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COUNTDOWN TO AEC: THAILAND'S JOURNEY SO FAR

By this time next year, we should be entering the dawn of the ASEAN Economic Community. Realizing the AEC has not been the easiest task for member countries. For all member countries, it is now vital that their governments establish a substantive regime to ensure that an effective implementation of the AEC concepts to which they have committed to. In this article, we focus on the changes that are still to be made to Thai domestic laws, regulations and policies.



The AEC, to refresh, involves achieving the goal of regional economic integration by the end of 2015. ASEAN should transform into a (a) single market and production base; (b) highly competitive economic

region; (c) region for equitable economic development; and (d) region fully integrated into the global economy. 2020 was the original deadline set for the birth of the AEC; this deadline was then accelerated to 1

January 2015. Noting that the member countries required more time to prepare for the ambitious targets, the deadline was further delayed to 31 December 2015. In this fluctuating timeline context, the new deadline

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is not a “hard target” but rather a milestone year to measure the work in progress.

ASEAN member countries have made a notable achievement in liberalizing trade in goods through the ASEAN Free Trade Agreement by eliminating virtually all tariffs within ASEAN. The achievement in tariff reductions, however, has been tarnished by non-tariff barriers. Non-tariff barriers are defined as barriers, other than tariffs, that distort trade. Generally speaking, typical distortions include border and behind-the-border measures that arise from government regulatory policies, procedures and administrative requirements which are imposed to serve a particular purpose. Thailand to date has largely eliminated the non-tariff barriers or at least brought them under the standards acceptable to the World Trade Organization.

In general, there are no restrictions or prohibitions on imports of most products; import prohibitions are grounded by the necessity to protect public morals, national security, human, animal or plant life, and health.

The liberalization of the services sector in ASEAN is expected to create a competitive environment that will lead to better and more efficient delivery of services. It is thus expected that together with the progressive liberalization of services in ASEAN, local professions will have the opportunity to seek employment regionally, whereby potentially gaining valuable international experiences required for career advancement, not to mention higher wages. In order to implement the AEC, to promote the trade in services and to have a free flow of labor in the region, ASEAN has formulated Mutual Recognition Agreements (MRAs)



for eight professions being: engineering, nursing, doctors, dentists, architects, surveying, accounting and tourism.

Complying with its services obligations has been a difficult task for Thailand as it is known for one of the strongest service-sector protectionism in the region. Historically, Thailand’s investment laws have pendulated between protectionism and liberalization. Thailand recognizes the importance of foreign investment for promoting economic growth and has in recent years relaxed many of its restrictive investment laws and regulations; it has however

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stubbornly held on to antiquated laws which restrict foreign participation in certain industries where Thai nationals are not ready to compete with foreigners. This is further shown in the World Bank's Services Trade Restrictiveness Index, which provides an indication of how willing countries are to accept foreign involvement in services. According to World Bank, the world average is 29 on the index; the lower this number is, the more liberal the country is to welcome foreign involvement in services. Thailand under the index has received a rating of 48 which is well above the world average due to its protectionist policies. Cambodia's rating on the index is currently at 24,

meaning that it is more likely to accept foreign investment in services and subsequently reap the benefits derived from it.

For Thailand to fully comply with its obligations under the trade in services component of the AEC, the following changes will be needed:

1. Liberalization of the 39 Protected Professions

There exist 39 protected professions in which foreigners are not allowed to work; this law was first issued in a Royal Decree in 1973 and has been updated on several occasions. Current professions listed include laborers, lawyers, tour guides, engineers

and architects. It is obvious to see that many of these professions are also professions under which MRAs have been signed. In order for Thailand to fully comply with the AEC, the list of protected professions will need to be further reduced.

