



Joint Foreign Chambers of Commerce in Thailand

JFCCT AEC Committee Summary of AEC September 2013 For JFCCT Members

JFCCT Member Chambers have previously been provided background information on the plans for the ASEAN Economic Community or AEC. The original target date for many of the changes was to be January 1st 2015, but the ASEAN Member States have agreed that it will be changed to December 31st 2015. Members should be aware that it is not a 'big bang' set of changes, rather some changes are already supposed to be in place and technically, some of the changes are already in effect (eg Goods movements, and Visa relaxation for ASEAN citizens). However, many that should be implemented have not yet had local Thai legal or procedural changes implemented to facilitate the change.

To recap - the 10 ASEAN countries have undertaken to implement a range of changes for the purposes of ensuring stability and raising living standards across the region. The changes under the AEC area are covered in the following 5 categories:

- Free flow of Goods
- Free flow of Services
- Free flow of Investments
- Freer flow of Capital
- Free flow of Labour

The JFCCT AEC Committee has been discussing the AEC project with the Department of Trade Negotiation from within the Ministry of Commerce to do the following:

1. Try to clarify the details of the various changes to allow us to inform the JFCCT members
2. To determine the timeframe of any changes
3. To attempt to improve the overall approach for Thailand and JFCCT members

Implementation Updates

In June 2013 the DTN provided a seminar that members of the JFCCT chambers were invited to. At that session, representatives from other government departments were also present. The JFCCT AEC Committee tabled a series of questions to the representatives and requested responses. During the seminar some information was provided, and they key points have been highlighted in the following table. It is critical to note that the information contained in the table was prepared by the JFCCT AEC Committee based on oral answers and information at that seminar, and not the Thai government, and has not been confirmed in writing at this time. The committee continues to request written answers to our questions and will provide these once they become available.

Area	JFCCT Understanding
General	<i>The definition of an ASEAN citizen is most likely to be defined as a passport holder of one of the 10 ASEAN countries</i>
	<i>Visa free tourist travel for ASEAN citizens within ASEAN is now confirmed and we were informed that it is in effect today for all but Myanmar - so no surge in tourism arrivals post 1/1/2016 is expected</i>
	<i>Thailand and Cambodia have signed an agreement with the expectation that LMV will follow to create a single tourist visa for non-ASEAN citizens</i>
Goods	<i>98% of tariffs have been eliminated between the ASEAN countries today with some exception for the CLMV countries and for a set of sensitive products</i>
	<i>There are efforts underway in relation to product harmonizations and an ASEAN certification system</i>
Services	<i>There are some service business categories that can be owned more than 49% today in certain sectors or on a case-by-case basis, up to 100% but Thailand is behind the AFAS targets which have phased commencement dates, and there should be more by 2015 (this should mean all service types), but there is no clear plan for how an ASEAN entity could establish or operate under this model</i>
	<i>A Substantive Business Operation test is likely to be applied when an ASEAN citizen attempts to purchase or own more than 49% of a Thai services business but the SBO test has not yet been defined</i>
	<i>In addition to the Skilled Labour category, a movement of Natural Persons concept was provided aimed at supporting services operators whereby an ASEAN citizen outside of the MRA categories could be provided a work permit/visa – but this will likely be limited to one year periods, and renewable only 3 times (this may replace the WP10 for some purposes) although note that the implementation details of the MRAs remain unclear</i>
Investment	<i>Investments cover Agriculture, Mining, Fishing, Forestry, and Manufacturing, and it would appear that</i>

	<i>these can be owned 100% by ASEAN citizens – this will presumably require some amendment of the Foreign Business Act and procedures – there was discussion of a quota in these areas, but this is not yet determined</i>
	<i>The foreign ownership of Manufacturing operations is well established in Thailand, and usually managed by the BOI, so there is no significant change needed here, but there is no clarification yet in relation to any changes in the application procedures for ASEAN citizens as opposed to those from non-ASEAN countries.</i>
Skilled Labour	<i>The labour department clarified that the intention of the Thai government is not to be like the Eurozone, and work permits are still likely to be required for any non-Thai, but there has been no decisions taken about how this will operate. There are likely to be no changes to the Work Permit and Visa rules and processes even for ASEAN citizens (and this only applies for those in the MRA categories)</i>
	<i>Details on the MRA's in terms of definitions are not yet clarified in most cases (definitions of Engineers or Accountants for example, and local testing details are not yet determined for Doctors and Dentists).</i>
	<i>When asked about the WP10 (short term business visas) the Labour department indicated that there would be no changes needed (ie still required even by ASEAN citizens) but then a representative of the DTN indicated that the need for a WP10 may no longer be needed for ASEAN citizens – although the details of how this would operate were not provided.</i>

