

## Transport and 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 starting well **before** Laws and Regulations are drafted.
- 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 Customs can 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 all and any 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 with equal participation from both Governmental and Private sector to settle disputes between Thai Customs and importers / exporters / agents, bonded warehouse holders or any other concerned parties.
- 1.5 Limit the application of Customs Penalties for “Smuggling” (up to 4 times cargo value) to cases where Intent to avoid, evade, or defraud 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 Establish that Transit of goods under Customs Bond by an ASEAN Authorised Economic Operator (AEO) between Customs-free zones of any type, on the borders or inland, be free of restrictions as to routing, trans-shipment, 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
- 1.7 Uncouple the regulations on movement of goods by road in Bond from /to/between Thai border crossing points from the existence or not of Bi-lateral road transport agreements. Subject them to liberal domestic in-bond transport regulations as listed in 1.6
- 1.8 In line with ASEAN rules, change the requirement that all documents required for Customs clearance of cargo into Thailand, especially Import Licenses, be presented immediately when goods enter Thai sovereign territory. The requirement to become that the documents must be presented if and when the cargo moves from a Customs-free area in to duty-paid free circulation in Thailand.

#### 2 Individual measures in Customs and Trade Facilitation Reform

- 2.1 Customs declarations in Thailand to be either in Thai or in English language but not in both languages
- 2.2 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.
- 2.3 Thailand to separate tariff codes for controlled (needing an import license) and non-controlled items to facilitate the import of non-controlled items. This is particularly

important for products within the Life-Sciences Sector.

- 2.4 Goods in Customs custody or Bond for any reason to be allowed to stay in the Bonded warehouse up to one year to allow for the economical operation of Hub-distribution warehouses.

### 3 Rules on foreign direct investment

- 3.1 We recommend that Thailand study opening the postal market to Private Sector and International 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. The desired major investments from Foreign Logistics Services Providers are unlikely to materialise as long as Foreign investors are restricted to minority holdings.

### 4. Other areas of Interest

- 4.1 EABC recommend that Thailand study European best-practice in Taxi and Ride-hailing technology with an eye to drawing up development-friendly regulations for the industry combining High Service standards with economic sustainability for the operators and drivers.

- 4.2 We recommend that Thailand commission a thorough Feasibility study to evaluate the Costs, Benefits and Commercial feasibility of the Thai (Kra) Canal linking the Gulf of Thailand to the Andaman sea.

- 4.3 We believe that Thailand would benefit from accessing European expertise on the formulation and implementation of regulations on TAPA, the AEO and Counter-Party evaluation.

## 1. Long term goals for customs facilitation

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, still unsuited to those ambitions. The new Customs Act 2560 has made some minor changes, and most of them are beneficial. It is still the case, however, that a Regional Logistics Hub operating in a fashion attractive to International Distributors of Goods or their Logistics Service Providers cannot be operated under the existing Law and Regulations.

The EABC welcomes the establishment of the Eastern Economic Corridor (EEC) to attract new business and to enhance infrastructure. To make the EEC interesting especially for ASEAN or Asian wide distribution centers the customs handling would need to be adapted to the needs of such a logistics concept. We understand that the EEC or companies in the EEC can be exempt from general customs law under Section 57 of the EEC act.

We suggest to have regulations drafted for companies to especially enable region wide distribution centers including distribution of goods in transit to neighboring countries, free zones or bonded areas.

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 recognized and trusted traders. The New Customs Act 2560 has also made beneficial changes in the areas of Penalties for Customs Avoidance and Import Restrictions, established a 30-day period for goods to stay in Bonded area and made improvements to the Customs Appeal Committees and Post Audit systems.

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 before Laws and Regulations are drafted, not afterwards. 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, open and early 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 tangents the issue of intent or lack of, in a non-compliance or violation: distinguishing between unintentional non-compliance and intentional/fraudulent violations.

Countries such as the US and EU have clear programs which encourage companies to voluntarily comply with regulations, which recognise proven reasonable care and allow the trading community to voluntarily disclose errors/violations without attracting significant penalties. 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. The present rules, by not recognizing and rewarding self-declaration of violations by trading companies encourage deception and re-inforce the adversarial relationship between Customs and Im/Exporters.

In the case of disputes arising despite all efforts, an impartial, separate legal channel should be available for resolution of such disputes. Such a channel may be either be the standard external legal system or, if Customs-internal, should have equal participation from the Private and Governmental sectors and practice transparency and openness in all dealings. The structure of the Appeals Committees in the 2017 Act, whilst incorporating several improvements over the old Act, cannot be perceived by the Private sector as impartial given that all members are from Governmental organisations with no Private sector representation.,

### 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.

In charges of “Smuggling” under section 242 Customs do not bear the burden of proof and so they are

allowed by law to qualify certain 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 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

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.

