

**Technical Cooperation  
for the Study on Capacity Building  
for Implementation of  
the Trade Competition Act  
in  
the Kingdom of Thailand**

**FINAL REPORT  
(SUMMARY)**

**September 2005**

**Japan International Cooperation Agency (JICA)**

## Abbreviation

TCA	Trade Competition Act
TCC	Trade Competition Commission
OTCC	Office of Trade Competition Commission
TCB	Trade Competition Bureau
MOB	Monitoring and Operation Bureau
DIT	Department of Internal Trade
MOC	Ministry of Commerce
AMA	Antimonopoly Act
JFTC	Japan Fair Trade Commission

## Table of Contents

Introduction.....	1
I. Overview of the Programs of the Study .....	2
II. Backgrounds of the Technical Assistance Program .....	3
III. Updates of the Current Situation related to the TCA Authorities .....	4
1. Findings on Organizational Aspects Survey .....	4
2. Findings on Legal Aspects Survey .....	6
IV. Capacity Building Programs.....	8
1. Workshops .....	8
2. Advocacy Activities .....	13
V. Market Survey.....	16
1. Overview of the Market Structure .....	16
2. Detailed Market Survey on Maritime Transport Services.....	17
VI. Recommendation .....	19
1. Continuation of Further Capacity Development Programs .....	19
2. Continuous and Extended Information Support Base .....	19
3. Extending Advocacy Activities .....	21
4. For Competition Policy (Industrial Development Policy and Competition Law) .....	22

## Introduction

Since the early 1990s the Government of Thailand (GOT) responded to the rapid development of Thai economy by making law amendments and enacting new laws. In April 1999, the GOT introduced the Trade Competition Act (TCA), establishing an operational authority called the Trade Competition Commission (TCC).

Five years have passed since the establishment of this new scheme; TCC noticed that capacity buildings are essential in the areas of practical knowledge and technical know-how in implementing the TCA.

In response to the abovementioned situation, the GOT and the Government of Japan (GOJ) have mutually agreed to conduct ‘Technical Cooperation for the Study on Capacity Building for Implementation of the Trade Competition Act in the Kingdom of Thailand’ (the Study).

The following, presented as Draft Final Report, is a report of findings from the Baseline Survey and program activities conducted by the JICA Technical Assistance Team (TA Team), with collaborative tasks by the DIT Team.

## I. Overview of the Programs of the Study

Activities of the Study can be categorized into the following four phases: 1) baseline survey on the status of implementation of the TCA; 2) capacity building of the DIT (the Department of Internal Trade) staffs on necessary measures and practical procedures for implementation of the TCA; 3) advocacy activities; and 4) recommendation.

As baseline survey, first, following activities were carried out.

- 1) Assessment of achievements in, and obstacles with, implementation of the TCA thus far;
- 2) Evaluation for understandings on competition policies and measures;
- 3) Studies on the Office of Trade Competition Commission (OTCC) and understand its status as a competition authority, power, organization, activities and management;
- 4) Studies on sectors from the macroeconomic viewpoint, and market structures and business habits to find if they would have problems concerning TCA.

With regards to assistance in drafting guidelines, secondly, the emphasis was on introduction to the DIT of recent cases handled by the JFTC as well as the guidelines drafted by the JFTC which are deemed useful for DIT, while conducting the following activities: (1) Workshops (Case studies with particular focus on the four areas of Dominant positions, Mergers, Unfair Trade Practices and Cartels) and (2) Market Survey ( Detailed market survey was conducted by out-sourced Thai researcher. The choice of the sector, Maritime Transportation, was based on a request from DIT).

Thirdly, two activities, (1) Advocacy Seminar and (2) Website Development, were conducted as part of advocacy activities, with the goals such as public education, promotion and communication regarding competition policy in Thailand.

Fourthly, an overall Recommendation was prepared for further strengthening the capacity of the OTCC to implement the TCA from the viewpoints of strengthening capacity building activities including human resource development.

## II. Backgrounds of the Technical Assistance Program

Competition policy, which ensures an appropriate competitive environment in a free market system, has well been recognized as one of the essential instruments to maximize efficiency in a national economy<sup>1</sup>. In general, appropriate implementation of competition policy exposes firms to fierce market competition, thus compelling them to swiftly and flexibly meet consumer demand by reducing costs and upgrading the quality of their goods and services. This mechanism contributes to promoting optimal resource allocations, as well as to stimulating economic development through giving incentives to firms to further improve their management and technology.

