend a dialogue with the Alcohol Policy Board to explore pragmatic solutions to labelling as well as other areas we could potentially work together on drinking and driving policies, reducing underage drinking, providing relevant information through education, awareness and interventions.
4. Moreover, as the labeling notification enforced on 20 October 2015 with the guidelines issued on 30 September 2015 remained unclear, making it extremely difficult to comply. the EABC request a dialogue with the Thai authorities to establish comprehensive guidelines on interpretation and implementation of these measures. Any reform or amendment to this notification should lead to clear and comply with WTO obligations.

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

3. Excessive Graphic Health Warnings

A draft Notification prepared by the Alcohol Beverage Control Committee proposes to mandate graphic, pictorial warning labels on all beverage alcohol products. These labels would be at least 25 per cent of the area of the largest label on a bottle and 25 per cent of the surface area of the entire box. The European beverage alcohol industry believes that it is fundamentally inappropriate to apply such images to alcohol packaging/labels.

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

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

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

Recommendations:

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

As noted above, the industry, via the EABC Working Group, is willing to engage in dialogue with the Alcohol Policy Board to consider alternative and more effective measures to inform and educate the general public about harm-prevention and responsible drinking.

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

Policy Consultation

In 2016, Thailand promoted and encouraged the private sector to participate in large infrastructure projects under Public-Private Partnerships (PPP). PPP's aim is to attract cooperation from the private sector to co-invest in projects with the Royal Thai Government. Significant marketing efforts were undertaken by the Royal Thai Government for roadshows to attract foreign investment. These costs can be mitigated and processes to obtain investment funds can be fastened.

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

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

Recommendation:

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

Respect for, and compliance with, WTO regulations

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

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

The EABC strongly encourages Thailand to comply with WTO rules set to promote the country's position as a respectful, food exporting nation on the world stage.

Recommendation:

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

Healthcare and Pharmaceuticals

SUMMARY OF RECOMMENDATIONS

- 1. Fostering investment attractiveness for innovation and research collaboration**
 - 1.1 Tax and non - tax incentive schemes for innovation shall provide competitive benchmarking in the region.
 - 1.2 Enabling viable and accessible local market with available skilled workers. The public and private sectors must work together to advance R&D and ensure access, viability and sustainability of the investment.
 - 1.3 Thailand needs to provide a suitable environment for innovation and R&D collaboration from the development to market entry aiming to enhance competitiveness and to serve the demand of global consumers.
- 2. Enhancing regulatory ecosystem and removal of technical barriers to support ease of doing business**
 - 2.1 The EABC encourages constructive dialogues between the Royal Thai Government and multi-stakeholders including industry in the regulatory reform which may involve new draft or revision of Law and regulations to enhance transparency, involvement and practical resolutions.
 - 2.2 Price inquiry/ control should not be compulsory in regulatory process which will be in alignment with international regulatory practice.
 - 2.3 Thailand must support prevention of patent infringement by generic drug companies. With the disclosure of patent information, adding a condition for generic drugs to notify patent status could be specified in Ministerial Regulations.
- 3. Appropriate Intellectual Property ecosystem; key enabling factor of pharmaceutical innovation**
 - 3.1 The EABC recommends Thailand prioritises increasing competent patent examiners in high technology research especially in chemicals and pharmaceuticals, where the number of patents granted is significantly low due to a lack of competent examiners.
 - 3.2 We recommend the DIP commits to training, to improve the quality of qualified officers in the short, medium and long term. It is stressed that merely increasing staff is not satisfactory – these new examiners must be skilled in a particular art, such as pharmacy, mechanical engineering, electronics etc. and must be adept at patent analysis.
 - 3.3 We encourage the DIP to consider outsourcing options to improve efficiency.
 - 3.4 Thailand should establish patent term restoration to compensate for long patent approval process and delay of regulatory marketing authorization to encourage effectiveness and productivity for government procedures.
- 4. Enabling market environment and sustainable healthcare financing approaches to support innovation**
 - 4.1 The EABC encourages more industry consultation or regular dialogue to ensure transparent procedures and to enhance access to medicines.
 - 4.2 We support transparent procedures for the pharmaceutical listing, pricing and tendering process, considering the value of innovation to therapeutic outcomes and clinical needs rather than cost savings.
 - 4.3 Thailand should exercise open competition in order to best serve consumers and patients.
 - 4.4 It is essential that legislation, in procurement and regulatory frameworks, as well as the Trade Competition Law, must be reviewed for further liberalization to allow competition on an equal basis.

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

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

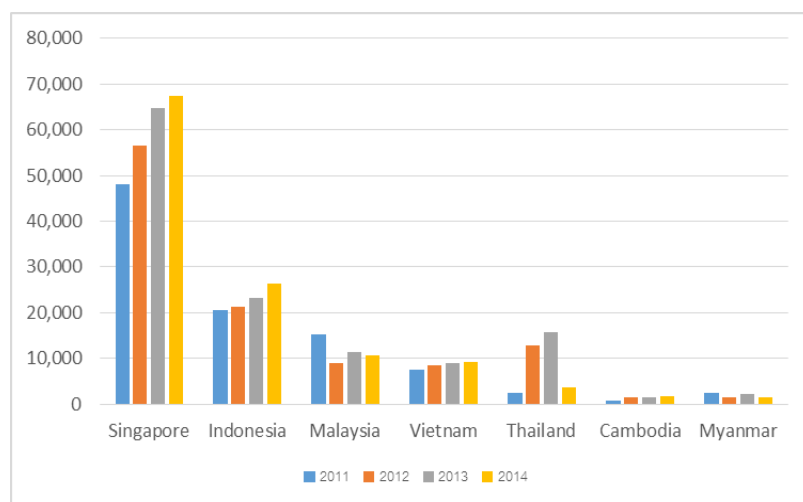
To become a regional leader in healthcare services and the medical research and development sector, Thailand needs to develop a long-term innovation embracement policy that is strong and consistency implemented; there are needs to be coordinated between the private sector, academic and research institutes,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

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

1. Fostering investment attractiveness for innovation and research collaboration

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

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



Source: The World Bank, 2016

Recommendations:

1. To attract research investment and enhance research collaboration, tax and non-tax incentive schemes for innovation should be established, competitively benchmarking in the region.
2. Ensure viable and accessible local market with available skilled workers. The industry cannot go in alone. The public and private sectors must work together to advance R&D and ensure access, viability and sustainability of the investment.
3. Thailand needs to provide a suitable environment for innovation and R&D collaboration from the development to market entry aiming to enhance competitiveness and to serve the demand of global consumers.

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

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

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

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

The European industry supports the revision of Drug Act to enable the facilitation of regulatory enhancement involving process reform and appropriate regulatory fee, which promotes ease of doing business.

The European industry may have key concerns if the regulatory requirements for marketing authorization applications¹ included in the new Act, notably:

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

The decision to deny market entry of innovative healthcare products on a subjective, and as yet translucent price level determination as opposed to the internationally accepted norm of safety, quality and efficacy, will not only create an excessive barrier to innovative and essential medicines and restrict public health benefits, but will also send out the wrong signal to potential investors in R&D. It is highly recommended that such articles should not be associated with marketing authorization approval as the ramifications on availability of novel medicine decided on subjective price considerations will have negative impacts from a social, scientific and economic perspective. To date, a similar provision has not been established in countries with known competent regulatory capacity.

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

Recommendations:

1. The EABC encourages constructive dialogues between the Royal Thai Government and multi-stakeholders including industry in the regulatory reform which may involve new draft or revision of Law and regulations to enhance transparency, involvement and practical resolutions.
2. Price inquiry/ control should not be compulsory in regulatory process which will be in alignment with international regulatory practice.
3. With regards to the disclosure of patent information, adding the condition for generic drugs to notify the patent status of the medicine to be registered with authorities, could be specified in the Ministerial Regulation. This is in order to prevent patent infringement of the generic drug companies that will cause unnecessary business conduct costs to the generic companies

¹ Reference is made to the following sections:

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

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

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

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

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

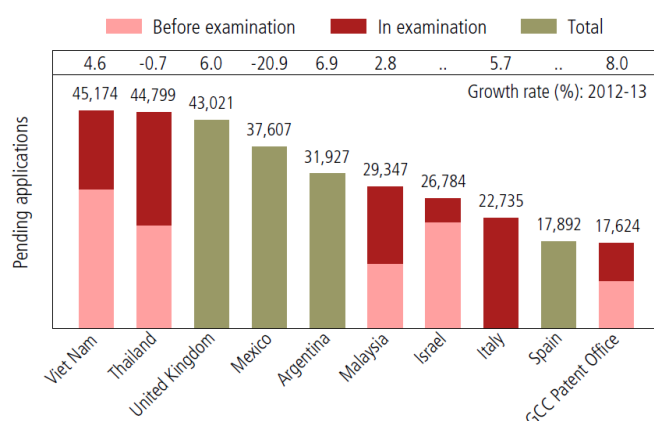
3. An appropriate Intellectual Property ecosystem; a key enabling factor of pharmaceutical innovation

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

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

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

Figure 3: Patent Application Backlog



Source: WIPO Statistics Database, 2014

Additionally, data exclusivity, in compliance with the WTO TRIPS agreement, Article 39, is necessary to provide a measure of certainty to the innovator that they will be provided with a period of protection for their efforts of testing a drug and ensuring its safety and effectiveness for patients no matter when, where or how long it takes to bring a drug to market. Patents are an important form of intellectual property, but are not themselves necessarily sufficient to create the favourable

environment needed to support the development of medical advances. Data exclusivity is not an extension of patent rights, and it does not prevent the introduction of generic versions of the innovative drug during the data exclusivity period, as long as the marketing approval of the generic version does not use or rely upon the innovator's test data.

The Department of Intellectual Property (DIP) is aware of the necessity to resolve the patent backlog by increasing appropriate resources of competent patent examiners. However, this effort should be additionally prioritized to focus the increase of appropriate resources in the areas that require high skill of technological advancement like pharmaceuticals and biotechnology in order to support the national R&D agenda.

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

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

Recommendations:

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

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

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

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

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

Recommendation:

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

ICT / Digital Economy

The background and recommendations in the ICT Chapter (including Digital Economy) of the EABC 2016 Position Paper stand as current and relevant background and recommendations, other than as updated by this ICT Chapter in this Position Paper, which provides an update.

This chapter is in four parts: 1, 2, 3 and 4.

The EABC definition of Digital Economy (see p.88 of the 2016 Position Paper) shows how reliance on telecoms infrastructure and a well-structured, well-functioning services sector is an essential factor in make a digital economy work.