Equally the EABC note, and welcome, that in the Customs Act of 2560 Intent, or absence of Intent, is recognized as a factor in the evaluation of Penalties for section 243 (“Avoidance of Customs Duty”) and section 244 (“Avoidance of Import Restrictions”) but we miss that recognition for section 242 (“Smuggling”). We would welcome a discussion on how Intent could also be factored into Penalties for this section too.

## 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 into 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 transshipped 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.

Discussions on this subject have been complicated by misunderstandings over the use of the word "Transit". Europeans would also use that word to refer to a domestic movement under Customs bond to another Customs area. In Thailand the word is generally only used for International cargo transiting Thailand from Border to Border.

To avoid such misunderstandings, we suggest that It would be a good start to distinguish clearly between

- Goods in International Transit on the one hand and
- Goods being transported within Thailand between Thai Customs offices under Customs Bond on the other hand.

If "Thailand Regional Logistics Hub" is to become a reality both types of transit will have to be liberalized to the level of international best practice, but the steps to be taken will differ.

**Goods in International Transit cannot**, under present legislation, cross through Thailand unless bilateral agreements exist between Thailand and each of the countries concerned. This is very limiting as only two such agreements exist, with Cambodia and with Lao PDR, and neither of these is working in practice. Even more limiting is the fact that neither of the alternative International Transit systems, CBTA and AFAFGIT/ACTS is yet, 20 years after their inception, fully ratified and operational. It would be prudent to assume that they never will be. In the medium term the TIR (International Road Transport) system of the International Road Union of Geneva may well become a viable option since the PR China and India have now signed the Convention and Myanmar and Vietnam are actively considering it. There too however pressure groups within Thailand will resist. Unfortunately, the Thai Government's freedom of unilateral action is limited.

**Goods being transported under Customs Bond** within Thailand between Thai Customs Offices under Customs Bond are, however, completely under the control of the Thai Government and here progress can be made. The first step would be to recognize that there is no need for the regulations concerning the transport of goods in bond to be tied to international agreements focused on the free passage of foreign trucks. Those agreements cover both free access for Trucks, in which Thai Customs have a minimal interest and also Cargo moving under Bond which is fully within the remit of Customs.

It is quite possible to create regulations governing the Transport under Bond of cargo from Border Station (say). Sadao to Border station (say). Nong Khai, or from any Border station to an Inland Customs Area (say). Bangkok, without any reference to the type or nationality of trucks to be used.

As things stand the trucks would be Thai. Should bilateral agreements come into force other trucks could be used. Thai Customs rules would however focus only on the cargo. The "Transit" sector would, in effect, become a sub-set of the general sector "Cargo moving under Bond within Thailand".

In this sector three issues need to be addressed.

**Firstly**, regulations exist hindering the movement of cargo in bond between different types of Customs areas set up at different dates under differing legislation. These should be amended to acknowledge the commonality of all Customs areas, at least as far as transport is concerned. Thus the same rules would cover all cargo moving between different Customs areas, regardless of what type of Customs area may be concerned.

**Secondly**, transport between Customs areas is at present encumbered by many regulations specifying that each bonded shipment must be alone in a sealed truck, that this truck may only follow a specified route, that it should be inspected at certain places. These regulations do not conform to international best practice. They render the cost of distribution from a Bonded Hub in Thailand hopelessly expensive and make such a Hub non-competitive in international comparison. We suggest that Customs use the AEO system and free up the transport specifications to say only that the AEO may take out cargo under bond and move, transship and load it as he likes, on condition that the goods arrive at the specified destination Customs area complete and in good order before a specified deadline. Otherwise the Guarantee of the AEO will be debited and, in the case of multiple violations, the AEO accreditation will be withdrawn.

We accept that there may be reluctance to change based on worries about the “identity” of the cargo delivered. How can one be sure that these are identical to the items which were sent? We would be glad to participate with Customs in discussions to find a mutually satisfactory solution based on international practice.

**Thirdly**, as a consequence of the above the new rules should allow transport of bonded shipments economically in consolidated loads together with other cargo, and the consolidation and de-consolidation (“Break-bulk”) of consolidated trucks within Bonded / Customs areas should be allowed. At the moment Customs officials do not allow this even though there is no regulation forbidding it.

## 2. Individual measures in customs and trade facilitation reforms

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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 important spill-over effects in the local industry.