While competition is a welcome development for the national economy, particularly for consumers/user firms, certain frictions exist on the supply side, especially among existing major suppliers trying to maintain their power by means of anti-competitive practices such as abuse of dominant position or collusive arrangements. Competition policy aims to prevent and/or reduce such anti-competitive business practices and promote sound free market mechanisms. Hence, competition laws and regulations play a key role in appropriate implementation of this policy.

Since the late 1990s, rapid developments in the enactment of competition law have been observed among Asian countries. Following the 1997 Asian Financial Crisis, these law enactments were encouraged under the conditionality of international organizations, such as the International Monetary Fund (IMF) and the World Bank (WB). On the other hand, economic growth levels in this region no longer compelled these countries to preserve the conventional protective industrial policies, thus, welcoming these new developments. In fact, even after the IMF/WB initiatives in 2000, Singapore and Vietnam have enacted competition laws, and voluntary development processes can be observed in Malaysia, the Philippines, and in China.

Especially for a country like Thailand among Asian countries, where labor costs continue to rise, it is important to promote managerial and technological innovation in order to maintain and strengthen its international competitiveness. Needless to say, such innovation at the firm and industry level may contribute to sustainable development of a national economy.

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<sup>1</sup> UNCTAD *The Relationship between Competition, Competitiveness and Development*, TAD/B/COM.2/CLP/30, UNCTAD, 23 May 2002

### III. Updates of the Current Situation related to the TCA Authorities

The objectives of the baseline survey were as follows:

- To understand achievements and problems in implementation of the Trade Competition Act (TCA);
- To evaluate and understand problems of competition policies and measure;
- To study the Thai Trade Competition Commission (TCC) and understand problems in terms of its status as a competition authority, powers, organizations, activities and management;
- To survey on capacity building activities from other donors; and,
- To study sectors from the macroeconomic viewpoints, such as market structures and business habits, to find if they would have problems concerning TCA.

This survey mainly dealt with the above objectives from three aspects: 1. organization, 2. laws, and 3. economics. Regarding organizational aspects, the survey focused on 1.1 organizational frameworks, and 1.2. implementation frameworks. As for legal aspects, each section of the TCA were reviewed and compared with those of Japan, US and EU. Economic aspect research focused on a sector study of Thai industry.

#### 1. Findings on Organizational Aspects Survey

##### [Organization Framework]

The Office of the Trade Competition Commission (OTCC), which performs administrative works for the TCC, Appellate Committee, and the subcommittees, is composed of three different bureaus/divisions, the Trade Competition Bureau (TCB), the Legal Division, and the Monitoring and Operation Bureau (MOB). The OTCC plays a key role for implementing the TCA and works well and effectively in the current framework. However, the number of officials responsible for the TCA in the OTCC is limited compared with the amount of complaints/cases.

##### [Implementation Framework]

Implementation Framework is composed of three phases; (1) initiation of a case, (2) consideration by the specialized subcommittee, (3) Inquiry by the inquiry subcommittee and (4) consideration by the TCC. As regards (1) initiation of a case, the OTCC carries a heavier burden to display a higher possibility of the fact of the

violation than those required in Japan. Hence there are cases where the OTCC conducts voluntary interviews, during such preliminary analysis phase, with relevant parties including the alleged company. However, confiscation of relevant documents, including by way of on-the-spot inspection, is only authorized in the formal investigation by the Specialized Subcommittee. Under such circumstances, prevention of destruction and scrapping of evidence incurred by the leak of investigative intentions of the authority could be a concern the OTCC is currently facing.

Secondly, regarding (2) consideration by the specialized subcommittee, Section 13 of the TCA allows for the Specialized Subcommittee, assigned by the TCC, to consider conducts alleged of violation of one of the Sections from 25 to 29, and make recommendations to the TCC.

Thirdly, regarding (3) inquiry by the Inquiry Subcommittee, Section 14 of the TCA allows for the Inquiry Subcommittee, assigned by the TCC, to inquiry conducts alleged of violation the laws, and submit opinion to the TCC for further consideration.

Finally, on (4) consideration by the TCC, as with procedures for the Specialized Subcommittee, investigation procedures of the TCC also are not disclosed.

In terms of practical administration in Japan, the US and the EU, for cases with relatively low illegality or anti-social effect, instead of using the judicial process which requires detailed burden of proof to the authority, release of administrative orders are effectively functioning to correct the alleged conducts. With that in mind, development of operational procedures regarding Sections 30 and 31 of the TCA, and effective implementations of those procedures, could be useful in securing effectiveness of the competition policy in Thailand.



## 2. Findings on Legal Aspects Survey

Legal surveys focused on the following specific sections of the TCA, which are, Sec. 25 (Monopoly), Sec. 26 (M&A), Sec. 27 (Cartels) and Sec. 29 (Unfair Trade Practice) of the TCA.