Formally the Ministry of ICT is now the Ministry of Digital Economy & Society, with some minor rearrangements.

1. Digital Economy

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

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

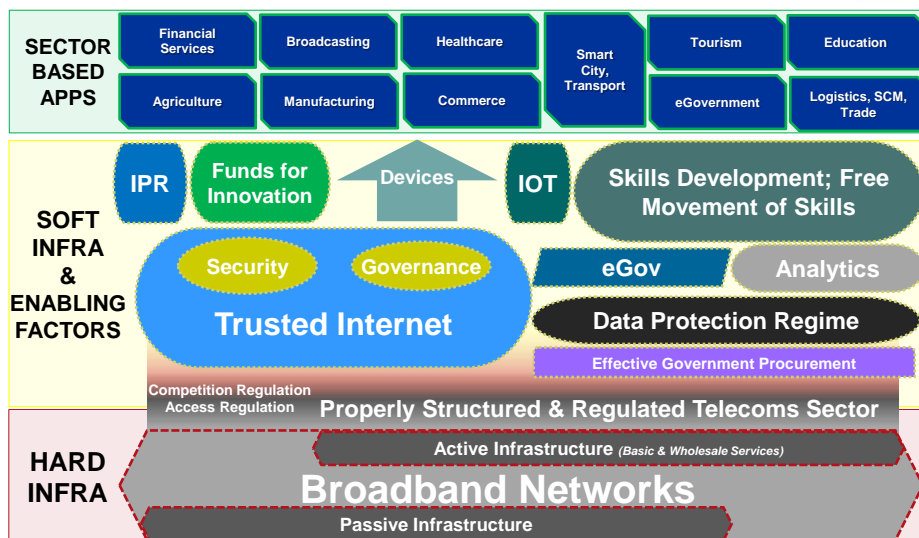
The goods and services within the digital economy can be broadly grouped as:

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

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

The Digital Economy works as we see it in three layers – the descriptions build up from bottom to top on pages 88-92 of the 2016 Position Paper.

Digital Economy Schematic



Digital Economy done Mar 2015

Status of Digital Economy Family of Laws

The eight major laws in the so-called Digital Economy family, briefly described in a table on p. 92 of the 2016 Position Paper, are at various stages of development. As noted in the 2016 Position Paper, public consultation was conducted by ETDA on the bases of these laws during 2015. But major changes were later introduced.

Ref	Name of Law	Purpose	Comments	Status
1	Frequency Act, aka NBTC Act	Amendments to existing Frequency Act 2010, to constitution of NBTC and role of NBTC and how spectrum is issued.	<ul style="list-style-type: none"> Robust independent NBTC important; recommend some changes to strengthen governance and independence. All spectrum for commercial use should be allocated by auction (or beauty contest for short list + auction) Regulator should be the single licensing authority 	Bill is in NLA committee.
2	Personal Data Protection Law		<ul style="list-style-type: none"> Purpose should be about confidence in the jurisdiction and consumer protection, not just consumer protection. Cross border insufficient; data must be allowed to go offshore under rules. Role of DPC does. 	Still in draft form. Cross border still one line.
3	Computer Crimes Act amendments – and elsewhere?	Tighten CCA	CCA was changed in 2007 to include some over-reaching and unworkable provisions, although the high level intention was good. A 2010 proposed change (controversial) was shelved. Surveillance powers not helpful for the essential 'trusted internet' which has security and	Major debate and objections – law is passed by NLA <ul style="list-style-type: none"> Criminal defamation Fair comment

Ref	Name of Law	Purpose	Comments	Status
			governance aspects.	<ul style="list-style-type: none"> Merely being in possession – presumption Lacking in due process protections
4	Digital Development for Economy and Society	Consolidates into one law, these three laws: <ul style="list-style-type: none"> Committee for Digital Economy and Society Promotion of Digital Economy Digital Development Fund for Economy and Society law 	Policy making powers in a committee. What checks and balances? How far will it cover spectrum management for example? Establish National Digital Economy Promotion Committee and committee office Establish Digital Dev Fund for Economy and Society, DDF for E&S Committee.	Status unclear
5	Ministry, Department and Bureau Reform law	Reforms MICT into MoDE&S.		Passed – establishes Ministry of DE&S
8	Electronic Transactions Act amendment.	Amend ETA to provide for not only eSignature or Digital Signature. Revises Electronic Transactions Commission		Not known
9	Cybersecurity law	Dispense with due process, give powers Establish NCSC	s. 35 controversial. Note 'trusted internet' concepts.	Not passed – still a draft
8	Draft Royal Decree establishing ETDA	Revises ETDA		Not clear
	eCourt	Establish dispute resolution?	Where does this fit?	Not clear
9	Competition Law upgrade (missing)	Promote and regulate completion.	Should apply to telecoms sector . See separate paper on this.	Revision to Trade Competition Act made, no impact on Telecoms.
10	Structural reform eg: Mandated access to wholesale services and infra from SOEs (missing)	Towards properly structured industry	Infrastructure – covered in detail at 28 March Open Forum – see long PPTX.	No law on this. A major policy gap

The status of enactment at time of press time for this ICT Chapter update (December 2016) the laws are in various stages. The areas in blue continue to be significant gaps.

The **Computer Crimes Act** amendment is controversial. Key points of concern are noted in the table. It is recommended that this law be amended as soon as possible (even though only recently enacted).

The internet is an essential business tool and a key ingredient in an intelligent and well informed society. Both aspects are thus relevant to Thailand as a business destination. Thus EABC has proposed a TRUSTED INTERNET as the basis. This has elements of security, privacy and (with some limits) free expression and comment, all essential in a business context.

The amended CCA grants authorities wide powers to control and censor online content and widens the law about defamation (which can be criminally applied), almost making possession an offence in itself.

Authorities can now access private data without following usual process. Such data includes records of financial transactions, phone calls and text. Records of what is done with such data are not mandatory.

What can be compulsorily removed from the web is too broad. Illegal content includes that which 'threatens stability', 'threatens the economy', 'is immoral' and content violating copyright laws.

Unfortunately the amended CCA does not support the TRUSTED INTERNET concept.

The 2016 Position Paper has detailed recommendations on the **Personal Data law** in particular on the cross border regime. It is important that this is on a 'Rule of Law' basis.

2. Telecommunications sector – major issues

SOE Reform

The background to how the telecoms structure can optimally function is well covered in the EABC Policy paper 2013 and 2016 and in various other submissions and ICT conference materials on the EABC website. These continue to be relevant. Reform of SOEs and their evolution is well overdue.

The SOEs continue to be used as public policy tools. While a regional broadband network may possibly serve some well, the opportunity to do a properly structured (eg PPP model) national backbone with appropriate wholesale regulation has not been taken.

We reiterate the recommends from the 2016 Position Paper, with the following principles being used:

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

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

An Independent regulator

We reiterate the issues about the importance of an independent regulator as in the 2016 Position Paper.

Foreign Equity Restrictions and service sector liberalisation

The 2013 EABC Position Paper and the 2016 Position Paper covers this in more detail. The issues have not changed.

The Cross Sectoral chapter of this Position Paper describes restrictions on foreign equity participation, and thus effective competition, in the services sector. It also has a useful description of what service sector liberalisation means. A *structured approach* is needed for telecoms, with changes to the law including the Telecoms Business Act which hard wires foreign equity at 49% for category 2 and 3 licences.

With changes in the market, the Foreign Dominance Notification of 2012 continues to be an administrative burden with no value to the economy. It is recommended that it be frozen, then rescinded.

Other Major Issues:

Security and the Trusted Internet

Engagement through Internet governance is essential; Security and freedom are not opposites. The multi-stakeholder model works; top down (only) will not in our recommendation.

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

This section considers security further.

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

Liberalising all aspects of international gateways and addressing bottleneck issues such as at cable landing stations will improve the ability to access affordable bandwidth for international use. Even with CAT's late entry into the Asia Pacific Gateway (APG) cable,

Industry collaboration for peering, domestic internet exchange etc are all encouraged, but producing a new government-controlled CAT-led collaboration should be reconsidered urgently. A network company which needs to be trusted by the whole industry, should not be the driver of a kind of

security which includes national security ideas. Rather in terms of security, network and operational security should be its focus.

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

eCommerce, ePayments, FinTech

eCommerce in Thailand is growing. This is an area under BOI promotion (non tax benefits) and is open for innovation. PromptPay has not worked well and needs an open review.

The ANT Financial Services (formerly AliPay) effectively outsources RMB payments for settlement in PRC. While that may be good for Chinese tourism, local banks have the opportunity to develop attractive platforms also.

Greater transparency is needed in the process of devising national payment platforms.

FinTech sandbox guidelines with regional harmonization are needed.

3. Digital Broadcasting; Digital Content

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

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

The history of these has not worked out quite as hoped, with many finding business tough-going. We understand that the NBTC aims to work out fair and reasonable resolutions.

Further details are in the 2016 Position Paper.

4. IT

Procurement: eAuction, Unlimited Liability, Software IP

The recommendations in the 2016 Position Paper continue. Procurement by government is under review and engagement on this will be important.

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

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

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

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

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

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

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

Work Permit and Visa – The Cross Sectoral chapter of this Position Paper makes recommendations on work permit and visa reform. These include a change to the law to change the definition of “work” and having an easy to obtain business visa (or being ‘visa free’), the idea being to limit ‘work’ to real local employment-type activity, whereas ‘business visitors’ would cover a wide-range of activities normally associated with doing business, including meetings of all kinds, seminars and conferences of all kinds, trade fairs and exhibitions of all kinds and covering all kinds of activity. In the ICT sectors, skills need to be deployed at short notice and often for very short periods (eg configuring a customer set up in a data centre; working on an agile-based software development project. For ‘business visitors’ a change to the law is needed. One way to do that is to apply the concept agreed in the APEC context.