The committee has not yet been provided with more specific information about how these interpretations will be implemented in terms of specific forms or processes that members may be required to use to take advantage of them, although we continue to try to obtain this information.

It is very clear that many areas of the Thai government have not yet determined exactly how the AEC changes will be implemented, and Thailand is lagging behind some neighbors in this area. We have highlighted the concerns to various government departments with examples that include the need for many investors to plan many years in advance of an investment, and therefore needing to know well ahead of any factory being built, what the rules and processes will be one or two years into the future.

Information Updates

The JFCCT AEC Committee is updating our presentations provided previously with this new information, and would be happy to present this to chambers and their members at a convenient time and location.

If your chamber would like an update please contact the AEC Committee or your board as soon as possible.

The committee also provides a monthly report to the JFCCT Presidents Council and has informed all presidents that these reports can also be provided to their boards and members if required. Please contact your chamber board or president if you would like copies of these.

Policy

The JFCCT Policy remains unchanged, with the key points being that the JFCCT support the AEC initiatives, and any move towards liberalization of the Thai economy, especially the services sector. We would like the Thai government to speed up the process of change and implementation, along with improving communication, to allow business operators to know and understand what the economic and regulatory environment will be, so that our members can make informed investment and planning decisions. The key focus should be moved away from fear and threat, and the resulting protectionist approach, and towards highlighting and working to achieve the benefits for the average citizen in Thailand in terms of cheaper products, better quality goods and services, improved employment opportunities and, for business owners, easier access to a market 10 times the current size.

Next Steps

With the AEC Policy in mind, and in light of the information obtained to date, the AEC Committees next steps will be to start to provide recommendations to the Thai government based on our ideas that will benefit Thailand as a whole, and should therefore be positive for the business environment for our members.

These recommendations are being developed at this time and the committee welcomes ideas or suggestion from member companies of JFCCT members.

Please note that these ideas are draft only at this stage and are not the complete set, and nor are they finalized amongst the committee. Some key ideas will likely include:

- Offering ideas on the interpretation and procedures for allowing ASEAN skilled labour to enter Thailand. We would recommend an English language test be used for the skilled workers where possible, rather than only Thai language tests for engineers and doctors.
- We would also recommend doing away with the requirement for the WP10 for ASEAN citizens, and will push for doing away with the need for the WP10 for all nationalities to ensure that immigration processing is more efficient and to not require the creation of 3 types of citizens in the Thai law (Thai, ASEAN and All Other).
- We believe that ASEAN citizens who do work in Thailand under the MRA's should not require Work Permits, but if they do, they should not be counted as "farang" for the purposes of determining the ratio of Foreign to Thai employees.
- We think that there should be consistent ASEAN wide use of definitions. Examples include:
 - In the free movement of skilled labour area, we are asking if "Accountant" also includes "Auditor", and what the scope of Engineering includes.
 - Foreign Equity limit measurements
- We also will recommend that the BOI processes can be used to assist implementation, even in the services sector (we have already requested meetings with the BOI to discuss these ideas).
- We will also request the BOI and other departments to look to provide information to all Thai companies about how Thai companies can take advantage of the AEC changes in the other ASEAN countries. This may focus on how to establish a legal entity in other ASEAN countries, how to move Thai staff to these offices once established, and assistance (or guidance) with local legal protections
- There are a number of other ideas, and we would welcome the input from any chamber or their members at any time.

Media

We again like to highlight to members of the JFCCT Chambers that many media stories relating to the AEC, and even many Thai government quotes and press comments are very often not accurate and the details tend not to match the agreements.