### [Section 25 of the TCA: Abuse of Dominant Position]

One of the main issues TCB is currently facing with is the drafting of a threshold, which defines market share and total sales volume criteria for monopoly. However, as illustrated above, neither Japan, US, nor EU explicitly fixes threshold market share as legislation or guidelines. This owes to the fact that market share basis for findings of monopoly depend on the situations in relevant market(s). For instance, there could be some markets where a company with market share of 70% will still not be deemed as having monopoly power, whereas in other markets even a market share of 40% could be sufficient to conclude monopoly power. Fact follows that in both Japanese and American case law, “abuse” of alleged monopoly power carries more importance than the power itself. In EU, a dominant position also is determined by other related factors such as market entry, in addition to market shares. Therefore, it seems rational to retain some reservations towards explicitly declaring a trigger level market share on a legislation or a guideline.

### [Section 26 of the TCA: Mergers and Acquisitions]

Clarification of characteristics and positioning of guidelines is important. For threshold in Thailand first need to be recognized as displaying “objective numeric” concerning applications and investigations, unlike the ones in Japan, US or EU which serve as source of administrative implementation guidance. We then need to take the next step to further analyze the positioning of the “objective numeric,” as whether it is notification/applications threshold. Now, it is on proceeding.

Because of the above the characteristics, Section 26 of the TCA will be completely unapplicable for mergers below thresholds prescribed in the “Guideline.” It is important to recognize that this is different from the AMA structure, in which while there are no notification obligations for parties to mergers that do not meet the criteria in the AMA, they nevertheless are subject to regulations by the JFTC.

### [Section 27 of the TCA: Cartels]

Section 27 of the TCA defines a list of types of prohibited collusions. Cartel

regulations are to cover any conducts, which causes a substantial restraint to the concerned market. However, in countries where competition laws are recently introduced, there tends to be limited mutual understanding between competition authorities and domestic industries about which conducts could be prohibited under the competition laws.

#### [Section 29 of the TCA: Unfair Trade Practices]

Section 29, unlike the prescriptions for private monopolization or cartels, enables TCC to regulate various anticompetitive conducts by not listing up prohibited conducts individually and substantively, similar to unfair trade practices provision in Japan. Such characteristic of the Section is an ambiguity to be criticized. As in the case of Sec. 27, it is useful to come up with common understandings on prohibited conducts between competition authorities and private sectors to enumerate standards and contents of the prohibitions. Notable importance of this Section with enactments of respective guidelines in insight is the fact that these guidelines make it impossible for the TCC to prohibit conducts other than those enumerated under the guidelines. In case of Thailand, it seems to take some time for enacting guidelines of Sec. 25 and 26., and the prospected roles for Sec. 29 (not only for prohibitions against unfair trade practices, but also for those against monopoly and others) is still large. Therefore, maybe the priority to establish the guidelines for Sec. 29 is not so high at this moment, but it is important to recognize the need as mid-long term targets.

#### IV. Capacity Building Programs

Capacity Building Activities of this project are composed of two parts, 1. Workshops and 2. Advocacy Activities, as follows;

##### 1. Workshops

###### 1.1 Development of Program Formulation Process

In formulating the program activity, the following step cycle was utilized in order to substantiate a continuous series of programs.

Step 1: Identify theme subject(s) through discussion within the authority (among the units).

Step 2: After prioritizing the theme subject(s) in each unit, the priority in the authority as a whole be identified.

Step 3: Identify point(s) of focus and referential resources (ie. cases).

Step 4: Identify the reason(s) why the item(s) of Step: 3 above is/are chosen.

Step 5: Evaluate the level of understanding from the material(s)/program(s) actually provided in terms of the context of Step: 4 above

Step 6: Consider rearranging the next program to recover inadequacy in the previous program when found necessary in the Step: 5 above. (Provided that the new interest(s) is/are addressed at this stage, the cycle can be re-process from Step: 1.)

Step 7: Evaluate over-all program by over viewing completed matrix. The cycle can be re-process from Step: 1 where inadequacy is found in the matrix.

## 1.2 The First Workshop

The first workshop was held from January 25 to 27, 2005 at the UN Conference Center in Bangkok. The theme was “unfair trade practice” and Mr. Fumihiko Sajima, Director of Investigation Division II, JFTC and Mr. Kaoru Yokoshima, Chief Investigator, JFTC were invited as lecturers.