Recommendations about critical success factors for a Digital Economy

- (i) Telecoms networks underpin the digital economy. The structure and operation need to be effective, efficient and innovative; reform is needed to include an effective wholesale market
- (ii) SOEs must evolve to be licensed, competitive operators, not instruments of policy. Policy vision should be about the industry as a whole and how it can play a more effective role in the national economy. This is a major gap in Digital Economy policy and law.
- (iii) SOEs should not compete with the private sector and should focus on fixed line wholesale services and infra provision.
- (iv) All commercial operators licensed by NBTC; all commercial spectrum should be allocated by auction.
- (v) Laws should respect and encourage the role of civil society, not be all 'top down'. They must engender trust in the use of the internet. The recently amended Computer Crimes Act for example does not do this.
- (vi) Thailand needs a Rule of Law based cross border regime for data. The 2016 Position Paper has details.
- (vii) Higher expectations about service quality – especially mobile broadband
- (viii) Security should start with network and operational security, all parties have a role.
- (ix) Continued liberalisation of International Internet Gateways – a strategy for lower cost international capacity; private sector-led sharing and pooling / peering
- (x) National security should be run according to law (cybersecurity and revised computer crimes act) using an overlay platform, by a government agency not involved in network operation, not being mixed with an SOE operator. Trust is essential
- (xi) The multi-stakeholder model of internet governance (now accepted by a majority of the world's economies), with any necessary adaptations, is the only workable model. A top-down model will not work. A Trusted Internet is vital. This model includes civil society governance and multi party responsibilities for security.
- (xii) Funds for innovation for start ups and later stage development by enabling the market not by government run VC funds. Removing the regulatory burden would be a major achievement.
- (xiii) Free movement of skills, education change and re-skilling
- (xiv) A range of other enabling factors such as the personal data protection law, eGov penetration, better standards for eCommerce.

Insurance

SUMMARY OF RECOMMENDATIONS

1 Liberalisation of insurance industry

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

2 Enhancing the development and competitiveness of the insurance industry

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

3 Other recommendations

- 3.1 Promote insurance knowledge to create well-informed and empowered consumers as well as qualified insurance professionals
- 3.2 Promote higher standard of ethics within the insurance industry
- 3.3 Promote tax incentives for health insurance
- 3.4 Remove constraints to allow health insurance policies to be sold in foreign currencies

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

Nations that have well developed insurance industries are able to focus on the economic and social welfare aspects of their population that are not readily insurable, knowing that insurable risks are catered for by the insurance industry.

According to The Geneva Association (The International Association for the Study of Insurance Economics) in their 2012 publication *The Social and Economic Value of Insurance* the ways in which insurance contributes to society and economic growth can be summarised as follows:

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

The EABC congratulates the Royal Thai Government for its recent engagement in 2016 with the 3rd party such as the World Bank to provide advice to the Office of Insurance Commission, on a reimbursable basis, on the development of the insurance market in the country. This work of the Office of Insurance Commission, with World Bank support, aims to foster an environment in which the

insurance industry can efficiently expand and grow. The EABC Position Paper: Insurance chapter is a companion of the World Bank's report to further strengthen Thailand's competitiveness for the insurance market. The European expertise and technical advices on insurance industry will allow additional development in Thailand.

1. Liberalisation of the Insurance Industry

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

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

Recommendations:

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

2. Enhancing the Development and Competitiveness of the Insurance Industry

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

Capital

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

Recommendation:

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

Regulations / Product Approval Process

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

In certain cases of innovative insurance products, such long and difficult approval processes (which can happen in a very subtle way) result in the said product being copied easily over time and before any market momentum has been established. Consequently, an insurer who creates a new product will lose their competitive edge and later be discouraged to innovate again. A key example is the way that a 'Unit Linked product' has been introduced into the Thai market. Many of Thailand's ASEAN peers have a flourishing Unit Linked product sector, with markets like Indonesia and the Philippines enjoying more than 60 percent sales of Unit Linked policies. Unit Linked products expand customer choice; greatly improve the health of the life insurance industry by reducing guarantees, and help customers to plan insurance needs to their individual circumstances.

Whilst Unit Linked products are now available in Thailand, design constraints are highly restrictive and sales licensing requirements are prohibitive. As local companies begin to understand these products and start introducing them into their respective portfolios, lobby groups gain more traction and so laws will inevitably be changed to support them, but this process takes time and ensures that any competitive edge is all but removed by the time the process unravels.

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

Recommendation:

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

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

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

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

a) Difficulty in attracting foreign investors

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

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

Further, the new Acts require that when any relaxation or permission as regards foreign ownership levels is granted, it must be published in the Government Gazette, together with the rationale and conditions or timeframes.

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

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

b) Difficulty in attracting foreign experts

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

For example, high registered capital and a specific ratio of Thai to foreign employees are required for each work permit issued to a company. These metrics are not appropriate for SMEs, especially in the services sector and when critical skills are needed. SMEs, many of which provide important services to much larger organizations, often begin as sole proprietorships, or with just two or three partners and no additional employees.

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

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

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

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

Recommendations:

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

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

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

Tariff System

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

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

Recommendation:

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

3. Other Recommendations

Recommendations:

1. In response to the 'Disclosure-Based' principle, which aims to create educated consumers who can effectively make well-informed consumption decisions, the EABC encourages the OIC to take a leading role in dispersing knowledge to create well-informed and empowered consumers and actively encourage the public to have sound risk management systems. Consumers need to make purchases with confidence; therefore, they need to know which insurance products are available in the market and which are likely to meet their requirements. They also need to gain access to all critical information and clearly understand insurance products they are contemplating purchasing. An effective way to achieve this goal is to develop a simple targeted communication plan, which is to divide the target audiences into small groups (either by age, education, area, income, etc.) and then customize the content and messages that each group can relate to.
2. Repatriation of funds by investors is subject to criteria which are unclear, inconsistent, and lack transparency and standard procedures. Such activity has to be conducted through time consuming negotiations with the OIC and results are not guaranteed. The EABC wishes to work closely with the OIC and other related government agencies to relieve the said difficulty obstructing the free transfer of capital and payments in connection with investments by foreign investors. The removal of such restrictions will make Thailand's market much more attractive.
3. Increasing Thailand's healthcare expenditure will become a problem for public to access quality healthcare services while the national budget providing for the public healthcare system is insufficient. Private health insurance can help reduce rising expenditure in public healthcare system, middleclass people, who do prefer for better private health insurance, are reluctant to demand such premium services. This is because private companies already pay to social security. The EABC would propose the Royal Thai Government to consider tax incentives, such as deductible for personal income tax, for individuals to purchase private health insurance to reduce burden to public healthcare expenditure. This will ensure public healthcare system maintaining sufficient fund to provide quality services to those who are unable to afford the premiums.
4. There has been increasing demand for premium healthcare in Thailand. High net-worth individuals tend to buy Universal Life Policy outside Thailand for superior products, estimating 30,000 – 40,000 Mbht per year. Whist the local insurance market is capable to compete with the overseas offering, they would also need the support from insurance regulatory and development authority. The EABC recommends Thailand to remove constraints for health insurance policies to be sold in foreign currencies. This would also bring additional revenue to Thai insurance industry.

Intellectual Property Rights

SUMMARY OF RECOMMENDATIONS

- 1. Amendments to IP-related legislation**
 - 1.1 Amendments to Trademark Act on accession to Madrid Protocol and illegal refilling practices; and amendments to Trademark Act on protection of sound mark
 - 1.2 Challenges of Thailand accessing the Madrid Protocol (International Trademark Registration System)
 - 1.3 Amendment of the Geographical Indications Act B.E. 2546 (2003)
 - 1.4 Amendment of the Patent Act to Facilitate Accelerated Registration Process
- 2. IP Policies**
 - 2.1 Trademark elimination via plain packaging policy and excessive measures restricting normal use of trademarks
 - 2.2 Patent and Trademark registration procedures via Licensing Facilitation Act (LFA)
- 3. Intellectual Property Rights for ICT**

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

1. Amendments to IP-related legislation

Amendment to the Trademark Act supporting Thailand's accession to the Madrid Protocol, allowing a registration of unconventional mark and multi-class application, has been enacted and in effective in late July, 2016.

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

The EABC has underlined during various meetings with the Thai authorities the urgency to protect unconventional marks such as scent and sound as well as to prevent illegal refilling, which affects various industries including food and beverages, perfumes and cosmetics, and automotive, in order to reassure the protection of consumers as well as the rights of IP owners. The Thai Department of Intellectual Property (DIP), during various discussions and consultations with the EABC and its European business representatives, duly took note of the issues and concerns. In the end, only sound mark is accepted to be one type of mark for registration and has the same legal requirements as traditional marks. Though the Trademark Act introduces the accession to the Madrid Protocol, it needs the process of ratification by the Thai Ministry of Foreign Affairs to be completed in order for the Madrid system to be effective in Thailand.

Recommendations:

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

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

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

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

Advantages Expected:

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

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

Possible Challenges:

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

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

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

- Communications between the DIP and the IB could result in problems for the DIP, and would have a domino-effect on trademark owners and agents;
- Timeframes of the system are inflexible. Significant adverse effects could result from the failure by users of the system to meet particular deadlines;

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

Recommendations:

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

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

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

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

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

Recommendations:

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

Amendment of Patent Act to Facilitate Accelerated Registration Process

The period of patent approval from the submission to the approval date remains unpredictable and can be counted as long as 12.6 years on average in Thailand, due to a lack of human resources – particularly chemical and pharmaceutical patent examiners – at the DIP. The bottlenecks, resulting in only 1,286 patents granted in 2014¹ and 1364 patents granted in 2015², give rise to uncertainty of investment protection for rights holders and increase the possibility of infringement from local generic companies during the pending approval periods, which damages both local businesses and innovators. Under such unpredictable circumstances, the patent term restoration or adjustment have never been established in the Thai legal framework.

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

¹ http://www.wipo.int/ipstats/en/statistics/country_profile/profile.jsp?code=TH

² <http://www.ipthailand.go.th/th/patent-012>

on. Consequently, it is evident that the patent office under the DIP faces the loss of potential revenue from renewal fees should the patentee opt to abandon the patent before it is granted. In conclusion, not only does the huge delay of the DIP in granting patents discourage applicants to seek protection in Thailand, but this also means missing out on potential earnings for the DIP.

Recommendations:

1. We recommend Thailand increase the numbers of examiners and improve the patent approval process with a reasonable timeframe for patent registration. Details of amendments proposed by DIP are in Annex VI.
2. Patent term restoration should be considered and established as a solution to create fair practices to compensate rights holders, considering the current patent backlog in Thailand as well as the delay of regulatory marketing authorization. In the circumstance that a reasonable timeframe of registration is presented, the patent term restoration will only occur in case of a delay. This should enhance effectiveness and productivity in government procedural level with mutual benefits.
3. Promote a regular dialogue and consultation between the public and private sectors for information sharing

2. Policies Related to IPs

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

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

The draft tobacco product control act (being considered by the National Legislation Assembly – Espousal accepted on November 11, 2016) seeks to introduce a plain packaging of tobacco products. Such policy would result in companies having to relinquish their use of registered trademarks, or valuable elements of registered trademarks, in order to comply with the new requirements.