### 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

### Presentation of Import Licenses

Until recently Import Licenses, if required, had to be presented as soon as the goods in question crossed the Thai national frontier. Some flexibility has been introduced with the new Customs Act, the cargo will no longer be automatically be confiscated, but it would be in the best interests of all concerned if the principle were changed to require presentation of the Import License only at the point where the Cargo moves from Bonded areas into free circulation in Thailand. This would also take account of the fact that, in a Regional Hub operation, the eventual Importer of the goods is not even known at the time the cargo into the country and, in some cases, the final consignee will not even be in Thailand, so no Import could even be created. We have heard that innovative solutions are being considered for the Eastern Economic Corridor Area and we would gladly participate in discussions to draft a user-friendly which could, perhaps, later be rolled out nationwide.

### 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 creating Thailand 4.0, which requires facilitation for R&D.

### Time allowed for goods to remain in Bonded Warehouses

The Distribution Warehouses at the heart of the “Hub” concept will need permission to hold Bonded cargo for longer than the present one month. We would suggest one year to allow them to transport slow-moving items economically

### 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. The EABC recommend that Customs extend this period to one year to match the period to be allowed for Bonded facilities in general. We accept that this extended facility may have to be refused to certain particularly sensitive commodity-groups

## 3. Rules on foreign direct investment

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### 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).

We recommend that Thailand follow other countries in gradually opening the Postal market to competition

### Liberalising logistics services

We recognize and support the Thai Government's policy of increasing foreign investment, both in Manufacturing and Logistics in Thailand.

Virtually all World-wide operating Logistic Service Providers are also operating in Thailand: they need to, given Thailand's important position in international trade. For the most part, however, they operate on an "Asset- light" basis, working from rented offices and leased warehouses, owning few, if any own trucks. Their "investment" or fixed assets are not much more than office furniture. Although this is an accepted modus operandi for Freight Forwarders worldwide it is taken to extremes in Thailand due to the fact that Foreign owners are limited to 49% ownership of the companies in Thailand. Furthermore Foreign-owned Logistics companies are not allowed to operate their own truck fleets, "For reasons of national security"

Nobody is going to invest large amounts into a company which they cannot control and a market in which they cannot compete on an even playing field.

This position is at odds with Thailand's commitments to ASEAN, among others.

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. The EABC feel that Thailand, as a country wishing to develop a world-level Logistics capability and seeking investment from foreign Logistics companies in order to achieve that, should allow 100% foreign ownership of Logistics companies or, at the very least, meet our obligations under the ASEAN Logistics Roadmap and at the same time extend the 70% ownership level to Logistics companies from all countries, not just those of ASEAN origin.

## 4. Other areas of Interest

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### Reform of the market for Taxi -and related services

Given the current unsatisfactory situation of the Taxi-industry in Thailand and the uncertain regulatory situation of currently available alternative services, the EABC suggest that it may be of interest to the Ministry of Transport / DLT to consider Best Practice in Europe and particularly in the Baltic states where new formats are already in operation.

### Feasibility study for the Thai (Kra) Canal

The much-discussed project to build a canal across the Thai section of the Kra Peninsula and eliminate the need for vessels sailing between Europe, the Middle East and the Subcontinent on the one hand, and North Asia on the other hand, to use the Straits of Malacca, is now once again being proposed. Sources close to the PR China are suggesting that this could be developed as part of the "One Belt One Road" Megaproject.



Absent an official study, however, the costs of construction, costs of operation, potentially achievable savings to vessel operators, synergies with related projects and the level of subsidies (if any) needed are all unclear. The EABC has no initial position on the economic feasibility of the project but strongly favours the award of a professional feasibility study and would be prepared to participate in that study.

#### Compliance to International standards and Auditing of Counter-parties

- SME transport operators in Thailand see their access to multinational supply-chains for High-Value cargo blocked because they are not-certified for TAPA (the Transported Assets Protection Association) which is a global coalition of manufacturers, shippers, carriers, insurers, service providers, law enforcement and government agencies that aims to protect companies against cargo crime
- The concept of the Authorised Economic Operator is used in ASEAN, within Thailand and throughout the European Union. There are, however, major differences between each of the countries of ASEAN and between any of those and the European Union as to the operating practices and definitions of the AEO.
- The EABC has the ability to put interested parties from both the Private and Public Sectors in Thailand into contact with authorized Implementers and Auditors for both TAPA and AEO at the level of worldwide best practice.
- Furthermore, EABC members are in a position to audit potential counter-parties of Thai Freight-forwarding companies anywhere in the world, taking a major risk out of expansion into new markets.

The EABC would gladly put Private or Public Sector organisations in Thailand into contact with experts on any of the above-mentioned Areas of Interest.