The first workshop focused on two topics; guidelines concerning distribution systems and business practices and recent cases on unfair trade practices in Japan. First on the guidelines, various questions were raised from the participants including; (1) “a sale below the costs by large retailers” and the standards for its judgments, (2) illegality of articles on resale price maintenance in franchise contracts. Reasons behind the question on a sale below the costs attributed to the fact are that TCC was currently facing with similar problems and preparing the guidelines on the concerned conducts by large retailers.

Secondly, regarding recent cases, major points addressed by the participants included: (i) investigation methods of the JFTC (e.g. what kinds of proofs and witness JFTC used, how to take depositions), (ii) procedures before on-site inspections, (iii) JFTC’s power and authorities for investigations and inspections. The focus of questions is based on the fact that one of the main roles of OTCC is to submit a report recommending whether the TCC should start formal investigations or not. The OTCC officials are interested in how to make assumptions before conducting formal investigations.

## 1.3 The Second Workshop

The second workshop was held from March 7 to 10, 2005 at the UN Conference Center in Bangkok. The theme was “monopoly” and Mr. Kazuya Toyoshima, Chief Investigator of JFTC, Mr. Yasushi Ishizuka, Chief Investigator of JFTC, and also Professor Seryo, Doshisha University, were invited as lecturers.

The second workshop focused on two topics; thresholds for dominant positions and recent cases on monopoly in Japan. First, on the thresholds in Thailand, the TCC is currently considering thresholds for the definition of dominant positions. Because of lack of the thresholds for dominant positions, the TCC could not apply the section prohibiting a certain conducts by dominant players and, instead of the section, the TCC tried to use the section for unfair trade practices against the monopolization

cases. Based on the above backgrounds, one of the major questions raised by the participants were difference between “Private Monopolization” and “Unfair Trade Practices”, and difference between “Private Monopolization” and “Monopolistic Situation” in the context of AMA.

Second, with regards to recent cases, questions from the floor focused on; (i) methods and procedures for investigation/on-site inspections, (ii) definitions of geographic and product markets. Also on the third day, the floor was opened for questions and the participants raised questions such as: (a) methods of market definitions, (b) relationship between Section 3 and Section 19 of the AMA, (c) procedures and methods collecting information before initiating formal investigations, and so forth. After that, both Japanese and Thai sides explained their respective investigation procedures. Some of the Japanese lecturers pointed out the importance to disclose more detailed procedures for investigations to the public in order to maintain transparency of the competition policy.

On the fourth day of the second workshop, participants conducted moot court as practical trainings. The discussions between two parties were ranged from market definitions, existence of dominant powers and illegality of the concerned conducts. The sample case supposed that the TCC enacted the guidelines on dominant positions, which included not only market shares, sales volumes, but also other qualitative factors such as market entries. The TCA requested the TCC to provide thresholds for dominant positions from only two aspects, market shares and sales volumes and this training provided with the participants to review the importance of “other factors,” in particular, a factor of “market entries” in order to define a dominant position.

Also, after considering the thresholds for dominant positions, participants analyzed and discussed about how to deal with cases on monopoly under Section 25 of the TCA (prohibiting a certain conducts by companies with dominant powers). At pre-workshop hearings, some officers mentioned that Section 25 was judged as *per se* illegal case, while Section 29 (Unfair Trade Practices) was under “rule of reasons”. The moot court practice provided with the participants an opportunity to realize the importance of “other factors” in establishing Section 25 cases.

#### 1.4 The Third Workshop

The third workshop was held from May 30 to June 2, 2005 at the UN Conference Center in Bangkok. The theme was “cartels” and Mr. Kazuya Oya, Deputy Director of the JFTC, Mr. Atsushi Konno, Chief Investigator of the JFTC, and also Professor Seryo, Doshisha University, were invited as lecturers.

The interests of participants were focused on three areas; substantive laws, procedural rules and international cartels. First, regarding substantive laws, questions raised in response concerned with issues including: illegality of an agreement without explicit amount of price increase; to which party rests the burden to prove the conduct is “not contradicting to public interest”; regulations on export cartels; and basic concepts regarding methods to prove the substantial restraint to a competition.

Second, with regards to procedural rules, questions asked as follows: how the case was initiated, methods of on-site inspection, the size and budget of the site inspection, points to bear in mind for preliminary investigations before the on-site inspection, methods for planning the on-site inspection, and measures that could be resorted to when the companies do not cooperate. Thirdly, on international cartels, questions from the participants are those on issues such as: the key reason why surcharge order was not chosen in the end, existence of an exemption on markets with extremely small demand, possibility of proof gathering from a foreign company, and possible responses in a supposed situation where sufficient evidence mounts up after the issuance of warning.