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

Where intellectual property rights are concerned, the policy or legislation on plain packaging would surely eliminate trademarks and their respective value. Because of this potential elimination of trademarks, such policies risk being in contravention of TRIPs Article 20³, which prevents unjustifiable encumbrances of trademark rights.

Similarly the Alcohol Labelling Notification impedes the use of certain registered trademarks for alcohol beverages and likely constitutes a serious barrier to trade, especially to international companies, and some brands could be forced to exit the Thai market. Furthermore, such a

³ TRIPs Article 20 states that the use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as, use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings.

Notification is difficult to comply with due to its ambiguity and broadly defined terms. This raises a grave enforcement concern, considering the reward scheme. Most importantly, plain packaging of any protected trademark products would increase and ease the production and transaction of counterfeit goods.

Recommendations:

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

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

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

Recommendations:

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

3. Intellectual Property Rights for ICT

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

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

but more directly it is about the harm to systems through infections, and the time and effort they take to rectify. Remedies include a range of measures:

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

Copyright – eCommerce context

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

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

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

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

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

Rail and Road Infrastructure

SUMMARY OF RECOMMENDATIONS

EABC recommends:

- Thailand shall implement the Central Railway Authority to improve efficiency and transparency for railway infrastructure projects.
- Thailand shall consider European expertise for railway systems regarding standards, life cycle cost, interoperability, tender supervision, financing and civil engineering.
- Thailand shall start Thai Industry for Rolling Stock and Railway Systems with European support to supply ASEAN market.

Railway Main Focus

Central Railway Authority

Up to now any railway institution is specifying standards and approvals by itself. Sometimes this is done without sufficient expertise. This affects the quality and interchangeability. Corruption may be favored.

The Minister of Transport realized the proposal of EABC to set up a Central Railway Authority following European Nations role model.

This is adopting a new department in the Ministry of Transport, which shall perform the central function. Details are not yet known. EABC offers to bring the staff of the Ministry in contact with European comparable authorities to support implementation of the intention.

Life Cycle Management with RAMS Standard

Tender specifications mostly consider purchase cost but not Life Cycle Costs. EABC offers help to implement the International Standard of RAMS: **R**eliability, **A**vailability, **M**aintainability, **S**afety.

The method is perfect for the evaluation of different offers. It includes the preventive maintenance that so far is unfortunately neglected. It enables an objective risk analysis and assessment. To enforce the financing model of PPP, preferred by the government, RAMS is indispensable!

EABC organised a seminar on this topic in January 2016 at Chulalongkorn University with European experts.

EABC can provide specialists for the introduction of the system. Possibilities for funding by European Union to implement RAMS in tender specs will be checked in 2017.

Unification and Interoperability

Different solutions and systems for the same purpose are very costly. Examples are:

- Different signalling systems for rolling stock, different operational CNC system for maintenance machines.
- Staff problem - not exchangeable, high training cost.

- Spare part problem - inefficient warehousing.
- ASEAN institutional decisions needed for Cross border problem - no continuity with neighbouring states railway system yet.

Thailand, with its goal to become ASEAN transport and logistics hubs, needs to demonstrate leadership in ASEAN by considering unification for the transport system and interoperability for the region.

Supervision of Planning and Tender Specifications

The EABC analysis has shown that the technical level of tenders is severely outdated. As there was little activity on the railway sector for a long time, most consultants invested not much in international education. And lack of liberalization in the service sector is an obstacle for know-how transfer from abroad.

A solution that has proven successful in other countries such is the accompanying control of tendering by an international body. This committee may only consist of professionals with proven experience in tendering design of similar projects in other countries.

In addition, they may not engage in any business activities Thailand.

The current efforts to secure the quality of the investment goods to be procured are concentrated in two areas:

First, to describe the characteristics of the product as precisely as possible. This is, however, incredibly difficult as it requires a most de-tailed knowledge of the international state of the art. Here performance-oriented tenders would be much more helpful.

Secondly, reference letters from international customers are required. Unfortunately, this does not say much about quality and longevity of the investment goods. The references are not evaluated. There-fore, a reference of a world leading railway user has the same value as the reference of a developing country with little knowledge of railways.

Financing Rolling Stock

The European industry is the world leader in the production of rolling stock for railways. The technical progress allows the highest quality and an extremely long service life of the products with the lowest lifecycle costs!

The manufacturers can offer to the Thai railway operators favourable financing possibilities through leasing for periods of up to 15 years.

Lease financing allows existing budgets to be used for investment in construction and maintenance. Such also large projects to be realized quickly. After the end of the leases the vehicles can be taken over at favourable terms.

Successful tendering requires detailed knowledge of the contractual conditions for financial leasing. EABC can provide specialists for the correct preparation of tenders.

Set Up Thai Industry for Rolling Stock and Railway Systems

THE EABC believes Thailand has excellent conditions given for assembling and production of rolling stock and railway systems.

Discussions with leading European manufacturers have shown that a local production presupposes an adapted procurement policy. Instead of repeatedly buying a small number of material, master agreement long-term contracts on larger quantities shall be concluded. So, Thailand can build its own railroad industry - like it succeeded great in the automotive industry. This could not only help in meeting the Thai railway requirements, but also allow exports mainly to other ASEAN countries. Such industry, with support of the European Industry, will also be able to refurbish old and outworn rolling stock in order to save a lot for the railway operators.

Liberalization

The EABC is sure, liberalization would have very high positive impact on the Thai economy in short and long term. Many problems that are currently visible in the implementation of railway investments could be tackled by international experts. This is limited by the visa and work permit requirements and by legal restrictions that forbid certain professions for strangers.

Looking to any other nation, liberalization always was a success for growth and prosperity!
EABC suggests starting with a statutory exemption for European railway experts.

Civil Engineering

In civil engineering, there is also considerable room for improvement. Design recommendations from experienced experts are required, as sometimes totally obsolete standards are stipulated. The long-term quality of structures is low. The lack of systematic inspection, evaluation and maintenance, results in a cost trap for future generations. This could be avoided by co-operating with experienced international experts, free from any conflict of interests.

Railway viaducts, for example, designed in accordance with the Euro-codes, have a longer life span and considerably lower construction costs than the viaducts built in Thailand based on American standards.

Education

From European point of view in terms of railway experts the Thai universities have a potential to develop the level of science and, moreover, the number of students in this field seems to be much too low for the explosion in demand. Today salaries for good professionals rise so high that they can no longer be brought into conformity with the rigid tariffs of state business organizations.

EABC has already begun with the help of support programs of the European Union to initiate specialized courses for railway technicians at Thai institutions.
EABC supports the academic exchange of knowledge.



Transport & Logistics

SUMMARY OF RECOMMENDATIONS

1 Strategic goals for customs facilitation

- 1.1 Improve Transparency and Predictability in the drafting and implementation of policy, rules and regulations through the involvement of all stakeholders and affected parties in a fair and open consultation process.
- 1.2 Clearly state the service commitments of Thai Customs vis-à-vis the trading community and likewise the expected commitments from the trading community to Thai Customs.
- 1.3 Clearly indicate ways in which companies can comply with regulations and accept the concept of “reasonable care”. Thai Customs to accept voluntary disclosures from importers / exporters / agents / any other concerned parties of errors and breaches of regulations with reduced / waived penalties. Customs to publish guidelines for Compliance to aid much needed transparency.
- 1.4 Set up an external, impartial legal channel to settle disputes between Thai Customs and importers / exporters / agents, bonded warehouse holders and any other concerned parties.
- 1.5 Limit the application of Customs Penalties (up to 4 times cargo value) to cases where Intent to defraud or evade duties can be proven (Burden of Proof on Customs). Administrative faults or simple errors with no intended gain to be subject to much smaller administrative fines. This ruling to apply not only to cargo imported or exported but also to stocks held in Bonded warehouses.
- 1.6 Align regulations and processes with international and regional best-practice as well as with international agreements already signed by Thailand. In particular Thailand to ratify the ASEAN Framework Agreement of the Facilitation of Goods in Transit and on Interstate Transport including all Protocols and transpose both into Thai Law. This to provide the basis for implementation of the ASEAN Customs Transit System (ACTS) where Thailand, together with Singapore and Malaysia is charged with a pilot role.
- 1.7 Transit of goods under Customs Bond by an authorised ASEAN Authorised Economic Operator (AEO) between Customs-free zones of any type, on the borders or inland, be free of restrictions as to routeing, type of vehicles to be used, transshipment, tracking and tracing, sealing of vehicles, or loading together of goods having differing Customs status. The only obligation of the Cargo Owner or his Agent to be the delivery, intact and correct, at the specified destination Customs-Free zone within a reasonable period, of the goods listed on the manifest. Penalties from non-observance of this obligation to be charged against the guarantee lodged by the AEO with Customs
- 1.8 Again in line with ASEAN rules, change the requirement that all documents required for Customs clearance of cargo into Thailand, especially Import Licences, be present immediately when goods enter Thai sovereign territory. The requirement to become that the documents must be presented if and when the cargo move from a Customs-free area in to duty-paid free circulation in Thailand.

2 Individual measures in customs and trade facilitation reforms

- 2.1 Thailand to raise the “de minimis” level and the threshold for low-value, dutiable (Cat. 3).
- 2.2 Customs declarations in Thailand to be either in Thai or in English language but not in both languages
- 2.3 The Thai Customs Department to allow in principle that consolidated shipments be break-bulked within Customs-free areas as a matter of policy. Operational details to be worked out with the logistics service providers.

- 2.4 The Thai Customs Department should follow their own regulations and revert to paperless clearance at Suvarnabhumi airport customs and drop the re-introduced manual clearance procedures.
 - 2.5 The Thai Customs Department to revise Customs Notification 79/B.E. 2554 and allow submission of data for outbound shipments 30 minutes before flight departure in line with international best practices, to promote higher exports.
 - 2.6 Thailand to separate tariff codes for controlled (needing an import licence) and non-controlled items to facilitate the import of non-controlled items. This is particularly important for products with the Life Sciences Industry.
 - 2.7 Thailand to reduce delays in the application process for free zone licenses by providing more clarity to the guidelines especially in terms of process and requirements.
 - 2.8 Thailand to improve its e-Paperless procedures. Manual handover of original ID or passport to customs brokers for several days when processing the registration should be eliminated and replaced by a more streamlined process.
 - 2.9 Operating hours of Customs and related offices at orders and Free-zones to be widened to a standard 24/7 at strategically important points including Suvarnabhumi, Laemchabang and the major international road crossing points such as Sadao, Mae Sot, Nong Kai, Mukdahan and Aranyaprathet. Second-level border crossing points to move to 12/7 and no overtime to be charged within these opening hours.
 - 2.10 Suspended goods in customs custody should be allowed to collect within 2 months
- 3 Rules on foreign direct investment**
- 3.1 We recommend that Thailand open the postal market to competition.
 - 3.2 We encourage Thailand to review its regime for foreign investment, in particular in the services sector and the Logistics industry in line with ASEAN policy. World-class Service industries play a critical role in supporting the growth of strategic manufacturing sectors.