2. Compliance with Local Licensing Requirements

The eight MRAs are still subject to all domestic laws and regulations, and thus in order for a professional to work in Thailand, local licensing requirements must be complied with. It is worth noting that all licensing exams in Thailand are conducted in the Thai language and any professional wishing to be a



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licensed practitioner in Thailand is required to give the exam in Thai. This requirement severely hinders the possibility of young professionals moving to work in Thailand. To use nursing as an example, a Filipino nurse qualified in the Philippines when determining which ASEAN member country to practice in would not place heavy consideration on Thailand as such nurse would be required to learn the Thai language and subsequently sit the licensing examination in Thai.

To date Thailand has not provided guidance as to how the licensing requirements will change in the future. Suggestions have been made to hold the licensing examination in two possible languages being English and Thai. Ultimately the government has a responsibility in creating an attractive and integral environment for foreigners.

3. Promote Competition with Foreign Professionals

The existing protectionist policies are in place to give Thai

workers some form of security that they will not lose their jobs to the benefit of foreigners. Moving away from these protectionist policies would encourage Thai employees to obtain training and additional skills in order to effectively compete with foreign professionals.

Thailand's Foreign Business Act BE 2542 (FBA) restricts the participation of foreigners in certain business activities. The principles contained in the FBA are in direct contradiction to the principles of achieving a free flow of labor and services. More recently the Thai government announced its plans to amend the FBA and sought inputs from the public and representatives from the international business community. Surprisingly the proposed amendments, subject to their revisions further to the ongoing context of consultation, do not seem intended to reflect Thailand's commitments for the AEC.

4. Facilitating Work Permits and Eliminating Thai-Foreign Workers Ratio

Thailand's Alien Employment Act BE 2551 requires that every foreigner working in Thailand obtain a valid work permit. Under the act, "work" is defined broadly to include work involving physical strength or knowledge, unpaid internships, volunteering among others whether

or not done in exchange of money or other forms of remuneration. Only a few exemptions are granted, such as: (a) members of diplomatic or consular delegations; (b) the United Nations and other international agencies; (c) pursuant to certain treaties; and (d) upon authorization by the Council of Ministers.

In order for Thailand to fulfill its obligations under the AEC, further exemptions should be enacted in order for Thailand to be able to commit to the various MRAs which are essential for a true free flow of skilled labor.

5. Promote Career Advancement and Language Skills

Thai professionals are unlikely to benefit from the liberalization of labor as many young Thai professionals (a) lack the interest of working abroad; and (b) possess fewer language skills than their counterparts in other ASEAN countries.

In fact the EF English Proficiency Index showed that out of 63 countries and territories where English was not the mother tongue, Thailand ranks 48, narrowly outdoing Venezuela, Guatemala, Kazakhstan, Egypt and Iraq among others. Thailand currently ranks fifth in ASEAN after Malaysia, Singapore, Indonesia and Philippines.



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For example, Filipino nurses would be able to compete effectively with Thai nurses as their qualifications are on par with those of their Thai counterparts, and at the same time their superior language skills will give them an advantage over Thai nurses. Looking at the inverse of this situation, a Thai nurse having equivalent qualification to Filipino nurses would be at a less of an advantage given the lacking language skills should they apply for a nurses position in the Philippines.

The Thai government should have a clear policy in place to promote the development of Thai professionals. Altering the education system would allow the government to develop a strategy to develop the next generation of Thai professionals who are able to serve the demands of ASEAN.

Authors:

*Kunal Sachdev
(kunal@dfdl.com)*

*Audray Souche
(audray.souche@dfdl.com)*

*Matthew Christensen
(matthew.c@dfdl.com)*

*For more information
please contact
thailand@dfdl.com*



INTERN

WELCOME TO NEW CORPORATE MEMBERS:

Buchi (Thailand) Ltd.

77/121 Sin Sathorn Tower,
28th Fl., Unit C, Krungthoburi
Road, Klongsan, Bangkok 10600
Tel: 02-862-0851
Fax: 02-862-0854
E-mail: bacc@buchi.com
Website: www.buchi.com

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Fax: 02-744-3177
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