Also at the third workshop, a role playing practice was conducted. This practice succeeded in reaffirming, from their respective viewpoints as the TCB and cartel-participant firms, the importance of the risks of evidence destruction from having direct contacts with the suspected firms, and the difficulty in establishing a case to initiate formal investigations if the approval standard for on-site investigation by TCC is prohibitively high. Also after the practice, lecturers offered explanations on, among other issues, the necessity of ensuring a communication method with the anonymous witness, the importance of specifying individuals in the suspected firms who were involved in cartels before the on-site inspection, the items for market analysis that could be studied without getting in touch with the suspected companies, and detailed techniques which could be employed upon interviews. In addition, the lecturer pointed out that it was important for effective exposition of cartels that they

should be subject to administrative instead of criminal procedures, thereby enabling on-site inspections with less evidence.

### 1.5 The Fourth Workshop

The fourth workshop was held from July 11 to 14, 2005 at the UN Conference Center in Bangkok. The theme was “M&A” and Mr. Toru Hosoi, Chief Investigator of the JFTC, Ms. Toshiko Igarashi, Investigator of the JFTC and also Professor Seryo, Doshisha University, were invited as lecturers.

The fourth workshop focused on M&A guidelines in Japan and its related cases based on the backgrounds that OTCC was currently assigned to draft guidelines on M&A. Questions were actively raised regarding issues such as concepts of each type of M&A (particularly on “demergers” to which the Thais are unfamiliar with), the reasons behind the difference in notification criteria for stockholdings and acquisitions of business, basis for the respective notification thresholds, and organic interrelationship between the Commercial Code and the AMA, points for improvements to ease the burden on the companies upon their filing of notifications; the methods for, and the party in charge of market definition; methods for calculating market share; and investigation methods for conglomerate mergers.

Also in the final session, based on the merger regulation in Japan and the draft M&A Guideline in Thailand presented in the previous session, participants from both sides, Japan and Thailand, exchanged their opinions on the Thai Guidelines. Confirmed preconditions for the discussion on respective thresholds are: (i) theoretical possibility in Japan to regulate cases that would substantially restrict competition without meeting the notification criteria, in contrast to difficulty in Thailand to regulate cases that do not meet the criteria (on market share, sales volume, etc.), at least with TCA Section 26; (ii) possibility for mergers which could bring about monopoly or unfair trade practices to be still approved, if it meets the public interest, as provided in Section 37, unlike any provision in Japan; and (iii) confirmation that the Thai’s criteria on sales volume and market share and such which are to be prescribed in the Guideline serves not only as a “notification criteria” but also as criteria for *prima facie* illegal (whereas in Japan, only the criteria for notification requirements and for safe harbors are prescribed, but none is set as illegality inference).

Following the above confirmation, comments were made from the Japanese lecturers and the TA Team regarding individual thresholds. As for the threshold on “total asset,” important issues pointed out includes the desirability in principle of incorporation of such objective values for total asset in merger investigation, and the importance of appropriateness of the thresholds, since the increased burden that would ensue companies with too low a threshold, and ineffective surveillance resulting from too high a threshold, are both not optimal. As for threshold on “market share,” the Japanese participants noted that: because the value was extremely dynamic and variable, it may bring both the companies and the authority confusion; because market definition method may also affect the share, though figure did play as a reference it was never included in the notification requirements in Japan; and it was important to not only look at the absolute value of pre- and post-merger market share, but also at the significance of the change in the market share after the merger.

## 2. Advocacy Activities

### 2.1 Current Advocacy Activities by DIT

DIT is conducting the following advocacy activities.

#### Radio Broadcasting

DIT is broadcasting radio programs as one medium to inform of its activities to the general public, since 2003. In 2003 and 2004, interview/talk programs were aired to explain functions of competition law. In 2005, 15-second spot CM started to be aired, replacing other programs, through FM stations in Bangkok and major cities all around Thailand. The main contents of the spot CM are introduction of TCA and hotline for consumers. The radio broadcasting is a suitable media for widely informing the general public and consumers.

#### Newsletters

Since March 2002, newsletters (in Thai language) on website has been released on a monthly or semi-monthly basis, and the number of issues released is 55 as of May 2005. The title of the newsletter is “Open the competition World”. The newsletter is targeted to the general public with strong interest, as well as to the government staff within Ministry of Commerce to enhance their knowledge. There were two Japanese cases covered, one on merger of airline companies and the second on abuse of dominant position by a convenience store, together with JFTC’s view for the respective cases.



## Seminar by DIT

DIT started to conduct seminars since 2003, targeting the general public, to advocate the TCA and its implementation. The seminars were held once a year in 2003 and 2004; in 2005, DIT plans to hold four seminars, twice in Bangkok and twice in major cities in the regions, in addition to the seminar conducted under this project.