Thanks to its strategic geographical location, Thailand has a unique opportunity to position itself as the leading logistics hub in ASEAN. The Government has stated an objective of lowering logistics costs significantly in order to improve Thailand's competitiveness in preparation for the ASEAN Economic Community (AEC) (OTP, 2016).

The EABC heartily endorses these aims.

The present national laws and regulations governing the Importation, storage in bond, transit and re-export of cargo are, however, completely unsuited to those ambitions.

1. Long term goals for customs facilitation

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

The Thai Customs Department has in the past decade introduced a number of laudable initiatives, such as an automated clearance system and simplified procedures for reliable traders.

There remain, however, significant negative features:

Legal framework

The legal framework lacks sufficient clarity and therefore becomes subject to interpretation from individual customs officials. Detailed, technical guidelines are not always made publicly available, which makes enforcement and customs clearance procedures a source of uncertainty for the business community. In order to ensure foreign businesses' confidence in the Thai economy it is important that rules and regulations are aligned between departments and ministries as well as that timely public consultation takes place. Equally important, the policy framework and legal environment must be improved to serve fair, market-based competition and wider social interests prior to the enactment of rules, regulations and laws. When changes to the law are being considered it is important that stakeholders and other concerned parties should be involved in a fair and open consultation process on such changes. There must be clarity over what may / shall be expected from all stakeholders

Reasonable care concept

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

In the case of disputes arising despite all efforts an impartial, separate legal channel should be available for resolution of such disputes

Reward and penalty system

The Current **reward and penalty system** within the Customs Department encourages individual customs officials to take an aggressive and rigid stance in customs clearance, including customs valuation, document inspection, controls and audits, in order to get rewarded even for minor, administrative errors.

Currently the Customs do not bear the burden of proof and so they are allowed by law to qualify various non-compliances as smuggling, regardless of the circumstances and the intention of the alleged offenders.

The EABC completely agree that, where there are clear instances of intentional non-compliance, traders should be penalised.

However, technical mistakes are currently disproportionately penalized by Customs with fines of up to 4 times the value of the goods concerned.

This is a significant disincentive for foreign companies working in Thailand, especially where it is applied to routine stock discrepancies in the warehouses of companies manufacturing in Customs-free areas.

Whilst it is important to have in place effective customs investigation to prevent any offence or attempted breach of customs' provisions, a clear distinction must be made between intentional serious offences and unintentional or technical mistakes. This is well recognised under the Revised Kyoto Convention (RKC) which 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 this shall be no greater than is necessary for this purpose"*.

EABC appreciates that in the new Customs Bill the percentage of rewards paid to Customs officials may reduce from 25% to 15% but the company being fined will still pay 100% so there is no reduction of the dis-incentive, and it is arguable that customs officials may have an incentive to use all means to investigate more traders for possible errors to replace lost income.

EABC support the position taken by the Thai private sector represented by the Joint Standing Committee on Commerce, Industry and Banking (JSCCIB), that, in order to prevent abuse of the reward and penalty system, heavy penalties should only be imposed and rewards only allowed in cases which have clear fraudulent intent as reflected in international best practice under the RKC. The burden of proof of guilt should here, as elsewhere, be on the prosecution i.e. the Customs and, as mentioned above, in case of dispute, clear and independent legal judgement should be provided

Goods in transit

Thailand's current regime for goods in transit particularly affects cross-border road freight services and works diametrically against the Government's objective of establishing Thailand as a logistics and transit hub. Currently, regulations do not allow loading in the same vehicle goods in transit and goods for import, unless all goods are formally imported into Thailand (i.e. even goods in transit). They do not allow goods destined for different types of Customs-free zone to move in the same vehicle nor for goods to be transhipped en-route. Effectively consolidation of many shipments into one economical load is almost impossible to arrange legally. Regulations require presentation of documents at border posts even though the shipments in question will not be cleared into free circulation there and, in many cases, never will enter Thailand for Customs purposes as they are for regional distribution. In addition, Customs border posts and Free-zones need to be specially authorised for the various types of Transit and not all are. For example, Sadao, one of the major border crossing points in terms of number of vehicles and volumes, is not a pre-approved transit point, meaning that all vehicles passing in transit have to go through separate approval procedures. These complications, (and there are many more), result from attempts to fit the present and future developing traffic flows into the format of 90-year old regulations.

We suggest that it would be more beneficial for Government policy to draft completely new Customs Transit Rules based on international best practice as embodied in ASEAN's AFAFGIT, AFAFIST and AQCTS regulations. Thailand has signed all these agreements but has not implemented them or incorporated their rules into Thai regulations. Were Thailand to do so, it would become possible to transit in-bond cargo between any Thai border-station and any inland Customs-free area as well as between different Thai border-stations, based only on the guarantee given by a ACTS-based Authorised Economic Operators (AEO) to Customs that the specified shipments will be delivered intact to the specified destination Customs-free area within a reasonable period of time.

Should the AEO or his agent fail to deliver the goods as committed, Customs penalties would be applied to the guarantee which Customs hold from the AEO and, in case of repeated offenses, the AEO privileges can be withdrawn. The entire structure of specified or non-specified entry-points,

specified routings, tracking and tracing, limited transshipment possibilities, sealing of trucks, separation of shipment of differing Customs-status etc. becomes unnecessary.

Again following international best-practice, Thailand can recognise that, when we are functioning as a transit-hub, many shipments moving into and through Thailand will never enter into free-circulation here.

It is, thus, inappropriate and counter-productive to apply rules on required import documentation to every shipment coming over Thai borders. If and when cargo moves from a Customs-free area into Thai free-circulation full and correct documentation, including import-licenses, must, of course be presented. Duty and tax must also be paid at that point. Other cargo, which is to be distributed to other countries within the region, will never need Thai import documentation and should not be obliged to hold it.

On this basis, cargo can move into, and out of Thailand in the most rational and cost-effective fashion and the concept of Thailand as a transit logistics hub can become reality.

As a footnote, similar results can/could be obtained using other international transport agreements such as the CBTA or TIR, but the ASEAN system would benefit from the many years of preparatory work which has already been done.

2. Individual measures in customs and trade facilitation reforms

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

Helpful policies are the key to efficient and competitively priced logistics services. They need not require a lot of government resources, but can have a large positive impact and create important spill-over effects in the local industry.

Raising the de minimis level and the threshold for low-value, dutiable (Cat. 3) shipments

Trade facilitation seeks to reduce the transaction costs faced by exporters and importers. Reducing these costs stimulates trade, investment and business innovation. A so called “de minimis” regime provides streamlined border clearance and exemption from customs duties and other taxes below a specified threshold. For low-value shipments, the cost of collecting duties/taxes may far outweigh the revenue collected. Governments can thus refocus their revenue collection efforts on revenue sources such as high value and high risk shipments, reducing the costs borne by importers and speeding up the delivery of imports. The World Trade Organisation (WTO) and the World Organisation (WCO) have also recognised the important trade facilitation aspect of de minimis thresholds. The introduction of an appropriate de minimis facilitates trade, promotes e-commerce and lightens the workload for customs clearance by adopting a more focused approach towards higher value shipments.

Most ASEAN economies already have de minimis arrangements but they vary considerably. In Thailand, the threshold is currently only THB 1,500 (around USD 48). A study has shown that the net economic benefits to Thailand with a de minimis threshold of USD 200 would be USD 43.4 million per

year, whereas the corresponding figure with a USD 100 de minimis threshold has been estimated to USD 27 million per year.

Similarly, a higher threshold for low-value, dutiable shipments (Category 3), would simplify the customs clearance process and ease the administrative burden for business.

Recommendation:

We welcome the Thai Customs Department revising provisions related to simplification of imports, such as de minimis, and rising the de minimis threshold to at least THB 3,000 (around USD 100) or higher. We also propose that the current threshold for Category 3 (low-value, dutiable) shipments is raised from THB 40,000 to THB 80,000.

Formal Customs entry in English

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

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

Recommendation:

Using of English alone will greatly facilitate the preparation of customs entries, speed up the delivery process and improve staff productivity.

Restrictions to the Break-Bulk of Consolidated Shipments in Free Zones

Importers typically consolidate shipments to allow for greater efficiency and better costs controls when importing into Thailand. However, Thai Customs has disallowed the break-bulk of shipments in free zones upon importation and after clearance even though this does not violate any regulation or legislation.

The impact of this is higher costs and slower speed to deliver, as the consolidated shipments needs to be double handled, delivered to a facility outside of the free zone, and break bulked prior to delivery. This weakens Thailand's competitiveness as other ASEAN countries do not place similar restrictions to break bulk consolidated shipments in a free zone.

Recommendation:

To stimulate the growth of Thailand's increasing cross-border e-Commerce trade, which largely benefits Thailand's SMEs, the EABC proposed that Thai Customs, in principle, allows consolidated shipments to be break bulked, as a matter of policy. Operational details can be worked out with the logistics service providers.

Green line import permit entry

As part of the Thai Customs Department's efforts to streamline and modernise its customs procedures, it had introduced the use of electronic data interchange (EDI) to facilitate customs clearance via the e-Customs system. The regulations with regards to electronic customs clearance state that customs entries can be lodged by electronic means in Customs' computer systems. The

regulation furthermore states that Customs' IT system is to transmit approval information / license to the Customs computer system through an integrated system, and can serve as a single processing point. In this regard, under the importation declaration and clearance process in the e-Customs system, there is no need for submission of any paper documents, as all data will be transmitted electronically.

However, The Suvarnabhumi Customs Bureau Notice no. 4/B.E.2556 requires that all brokers and business firms, effective from 3 June 2013, submit the original import license prior to the issuance of the cargo permit for "Green Line" inbound shipments, and print all cargo permits at the Airport Customs Bureau Office, at an additional cost of THB 40 per shipment. This decision introduces a parallel manual processing of paperwork, in addition to the paperless clearance requirements previously in place. It thus runs counter to Customs' own regulations which do not require hard copies to be presented. This has resulted in delays of up to half a day.

