



JFCCT AEC Committee

Summary Report for JFCCT Chamber Members March 2015

Below is a summary of the status of the AEC Committees activities and information for the benefit of the members of the chambers.

Immediately prior to Christmas, our chairman, Mr Andrew Durieux, met with a senior DTN individual. Andrew was informed that “Thailand has met all our commitments (re the AEC) so we are not likely to be doing anything else on the AEC soon”. This sums up the situation nicely for the members.

Members will have seen many reports in the various media outlets in Thailand that the AEC is coming soon, and that there is great excitement about the benefits that are expected to flow to Thailand from this significant change. Those members who attended the JFCCT Prime Ministers Luncheon will have heard the PM and the Finance Minister both highlight the AEC in a very positive light.

In many cases, however, the details of what this actually means for any Thai business person, let alone a farang manager of a part or wholly foreign owned company, have been scarce and hard to come by. The various government departments and their employees do not appreciate the level of detail required for managers to understand the opportunities, threats and specific changes that such a comprehensive set of agreements entails.

In particular, we have heard that many Thai companies will be able to get access to a market of over 600 million people, and that the implementation will drive tourism growth.

At the same time, over the last year, there has been many reports by the same media outlets that the AEC will create significant competition threats for Thai companies and workers, the Thai people are unprepared due to a serious lack of English skills, and even that international crime will be seriously worse as a result of the changes in Thailand.

The truth is somewhat different than what the media has been reporting in most cases – in most cases the current reality does not match the hype.

A quick summary of the 5 key categories is shown below.

Goods

In the area of goods trade between ASEAN members, many customs tariffs have been reduced already and are historically very low – this has been the case for a number of years now. The aim is to increase trade within the region, which should result in lower costs for consumers and less reliance on the major markets of the US, Europe and China.

However, countering this aim and successful implementation has been a tendency by ASEAN members to increase Excise Taxes or create other Non-Tariff Barriers to replace lost national revenue. Most ASEAN countries generated significant portions of their national revenues via customs previously. There are also many areas where inconsistent standards and definitions have not yet been harmonized between the countries, and even worse, double tax treaties are not as we would expect and are thus creating confusion and lost opportunities.

Members should be making their own enquiries in each country they plan to purchase or sell goods to determine the latest charges and situation.

Services



Particularly here in Thailand there has been very little movement in the liberalising of the services industry. Thailand states that liberalisation has taken place (we were told this again at the PMs lunch), however Thailand has taken an industry level approach and chosen mainly minor sectors to date. Despite the agreements and roadmaps stating clearly that, starting back in 2008, ASEAN members will be able to own up to 70% (or more) of each others services companies, no laws have been amended in Thailand to facilitate this.

It is important to stress that the AEC agreements only concern ASEAN passport holders and registered companies. Many members of the chamber will be Thai registered companies and will thus be able to take advantage of the changes in other ASEAN countries, although we note that each country may apply their own tests in addition to the basic company registration source. Thailand has indicated they will use a “substantive business operation” test when ASEAN companies look to operate in Thailand. The details of the SBO test have not been provided as yet.

In reality, for Thailand to allow for the services liberalisation as shown in the agreements, a change to the Foreign Business Act is required. As a result of recent discussions that the JFCCT has been involved in, it is very unlikely that this act will be amended in the short term.

Some other ASEAN members have long allowed more than 70% foreign ownership (which means more than only ASEAN), and some have changed recently and have chosen to liberalise FEL for all foreigners rather than the limited ASEAN approach.

Investments

The effect of the Investment agreement (ACIA) is that ASEAN investors in ASEAN countries other than their own will be given the same opportunities and protections as the investors from the other ASEAN country. The aim is therefore to promote intra-ASEAN investments and thus rely less on FDI from the US, Europe and Japan over time. Thailand has long allowed any foreign entity to own manufacturing operations (with the Japanese being the largest), and this has been facilitated by the BOI. This means Thailand complies with the AEC Investment aims for the headline purposes.

Thailand has also stated to the JFCCT that Fisheries, Agriculture and Mining would also be opened to ASEAN ownership. Unfortunately no changes have been made (again in the FBA) to facilitate this commitment and we have been unable to discuss these concepts with other departments to date. There are also other problems in terms of protections and taxation that remain unresolved.

Capital

Thailands banking and stock market areas remain protected, with limited licences granted to foreign entities. Some controls on money flows still exist. The aim here is to grow the market size of the local stockmarkets to assist with national wealth creation and generating more confident and consistent foreign investment. Mutual and retirement funds can then be used in ways that contribute to national and ASEAN regional growth.

Certainly competition can be improved, and the current regime has discussed making some improvements. This is not a focus area for the committee and for most purposes there are few members that are concerned with this area. If your company is operating within this area and you have questions, please let the committee know.

Labor

This area of the AEC seems to be the least understood. This is not an agreement like the EU open borders and free movement of labour.



There is only a limited set (7) of Mutual Recognition agreements that have been agreed within ASEAN. This means only that members will recognise the qualifications of other members individuals. This does not mean these individuals can easily travel and obtain employment. Thailand intends to keep the requirement for work permits, visas, minimum capital and Thais per foreign employee at this time. They also intend requiring locally administered (Thai) tests in many areas meaning that it will be very difficult for these trained professionals to be able to operate in Thailand.

The employment act has also not been updated in any way to facilitate the AEC commitments at this time., and processes have not been detailed for how these ASEAN individuals or companies in Thailand could take advantage of the opportunities in this area.

Other Factors

Complicating much of the above is the plethora of other trade agreements that are either already implemented (eg Thai Australia Free Trade Agreement) or under negotiation (EU, Indian FTA's, Trans Pacific Partnership). Many of these include some or all of the areas above and create situations where it is difficult for the investor to make a decision on which countries to operate from or try to trade with, what the actual opportunities are, and to understand what the various compliance and paperwork rules are.

The Presidents Council of the JFCCT recently agreed that the AEC Committee should consider expanding the scope to include these other trade agreements and their affect on members, with a view to contributing a JFCCT Policy to the Thai and other governments on these agreements.

The JFCCT Committee will continue to try to obtain information from the Thai government, and where possible other ASEAN governments to assist members interests. Let us know if you have any specific questions or concerns.