### 2.2 Advocacy Seminar

The Advocacy Seminar subtitled as “Trade Competition Law: Benefit for Society”, organized by JICA and DIT, was conducted on May 27, 2005. The Seminar was opened with addresses by Mr. Mikiharu Sato, Resident Representative of JICA Thailand Office and Mr. Siripol Yodmuangcharoen, Director General of DIT. Following the opening address, Mr. Siripol continued to cover in his speech on “Trade Competition Act in Thailand”. Then the keynote speech, titled as “Japanese Experience in Trade Competition Policy” was delivered by Mr. Isao Kasubuchi, Director of Inter-Enterprise Trade Division, JFTC.

In his keynote address, Mr. Kasubuchi covered; history of Antimonopoly Act (AMA) of Japan, Competition Policy in the World, Recent Topics in Retail Business Regulation, and International Cooperation in Asia. In the past 50 years since its enactment, Japanese AMA has evolved its function along with the Japanese economy, starting from post-war depression to the recent development. The lecture contents were intended for sharing Japanese AMA case as a good reference for Thai in implementing TCA. The keynote speech lasted for about one hour, followed by a Q and A session.

In the afternoon, a panel discussion was held, with panelists being invited from Thai’s private sector, a consumer group and a law office, with a moderator from DIT and Mr. Kasubuchi of JFTC participated as a panelist as well. The panel discussion was lively and informative.

The number of participants to the seminar counted 164, exceeding the prospected attendance of 150, reflecting strong interest shown by the private sector. As for the evaluation by the participants, 86% of the respondents indicated positive remarks. The written comments by the participants highly evaluated the organizers’ initiative, while indicating demands for further effort by the Thai authority for the TCA to be effective.

### 2.3 Web Site Development

In addition to Advocacy Seminar, a website development for Trade Competition Bureau is being planned to be assisted by this TA. Since a website can provide detailed information to the general public with specific interest, either consumers and business sectors, it is a more appropriate media for those who have serious interest in competition regulation. As a part of this Study, technical assistance was provided to re-construct the present website in order to expand contents to be up-loaded to the OTCC web site.

## V. Market Survey

### 1. Overview of the Market Structure

The production structure of Thai Economy has been dramatically changing in the last 5 decades. Whereas agricultural sector accounted for 45% of the gross domestic products (GDP) in 1951, it contributes only 10% in 2003. On the other hand, the share of service surpassed that of agriculture in 1952 and it accounts for 53% of the GDP in 2003, while the share of manufacturing finally exceeded that of agriculture in 1980 and now it accounts for 37% of the GDP. Not surprisingly, the rapid growth of Thai economy since the second half of the 1980s has been driven by these two sectors. Although the Thai economy experienced negative growth in 1997 and 1998 due to the economic and financial crisis, it already shows a steady upward trend since 2001. One can observe that the underlying cause of this recovery after the crisis was the revitalization of manufacturing sector rather than service sector, and this was mainly driven by increase in exports brought about by the depreciation of the currency.

Foreign trade dependency ratio<sup>2</sup> of Thai economy significantly rose since 1980s, reflecting change in trade policy, such as introduction of export promotion policy and liberalization of tariffs and non-tariff barriers. The ratio was less than 40% in the 1970s, whereas it reached approximately 124% in 2003. One can easily imagine that current competitive conditions faced by domestic producers in Thailand are totally different from those few decades ago, and the role of competition policy in the domestic market is also inevitably different from what it used to be. Especially, trade liberalization without sound competition policy could damage domestic industries that are not prepared for fierce competition with imported products, while effective competition policy is also essential for inducing technological/managerial innovation of Thai exporters and thus strengthen their international competitiveness in the international market.

In this Study Program, we conducted research on overall market structure of Thailand in manufacturing and service sectors, by utilizing data on concentration ratio provided by the DIT. The concentration ratio (CR4) reaches 100% in the markets of export handcraft industrial goods, service provider of international communication of supporting, financial, banking information service, and tour guide service. The ratio is also high in the markets of communication services (99.7%), energy sectors (from 40

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<sup>2</sup> Trade dependency ratio = (Exports + Imports) / GDP.

to 79%), and insurance service (40.8%). This implies that markets with relatively high concentration ratio mainly belong to service sector in Thailand. However, one cannot easily conclude that the degree of competition is high enough in manufacturing sector, since this statistics is also too aggregated to evaluate the degree of competition in each product market. More detailed market analysis should be conducted in order to evaluate markets from the viewpoint of competition policy.