Recommendation:

We would recommend that Thailand do away with these manual procedures and reinstate the prevailing fully automated procedures, according to the regulations of the Thai Customs Department.

Data submission 2 hours before flight departure for express shipment

According to Customs Notification 79/B.E. 2554, express operators need to comply with data submissions for export shipment two hours prior to flight departure. However, international standard, such as in the EU and US, allows express operators to submit data 30 minutes prior to departure. This policy adversely affects Thai exporters, since time in transit is critical in today's global markets.

Recommendation:

The EABC encourages the Thai Customs Department to revise Customs Notification 79/B.E. 2554 and allow submission of data for outbound shipments 30 minutes before flight departure in line with international best practices, to promote higher exports.

Same codes for controlled and non-controlled items

Some life science products, such as blood laboratory testing, which are so called "non-controlled items" have to use the same tariff code as controlled items (requiring import licenses). However, blood for lab tests is not considered a controlled item by the Thai Food and Drug Agency (FDA). Since express customs procedures are not allowed for controlled items, every time blood samples are imported to Thailand, they need to be processed through formal customs clearance. This adds considerably to the customs clearance lead-time for laboratories and works against the Government's aspiration of making Thailand 4.0, which demands facilitation for R&D.

Recommendation:

We recommend that controlled and non-controlled goods have separate Customs tariff numbers

Delays in applications for Free Zone licenses

The stipulated timeline for completion of the application process for a free zone license (for all operators within a Free Zone area) at the Customs Department is one month (22 working days). However, in reality, this process lasts for two months (45 working days). This is due to the fact that several departments within Customs are involved in this approval process (e.g. admin, IT, audit department). Due to the lack of clear procedural guidelines, the process takes time since applicants

are unclear about what is considered a complete application, and the process appears to be ill coordinated internally within Customs.

Recommendation:

To avoid opportunities for poor governance and practices, we recommend that this process be clarified in a publicly available guideline, so that the process and requirements can be made clearer for the applications and the processing time shortened.

e-Paperless Registration

The Thai Customs Department has since 2008 implemented a system called e-Paperless to support electronic trade and trade facilitation. But the way to certify an importer's identity through the e-Paperless system still highly manual since Customs requires an original ID or passport for registration. This causes additional cost and delays for the importer or exporter, who has to hand over original ID or passport to customs brokers for several days processing of the registration with Customs.

Recommendations:

1. We recommend that Thai Customs Department provide an online e-paperless registration by scanning the original ID card/passport and uploading it to customs web service to assure and confirm identification for registration. Recognised, reliable customs brokers and logistics companies have robust procedures in place for registration of customers.
2. We would welcome if the Thai Customs Department relies on this category of operators to verify the identity of its customers upon registration rather than having to go through a separate procedure with Customs.

Operating Hours

There is uncertainty and inconsistency in the working-hours of Customs in different locations. Stakeholders are unclear about the criteria, and in some cases Customs overtime is charged even though the work appears to be within extended but normal working hours.

Recommendations:

We recommend that Customs reconsider the opening hours of Customs (and related services eg Quarantine / Immigration) at all borders to ensure consistency, extend wherever possible to 24/7 and ensure that, when hours are extended beyond the "09-17hrs Mon-Friday", no OT is charged within those extended hours.

Suspended goods in customs custody

Under the Licensing Facilitation Act B.E. 2558 (2015), which aims to improve government agencies' efficiency, suspended goods in the customs custody have to be removed within 30 days instead of 60 days. Whist businesses also want to collect goods as quickly as possible, obtaining required documents may take longer than 30 days.

Recommendation:

The EABC recommends that the Royal Thai Customs extended period to collect goods from the custody.

3. Rules on foreign direct investment

Gradual liberalisation of the postal sector

According to the Postal Act of 1934, the Royal Thai Government has the exclusive right to handle postal services. Collection, delivery or handling of letters and postcards fall under a monopoly held by Thailand Post. The breach of the postal monopoly by private postal, courier or express delivery operators is currently subject to a fine of THB 20 for each letter and postcard that is delivered from abroad to an addressee in Thailand. This creates an uneven level playing field, since the monopoly also covers segments which are outside the scope of basic postal services (such as express mail).

Recommendation:

We recommend that Thailand go down the same path as many other countries in gradually opening the postal market to competition.

Liberalising logistics services

The ASEAN Logistics Roadmap contains a list of sectors where ASEAN member countries “shall endeavour to achieve substantial liberalisation” by 2013. The objectives of the Logistics Roadmap are to “create an ASEAN single market by 2015 by strengthening ASEAN economic integration through liberalisation and facilitation measures in the area of logistics services”. The AEC further commits to allow for foreign (ASEAN) equity participation of 70 per cent by 2013. Current rules in the Foreign Business Act limit foreign direct investments in logistics services to 49 per cent equity ownership.

Recommendation:

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

Annex I: Continual Recommendations on FBA by Sector

- **Financial services: banking and insurance**

Due to the sector specific legislation, Thailand's **banking industry** remains restrictive to foreign participation. Currently, the largest five domestic commercial banks control over 60 per cent of the retail banking market with limited forms of competition. Stringent conditions for potential new foreign entities include majority ownership restrictions, limitations on the number of branches (a maximum of three for branches and 20 for subsidiaries), rules on minimum capital requirements and origin of assets and high joining fees for the retail payment system. Incoming foreign banks have also reported substantial administrative burdens and lack of transparency and certainty on legal and tax areas.

In addition, Thailand has Special Financial Institutions (SFIs) which are governed by a special Act under the Ministry of Finance. These financial institutions – currently eight banks – account for 23 percent of banking assets and 26 percent of deposits in the system, and as they are not subjected to BOT oversight and regulation, often these banks compete with commercial banks on an uneven playing field. While they can be deemed to be systemically important, these financial institutions are not governed by the Bank of Thailand, and hence are not subjected to the special prudential measures nor the FIDF fees imposed on commercial banks. Since the revision of FIDF fees to 45 bps, the Constitution Court has ruled in favour of a decree to allow transfer of FIDF debt by collecting 46 bps from all commercial banks and four state owned banks. The four are the Government Savings Bank, the Government Housing Bank, the Bank for Agriculture and Agricultural Cooperatives and the Islamic Bank of Thailand. The commercial banks paid the fee starting in July 2012, but the state-owned banks have not paid because of unclear enforcement.

Foreign participation in the **life and non-life insurance sector** remains restricted and has been further limited with the enactment of the Insurance Act of 2008, which requires existing foreign majority controlled life and non-life insurance companies to amend their voting share structures to become majority Thai controlled by 2013. As a result of the post-flood situation, Thailand has approved increases of foreign equity in insurance companies from the 25 per cent cap to re-capitalize the cash-strapped Thai insurance sector. This however has only happened on a case-by-case basis.

Nonetheless, there has been no formal notice issued that clearly states that those limits no longer apply from a certain date. To progressively liberalize trade in financial services within ASEAN, Thailand is also working towards recognition of professional qualifications (such as insurance intermediation, brokerage) with a view to facilitating their movement within the region. Unfortunately, this again has not led to concrete, measurable results of improved market access.

In an effort to increase foreign participation in the market, Thailand plans to remove the 75 per cent voting rights ('voting share sold') and management control restrictions under the existing Insurance Act of 2008, which require foreign insurance companies to restructure by 2013 to reflect Thai control. Failing to comply with such restrictions will be subject to penalty under the existing insurance laws of 2008 including prohibition of business expansion as well.

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

Transfer of credentials and professional qualifications, restrictions to cross-border supply (even if mode 1 and mode 2 are fully bound), lack of competition resulting in high premiums and

restrictions on innovative products, i.e. medical insurance, are other industry concerns. In addition, where industry innovation has taken place and new product ranges have been approved, discriminatory tax treatment has not allowed these products to become successful. An example of this is the unit linked business from Life Insurers.

The IT and Non-IT offshore regulations, although issued, may open up the possibility of future on-shoring of services. All banks should have the freedom to choose their suppliers, whether onshore or offshore, to enable the most optimum and efficient level of service.

- **Retail and wholesale industry**

The **retail and wholesale industries**¹ are captured under the FBA List 3 businesses. In addition, license to operate these wholesale and retail businesses must be obtained per location and there is no prescribed timeframe for the awarding process. Regarded as specific issues of concern to European investors, the limitations to operate under the FBA have been hindering European businesses' ability to compete on an uneven playing field and to implement the most efficient operational models to the benefit of consumers.

A draft Retailing and Wholesaling Bill has been published on several occasions in the past but has not been proceeded with. The last draft published a number of years ago proposed to impose an obligation to obtain a licence on such businesses, based on either the annual sales figure, the number of units or whether they were branded. Although efforts to push for the enactment of the Act seem to be put on hold, it is important to keep a close eye on potential developments to ensure that this does not lead to unfair, discriminatory practices on certain hyper-marts and superstores, discount stores, supermarkets and convenience stores, to the detriment of legitimate business interests.

- **ICT**

In telecoms services, category 1 licenses are restricted by reference to List 3 of the FBA, whereas for categories 2 and 3, the Telecom Business Act and the Foreign Dominance Notification govern foreign ownership. While there is at least one case of specific approval for majority foreign ownership in category 1, the policy of allowing it should be the norm rather than the exception. This is important for innovation and supporting end-to-end, global services better. The EABC recommends the removal of the Foreign Dominance Notification as it sends the wrong message to investors and adds to regulatory compliance costs without adding any real value. See also the ICT section of this paper.

The EABC appreciates the recent positive developments, and those that are still underway, with respect to the review of List 3 in the FBA to remove restrictions in certain areas of financial services².

¹ *Retail* sale of goods of all types with total minimum capital in the amount lower than one hundred million Baht or with minimum capital of each store in the amount lower than twenty million Baht; *Wholesale* of all types with minimum capital of each store in the amount lower than one hundred million Baht

² *The Amendment of the Category of Business under the Foreign Business Act B.E. 2542*

The Ministry of Commerce amended the category of business under the Foreign Business License Act B.E. 2542 by issuing the Royal Decree for the Amendment of list 3 (13) annexed to the Foreign Business Act B.E. 2542 as follows: "(13) Internal trade related to traditional agricultural products or produce not yet prohibited by law unless the future trading of traditional agricultural goods in Thailand's future trading market of traditional agricultural goods without the delivery or the receiving of the domestic agricultural goods." The effective date of this Royal Decree is from 23 March 2013 onwards. By this Royal Decree, foreigners can operate the future trading of traditional agricultural goods in Thailand without the delivery or the receiving of the domestic agricultural goods without the business license under the Foreign Business Act.