There is still an alarming lack of knowledge about the AEC details in the Thai media, and mistakes are made almost daily in the English language press.

Examples include many articles and discussions claiming that tourism numbers will increase in Thailand after the implementation.

We discussed this with some government departments and confirmed that all ASEAN citizens have visa free travel within the ASEAN countries today (the exception is Myanmar currently). They agreed that since this is already the case there is not likely to be any increase in tourists from ASEAN countries. There may be increases from other countries, but this will be because of other factors, and not the AEC changes.

We still regularly meet Thais who express fear about the AEC and how they will likely lose their job – despite their professions not being on the MRA list. This fear is due in large part to the media portrayal of the agreements to date.

Recent Events

The committee continues to attend, on members behalf, a number of events related to the AEC, where we are often able to be involved in discussions and meet with government officials from a range of departments. These include:

- the BOI information update on their next incentives package - we were able to ask about some AEC links at this event
- being asked to speak at the recent Thai Chamber of Commerce AEC event – we were able to highlight some of the delays (and explore their reasons) with a large number of Thai businessmen and representatives from other ASEAN countries.

JFCCT AEC POLICY

For your information we include the JFCCT Policy in relation to the AEC.

The JFCCT supports the aims of the **ASEAN Economic Community (AEC)** to create a common economic community in Southeast Asia. This will provide a range of improvements for ASEAN citizens and businesses. The key areas of the AEC agreements are free flow of Goods, Services, Investments, Capital and Labour.

The JFCCT is made up of many member chambers, some of these represent the business interests of other ASEAN member countries, some ASEAN+ countries and some members from countries which are not ASEAN 10 nations. The impact on the economies of various nations reflected in the JFCCT membership thus varies. The common ground for the JFCCT member companies is that they operate businesses within Thailand and therefore are interested mainly in the opportunities (and threats) to the Thai economy and for Thai companies doing business within ASEAN, including Thailand.

Thai companies (firms incorporated in Thailand) will have increased market opportunities within the ASEAN region, as well as possible cost reductions. Threats will include increased competition from other ASEAN economies, and, absent a neutral choice, possible skilled labour problems as labour will possibly move to other locations with improved opportunities and quality of life

The JFCCT membership therefore takes the following broad positions:

- Liberal open markets improve competitiveness, whereas protected closed markets can encourage laziness and corruption
- Competition improves efficiency in terms of use of resources, capital and labour
- Improved efficiency of resource usage within an economy leads to an increased standard of living and longer term sustainability

Within this context, the JFCCT would encourage the Thai government to fast track implementation of the agreed AEC policies and ensure the various ministries and departments work towards developing efficient and transparent regulations and procedures for business operators. Particularly in the services sector where there is competition for skills and capital, Thailand is encouraged to take the lead on implementation rather than relying on an item-by-item trade off, to ensure that all Thai businesses are prepared to compete well before the scheduled committed dates. Only in this way will Thai companies be well placed to take advantage of the opportunities as well as address the threats appropriately.

The JFCCT would take the view that for all AEC purposes, any company incorporated in Thailand and doing business in Thailand, regardless of its shareholding, should have equal treatment to any other Thai company in line with general free trade principles.

Specifically the JFCCT sees an urgent need for the Thai government to:

- Identify the limited number of sub sectors where there is a demonstrable case for lack of readiness to compete; identify and address areas of divergence/areas of concern,
- expedite the ratification of all AEC agreements/protocols with (where relevant) reasonable specific commitments,
- Clarify and agree via dialogue and engagement with the foreign business community, the status of companies doing business in Thailand, for all AEC purposes
- Take a more meaningful approach to identifying activities and sub sectors in the services sector which can be opening to greater foreign investment
- prioritize the initiatives or actions required to implement the provisions of each AEC agreement and protocol,
- identify the inconsistencies between national legislation and implementation of regional commitments in order to address the delay in ratification and compliance with ASEAN agreements, and
- enhance outreach and advocacy activities.

The JFCCT has taken pro-active steps to be ready to support a wide range of businesses in Thailand with information, access to tools to understand and use what AEC has to offer and to promote the use of the AEC environment for the benefit of these businesses and the Thai economy.