## 2. Detailed Market Survey on Maritime Transport Services

As a part of this Capacity Building Program, a detailed market survey on maritime transport services was conducted in cooperation with a local research institute (CA International Information, hereinafter “CAII”). The main objective of this market survey is to share with DIT Team the methodologies and procedures of a detailed market survey, which is essential for competition law enforcement. In addition to that objective, an actual case study on maritime transport services (including the market for road transportation service of containers) in Thailand, to grasp the market structure and to identify problems in the concerned market from the viewpoints of competition policy. The target sector was determined by the DIT Team, and scope of work was concertedly designed by the TA Consultant team and the DIT Team during the second field survey.

In this survey, both quantitative (e.g. statistical and financial analysis) and qualitative approach (e.g. interview with the experts and stakeholders, and regulatory analysis) were adopted. As for the interviews, total number of interviewees counted 101, including shipping companies (liners), shipping agents, freight forwarders, and firms providing road transport service for containers. The followings are some key-findings in the final report submitted by the CAII.

- 1) In 2004, 93.6% of Thai trade volume (import + export) and 66.3% in its trade value were transported by sea.
- 2) In Thailand, there are two major ports for container shipping, the Leam-Chabang Port and the Bangkok Port (Klongtoey). In 2004, containerized trade for both import and export passed through these ports account more than 75% of total volume.

- 3) Both shipping market and shipping agent market in Thailand are oligopolistic. Among others, the container shipping market is especially highly concentrated market with the CR4 of 98.5% and HHI of 3,617. This highly concentrated structure suggests that there might be anti-competitive conducts/behaviors in the market, as well as in the related market such as container road transport service, which is operated not only by independent trucking companies, but also by subsidiaries of these container shipping companies.
- 4) The procedure for ship registrations in Thailand is relatively complicated and time consuming. In addition to the current oligopolistic structure in the shipping market and the initial fixed cost for obtaining container ships, this inefficient regulatory burden such as administrative paper work would further enhance the difficulty for new market entrants to enter into the market. Compared with foreign liners, local shipping companies cannot enjoy economies of scale due to the small number/capacity of ships they have, as well as to the lack of global operational network and IT technology enabling efficient and timely service for their clients.
- 5) While there is a standard nominal freight rate in the market, both Thai and foreign freight rates are changeable, depending on several factors such as cargo quantities, distance of transport, bargaining power against the customers, destination, season, and so on. Most of large exporters in Thailand usually sign 1 or 2 year(s) contract of affreightment with foreign liners, by establishing a special fixed freight rate agreed between them through negotiations. The customers of Thai shipping companies mainly consist of local small and medium sized enterprises, who do not have enough bargaining power against the mega foreign liners and who do not prefer the annual contract due to budgetary constraints.
- 6) Generally, both Thai and foreign liners provide the road transport service of containers as a part of their service, so as to satisfy the customers' needs. The liners usually have their affiliated company for road transportation, or they hire other logistics companies. The fee for the road transport generally does not differ among the liners, since an association of container road transporter usually fixes the standard price.

## VI. Recommendation

### 1. Continuation of Further Capacity Development<sup>3</sup> Programs

While recognizing the needs and necessity for increase in the number of officials in the authorities, it is still effective to conduct capacity development programs in order to further substantiate the knowledge and experiences of current officials.

#### 1.1 Utilization of the Program Formulation Process

The process that JICA TA Team/DIT Team developed through the Project can serve as the foundation of further task to formulate effective capacity development programs.

#### 1.2 Internal Knowledge Sharing Activities

As there are already officials with extensive knowledge and experiences in the authority, it is recommendable that certain coordination will be made internally to activate mutual knowledge feedback activities not only to share the knowledge but also to construct the standardized foundation as the TCB. These activities can also be undertaken through the Process in the previous section (1).

It is also an effective way to share information through internal network system, such as intranet. Thus, besides developing the website as a part of advocacy activities, it is useful to consider internal use of servers.

### 2. Continuous and Extended Information Support Base

For collecting all necessary information efficiently and successfully for particular cases, TA Consultant Team recommends TCB to take five steps described below to achieve this goal.

#### 2.1 Collecting/Compiling Annual Data on Market Concentration in Oligopolistic Markets

It is recommended to periodically collect/compile market information such as production volume and sales value at least in oligopolistic sectors, in order to monitor the market structure and to be prepared for TCA-related investigations. Considering

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<sup>3</sup> : The Capacity Building has to be enhanced to the Capacity Development stage; thus, in this section, the term "Capacity Development" is used instead.

time and human resource constraints, the number of sectors covered in the database can be started with few prioritized sectors in the initial stage, and then the coverage can be extended step by step. TA Consultant Team also recommends TCB to deploy a full-time official/staff to maintain the database in the bureau.