New Ministerial Regulations Prescribing Businesses which are not listed in the List 3(21) of Lists Annex to the Foreign Business Act B.E. 2542
The Ministerial Regulations determines following businesses to be service businesses which are not listed in (21) of the list 3 annex to the Foreign Business Act B.E. 2542, thereby rendering them not subject to foreign ownership restrictions under the FBA, as follows:

Real liberalization will only occur however if the sector-specific laws which govern these sectors actually allow more liberalization. We welcome more progressive development in Thailand's services liberalization which aims to improve capacity, quality and competitiveness in the face of increase globalization. Further improvement of liberalization, in terms of wider sector coverage and a deeper level of commitment, is also envisaged as targeted in the AEC Blueprint. Overall, however, it is regrettable that tangible progress in this respect is not yet forthcoming and commitments seem weak.

The EABC strongly believes that rationalizing the regulatory regime and increasing competition in Thailand's services sector could help to enhance innovation and productivity, and hence increase the competitiveness of the Thai economy as a whole and also support and enable Thai businesses to compete overseas. Progressive liberalization and healthy competition is encouraged to ensure sufficient and sustainable economic growth in the services sector. An increase in foreign participation will attract investment and transfer of technology and will be to the benefit of consumers, through cheaper and better services. Admission and temporary employment of foreign workers also introduces more flexibility into the already tight labour market in Thailand, given the country's serious shortage of skilled labour. To enable Thailand to position itself as a regional and international hub for the export of services, it is important to ensure the business community's confidence with a concrete policy roadmap towards progressive liberalization. Essentially, this should also provide a meaningful drive for long-term development in the manufacturing sector, as well as increased tax revenues for the government.

(1) Securities and other businesses according to the Securities and Stock Exchange Laws

- a. Securities Trading
- b. Investment Advisory Service
- c. Securities Underwriting
- d. Securities Borrowing and Lending
- e. Mutual Fund Management
- f. Venture Capital Management
- g. Credits Granting to Securities Business
- h. Financial Advisory Service
- i. Securities Registrar Service
- j. Client's Assets of Securities Companies or Client's Assets of Derivatives Entrepreneurs
- k. Private Funds Custodian
- l. Mutual Funds Supervisor
- m. Bondholders' Representative

(2) Derivative Business according to Derivatives Law - (a) Derivative Dealers (b) Derivative Advisors (c) Derivative Capital Managers

(3) Trustee Business according to Trust for Transactions in Capital Market Law.

By this Regulation, the mentioned business in (1)-(3) do not fall in the Foreign Business Act. However, they are still under the Securities and Stock Exchange Laws, the Derivatives Law and the Trust for Transactions in Capital Market Law as the case may be.

Annex II: EABC's Comments on Draft Customs Bill B.E. ...

Draft Customs Bill, B.E. ...	Comments
<p>Section 164 Any person who imports or brings into the Kingdom any tax-unpaid goods or any goods which have not duly passed through Customs, or exports or takes such goods out of the Kingdom, or assists in any way in importing or exporting or removing or assisting in removal of such goods from any ship, quay, airport, godown, warehouse, place of security, or store room without due permission, or provides the place to store, keep or conceals such goods, or permits or arranges for other persons to do so, or is involved in any way in carrying or moving, or dealing in any manner with, such goods, shall for each offence be liable to <u>a fine of 4 times the duty-paid value of the goods</u> or to imprisonment for a term of 3 months up to 10 years, or to both.</p> <p>The acts stipulated in this section shall be deemed offenses <u>regardless of whether they were intentional</u> or effected by carelessness.</p> <p>Any goods related to the offences under this Section shall be forfeited regardless of whether any person must be penalized or not.</p>	<ol style="list-style-type: none"> Penalties: The fine of 4 times the duty-paid value of the goods, in our opinion, disregards the notion of intent. In our opinion, the offenses proved to be unintentional should be penalized commensurately. <i>We, therefore, propose that the fine be <u>not exceeding 4 times the duty-paid value of the goods</u>.</i> Intention: The 2nd paragraph of Section 164 of the Draft explicitly disregards the actor's intention. However, we are of the opinion that the acts under Section 164 may, in fact, be affected intentionally or unintentionally. Therefore, <i><u>we propose that the 2nd paragraph of Section 164 of the draft be removed.</u></i> <p><i>As an example, the United States' 18 U.S. Code §145 regarding smuggling into the United States defines the scope of offense by clearly stipulating, "Whoever knowingly and willfully, with intent to defraud the United States, smuggles...." Such language reflects the recognition that smuggling may be affected intentionally or unintentionally, and only the intentional smuggling is an offense under said law.</i></p>
<p>Section 165 Any person who imports or brings goods into the Kingdom, or exports or takes goods out of the Kingdom, or is involved in any way in importing or exporting goods by <u>evading, or attempting to evade, the payment of customs duty, with intent to defraud</u> the government of the tax payable on the goods, shall, for each offense, be liable to a <u>fine of 0.5 times to 4 times the additional amount of duty payable, or imprisonment for a term of not exceeding 10 years, or to both.</u></p>	<p>We agree with Section 165 of the Draft, which clearly requires that for an act to be considered an offense under this Section, there must be fraudulent intent. We also see support the <i>fine calculation based on the amount of additional amount of duty payable rather than on the duty-paid value of the goods.</i></p>
<p>Section 166 Any person who imports or brings goods into the Kingdom, or exports or takes goods out of the Kingdom by violation of restriction or prohibition applicable to such goods, shall, for each offense, be liable to <u>a fine as per the law prescribing that prohibition or restriction, or to imprisonment for a term of 3 months up to 10 years,</u> or to both.</p> <p>The acts stipulated in this section shall be deemed offenses <u>regardless of whether they were intentional</u> or effected by carelessness.</p> <p>Any goods related to the offences under this Section shall be forfeited regardless of whether any person must be penalized or not.</p>	<ol style="list-style-type: none"> Penalty: We propose that the penalty, be it fine or imprisonment, under Section 166 be as per the legislation prescribing the prohibition or restriction. Intention: The 2nd paragraph of Section 166 of the Draft explicitly disregards the actor's intention. However, we are of the opinion that the acts under Section 166 may, in fact, be affected intentionally or unintentionally. Therefore, <i><u>we propose that the 2nd paragraph of Section 166 be removed.</u></i>

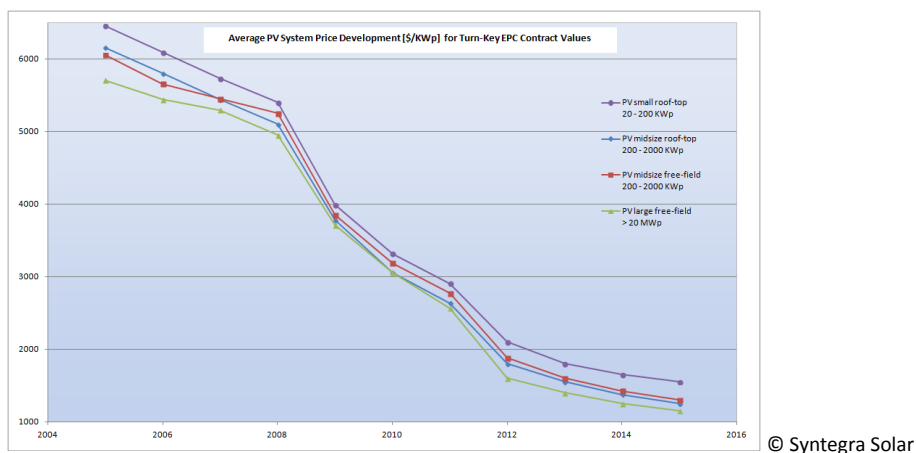
Annex III: Solar

EABC likes to convey important messages to the Royal Thai Government in respect to large scale and large scope utilization of Renewable Energies, namely of Solar PV, and entertains considering new thinking and a fresh start – based on recent technology / business model innovations leading to massive cost reductions namely of Solar PV technology – in looking at Renewable Energy and Solar PV in its role in future power generation and distribution.

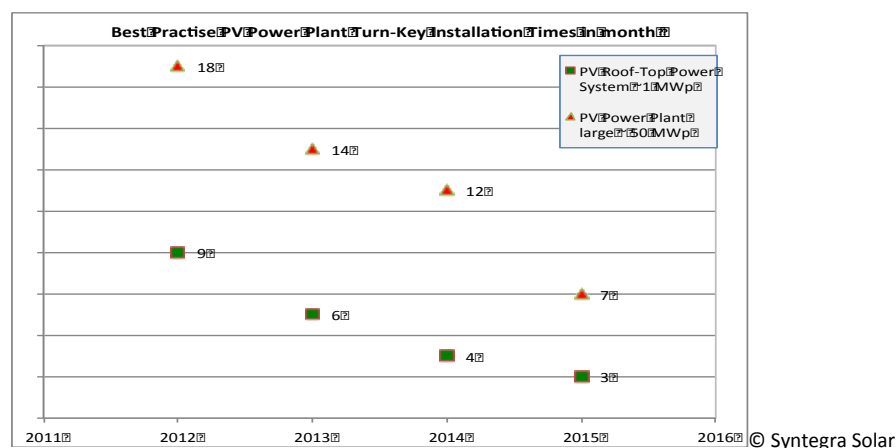
Renewable Energy, in particular Solar PV Power, is without alternative: Renewable Energy will be an important part of the future energy mix, actually for many applications Renewable Energy will be a preferred option for power generation and distribution in Thailand.

Renewable Energy – namely Solar PV and Wind – nowadays are fully cost competitive! To demonstrate this fact the following data has been generated from existing energy projects

- **Fully Cost-Competitive, at the example of Solar PV:**
 - ⇒ **Unparalleled low PPA's < 0,03(!) \$/kWh** for largest landmark Solar PV Power Plant projects, **associated LCOE for Thailand are < 0,1US\$/kWh** in most cases and for largest Solar PV Power Plants in favourable locations in Thailand at **~ 0,08US\$/kWh**
 - ⇒ Reduced investments in grid infrastructure due to the nature of distributed power generation
 - ⇒ In case of Solar PV: full modularity allows for customized, demand driven sizing of Solar PV power projects



Furthermore Solar PV Power Plants / Roof-Top Power Systems can be developed and installed in the shortest time lines, “**within month instead of years**”, which adds to the cost-competitiveness of Solar PV Power Plants and reduces the project risk mitigation. EABC therefore strongly recommends an overhaul of the underlying cost factors and based on this exercise, formulate a new solar energy policy for the industry.



External Costs

The Royal Thai Government should consider the cost for society and the economy with the increase in coal fired or even nuclear plants. How can the country reduce CO₂ emissions as committed in its **environmental impact assessment**? How can the country reduce the dependency on exhaustible fossil fuels if it invests today in Fossil Fuel Power Plants which will be in service for more than 30 years from now? As a consequence the Government should utilize available renewable energy source instead.

To promote clean energy sources EABC recommends providing investment incentives (no or little subsidies!) in clean energy generation such as Wind and Solar PV Power and others. Due to its short construction time-lines and its mature technology, an expansion in solar power generation can quickly be extended even beyond the 25% coverage as envisaged in the master plan.

However it is necessary for the Government to appraise the key technologies of the 21st century already available and tested. Furthermore the PV solar energy is constantly evolutionize itself. For example new Hybrid Systems are being developed just now which allows storage of energy for future usage. This could be battery or even pump storage systems that are being developed for industrial use right now.

The main obstacles that block further expansion in the RE (Wind, Solar PV) in the energy mix are the hindrance of feeding excessive energy into the grid. In particular the large unused space on factory and shopping mall roof tops where easily solar energy could be generated for these high energy consuming companies. Since a Net-Metering policy is missing in Thailand, PV Roof-Top Power System owners are not allowed to feed excessive energy into the grid the economic outlook of such investments are negatively influenced. If the Government would agree on a sensible Net-Metering policy for such roof top installations, the power consumption for high level power users could be greatly reduced.

Another problem for further investment in the solar energy are the relatively high interest rates. PV Solar Power systems are now mature and exhibit benign risk profiles. Installation time-lines are extremely short reducing the uncertainty for the investor. EABC thus recommends to the Royal Thai Government to provide special low interest loans for investment in this sector. This will help to develop new PV Power projects and the part of renewable energy will increase substantially.

Land use for Solar PV Power Plants is minimal and can utilize currently unused areas like Roof-Tops

- ⇒ To generate all current demand for power in Thailand would require less than 2% of Thailand's land area.
- ⇒ For PV Roof-Top Power Systems, in most cases otherwise unused or underutilized roof-top space can be used for PV systems.
- ⇒ PV inherently is an environmental benign, requiring very low impact power generation technology.

Support the Development of the Renewable Energy Sector in Thailand

In order to develop the Wind and Solar PV Industry Sector in Thailand further, EABC would suggest reducing import duties for solar panels and powering generating equipment. This will have little impact on the Customs revenues but can greatly increase the clean energy generating capacity in the country. In particular if high quality, high efficiency panels and equipment is imported.

The European PV Solar industry has extensive expertise, know how and experience in such systems. EABC and its member companies are more than happy to share the latest technologies, developments and research & development initiative in the PV Solar sector. Although Europe is mostly not in the sunbelt region our systems are therefore extremely efficient and cost effective. This knowledge can be shared with Thai companies and investors to upgrade the PV Solar energy in Thailand. Thailand with their high yield radiation environment could even profit more with such expertise and competence of the European Solar Industry.

Summary: Key Issues remaining for Thailand to promote Renewable Energy Sources like Solar Energy

- ⇒ A sensible regulatory framework for large scale / large scope RE/PV utilization, including sensible Net-Metering policies, as an example in case.
- ⇒ Advanced framework for PPA's.
- ⇒ Support Project Financing at favourable commercial terms & conditions, as it is available in other maturing RE/PV markets.
In addition, provide access to low-interest loans for earmarked funds, e.g. fund for climate change mitigation, CO₂ reduction, etc.

Annex IV: WTO - The Agreement on Trade-Related Aspects of Intellectual Property Rights

The relevant provisions of the TRIPS Agreement in respect of Thailand's labelling regulation are the following:

Article 15.1 providing that Members shall allow "any distinctive sign" to be capable of constituting a "trademark," i.e. a mark used or to be used on products to distinguish products. Trademarks are functional and relational rights. A distinctive sign that cannot be used on a product to perform its principal function is no longer protected as a trademark in violation of Article 15.1.

Article 15.4 prohibiting trademark "discrimination" based on the nature of the product. If the nature of the product rather than the nature of the trademark is the basis for refusing protection as a trademark, a violation exists.

Articles 16.1 and 16.3 affording registered trademark owners a minimum guaranteed level of protection that is directly related to the strength of the mark. Given that the strength of the mark and thus the scope of protection is determined by the use that can be made of the mark, a measure that prohibits the use of the trademark on the product reduces the scope of protection below the minimum agreed level; and

Article 20 providing that the use of trademarks shall not be unjustifiably encumbered by special requirements. A measure that prevents the use of a trademark imposes the ultimate encumbrance on the use of the mark and impairs the very substance of the trademark which is designed to distinguish products. Such a measure is per se unjustifiable unless it can be shown that the mark is misleading, deceptive or contrary to public morals.

Article 24.3 requiring each Member not to lower the protection for GIs that existed prior to 1 January 1995, which is the date of entry into force of the WTO Agreement. A measure that prohibits the use of a GI on the product when such use was permitted in 1995 violates this obligation.

Annex V: The regulations of the Office of the Prime Minister on Procurement B.E. 2535 (1992)

The Prime Minister's Office Procurement Regulation B.E. 2535 (1992) stipulates in Sections 60, 61, 62, which address the remit of pharmaceutical and medical product spend by governmental agencies, grant most favoured treatment to the GPO.

- *Section 60 requires that hospitals affiliated to the Ministry of Public Health must spend 80 per cent of their allocated health budget on medicines listed in the National List of Essential medicine (NLEM) while other government hospitals must spend 60 per cent of their budget on the same.*
- *Section 61 requires that products produced by or supplied by the GPO must be selected for procurement by funds drawn from the state coffers over other choices at prices which may be three per cent higher than the next candidate.*
- *Section 62 indicates that in the event the GPO does not produce but can supply, first right of refusal to supply must be given to the GPO at prices which may be equivalent to other suppliers; the same privileges are accorded to suppliers sub-contracted by the GPO.*

In addition, the **Thai Drug Act (1967)** also provides additional operating privileges to the GPO with respect to regulatory requirements. Section 13 of the aforesaid Act exempts the GPO from regulatory approval to produce, sell and import pharmaceutical products for both commercial and non-commercial gains. In the commercial context, the circumvention reduces the time to market and reduces oversight in comparison to other suppliers thereby providing competitive trade advantages. The decision to register for marketing approval or not is voluntary for the GPO and not a mandatory requirement from the regulators. Concerns were raised when this privilege was retained in the Draft Drug Act which is presently under development by the Thai FDA.

Recently, as an instrument for cost containment, the GPO has acquired additional privileges even as a for-profit state enterprise. Since August 2012, the Ministry of Public Health had called for several rounds of price cuts with suppliers of single source products which are not listed in the National List of Essential Medicine (NLEM). The requests for submissions of substantial price reductions in an abbreviated timeline of many innovative products, still under patent protection with much uncertainty in criteria and scope, were further augmented by the appointment of the GPO as the negotiator for the government. The resulting conflict of interest in the disclosure of commercial details to a for-profit state enterprise reduced cooperation and the required price cuts were not achieved. As a consequence, the Ministry of Public Health further empowered the GPO to:

- Be an exclusive importer, sourcing and importing generic drugs of selected items, some of which may remain under patent protection
- Facilitate the importation with fast track drug registration for selected items, even for non-essential or non-life-saving medicines as required by the normal fast track criteria

Be the exclusive supplier of the selected generic items.

Annex VI: Proposal to amend Patent Act

1. Amend Patent Act on the parts relevant to Patent and Petty Patent for Inventions registration in order to facilitate accelerated registration process:

1.1 Justification of Novelty of Inventions

- (1) Prior arts according to Section 6, paragraph 2, (1) as "(1) an invention which was widely known or used by others in the country before the date of application for the patent"; should be revised to cover an invention which was widely known or used outside the country
- (2) Prior arts according to Section 6, paragraph 2, (3) as "(3) an invention for which a patent or petty patent was granted in this or a foreign country before the date of application"; should be revised to align with texts the Claim Priority in Section 19 bis
- (3) The Exception of disclosure which will not affect novelty in Section 6, last paragraph, should be revised
- (4) The public exhibition of inventions according to Section 19 should be revised.

1.2 Examination of Patent for Inventions

- (1) Section 28, 30 should be revised; formalities examination should be examine on format and completeness of documentation.
- (2) Section 31,32,33 should be revised; Pre-Grant Opposition should be changed to Post-Grant Opposition
- (3) Observation by third party should be established in addition
- (4) Section 29 should be revised; the gap time between publication till the applicant request to perform Substantive Examination should be reduced from 5 years
- (5) The Applicants should submit a search report with the patent registration application
- (6) Section 29 paragraph 2 should be revised; the Director General can grant the private organization as the body to perform Substantive Examination
- (7) Section 26 should be revised; the applicants can separate applications of invention if it appears that the application relates to several distinct inventions which are not so linked as to form a single inventive concept.
- (8) Section 27 should be revised; In the course of examination of an application, the clear guideline should be established to instruct the applicant to appropriately respond to the competent officer's comments from examination.

1.3 Substantive Examination of Petty Patent for Inventions

- (1) Section 65bis should be revised; the conditions for granting a petty patent should be extended to cover "solving technical problems"
- (2) Formalities examination should be examine on format and completeness of documentation.
- (3) Post Grant Opposition should be added
- (4) The Petty Patent Owner shall request for novelty examination

1.4 Power and duties of Patent Board

The section should be revised to allow the Patent Board to revoke patents and petty patents if the owners did not pay annual fees

1.5 Fee

- (1) Add fee in the case of patent/petty patent applicants request to extend the timeline to respond to competent officer's comment during examination
- (2) Add fee of application according to the numbers of claims
- (3) Add search fee

1.6 Miscellaneous

Section 77 should be revised; Presumption in civil case in respect of the infringement of rights that defendant use the process to obtain the products of the rights owners of patent or petty patent.

2. Amend the Patent Act for Hague Agreement concerning the International Registration of Industrial Designs
3. Amend the Patent Act for Protocol amending the TRIPS Agreement, Doha Declaration Paragraph 6



The European Association for Business and Commerce
is supported and funded by the European Union



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