## **2.2 Enhancing Accessibility to DBD's Firm Database by TCB for TCA Enforcement**

It is recommended to have more efficient and frequent communication between the TCB and the Department of Business Development (DBD) where the companies' annual data is reported, in order for TCB to efficiently collect/compile data necessary for developing above-mentioned database within the TCB. Recognizing the fact that publicly available information for competition authority is quite limited in Thailand, it might be also useful to consider a possibility of re-designing DBD's notification format to further collect supplementary data necessary for TCB investigation.

## **2.3 Maintaining Information Library within TCB**

It is also useful for TCB to regularly collect/maintain other publicly available information necessary for promptly conducting market analysis when necessary. If necessary, additional budget for obtaining the above information should be requested in near future.

## **2.4 Hiring Economists for Analyzing Particular Cases and Formulating Guidelines**

It is essential for a competition authority, whose goal is to maintain and promote free and fair competition in the market, to have knowledge on economics to analyze cases from the economic perspectives. In fact, many competition authorities including JFTC have been hiring economists to implement competition laws and regulations in a consistent manner. TA Consultant Team recommends for TCB to actively hire officials with the level of master's degree or PhD in economics, especially in the field of microeconomics or industrial organization, as a substantial part of workforce to conduct market analysis as well as to make suggestions in formulating related guidelines.

## **2.5 Minimizing Risk of Information Leakage before Site Inspections**

It is very efficient way to outsource a part of the market analysis to private research and consulting firms/institutes. For example, outsourcing a part of general

market analysis for formulating a new guideline would be very useful for TCB, considering time and human resource constraints. However, to some extent, there would be a risk of information leakage if TCB tries to outsource a part of market analysis or interview survey concerning “a particular case” to outside firms/institutes, before conducting site inspections. It is therefore recommended to limit outsourcing activities to general research.

### 3. Extending Advocacy Activities

#### 3.1 Comprehensive Designing of Activities

Recognizing several existing activities, such as radio & TV programs beside symposiums, more comprehensive designing with interrelations among those activities should be considered. Keeping track of participants, listeners, or other related personnel is also important to scale and expand interested parties in the society/market.

Consideration to organize monitor groups as a system is to be taken to this end. As referred in the system conducted by JFTC, activities of consumer/retailer monitors has increased public awareness in the area of competition policy as well as collecting updated information of business situation and/or complaints.

#### 3.2 Organizing Counterparts in the Business Community

It is recommended that advocacy activities necessarily be strengthened for industry and business community as well as consumers.

In order to stimulate communication with industrial and business society, as a place to have exchange of views and opinions between those organizations and the competition authority, it is recommended to establish a focal point or a committee to serve those purposes. And a certain public comment system is also to be considered to generate attention to the focal point. The public comment opportunities can serve not only to this end but also to invite practical and significant comments when formulating new guidelines and/or policy.

In Japan, Japan Federation of Economic Organization has “Economic Law Committee”, consisting of member enterprises. The Committee gathers periodically, participated mainly by legal experts from the member enterprises. The Committee provides occasion to learn new regulation by inviting JFTC officials, and collect opinions from members in order to consolidate them into one voice. The recent



example is that opinion addressed to the JFTC regarding the amendment of the AMA. The opinion statement by the Federation is made public. It is recommended that DIT to as relevant private organizations to establish the counterpart organizations.

### 3.3 Utilization and Further Development of Web-site

In order to support advocacy activities, the website is an effective tool. It is recommended to have the contents of the website to cover more substantial and detailed information. It is also recommended to have opportunities to monitor needs of interested parties, such as consumers, businesses, and the professional society. It is also important that substantiation of Q&A through the website on inquiries of individual cases and complaints

Not only as an advocacy activity but also as an efficient way to gain the opinions/complaints, the website is effective. Enhancements to the website developed in the Project is recommended (i.e. substantiation of database function). As the operational training is essential to make it work effectively, the necessary effort has to be taken to design operational rules and training programs.

## 4. For Competition Policy (Industrial Development Policy and Competition Law)

Economic development of Thailand is considered as one of successful cases in Asia. Thai economy, having started with an agricultural base, is now enjoying more than 70% of its export revenue from industrial products. However, there is an opinion that Thai industry has not yet developed enough to the level as internationally competitive, which is a shared view among Thai government as well as private sector. And this view tends to lead to the opinion that the competition law needs to be applied with careful consideration for the national industrial development. On the other hand, there is an observation, mainly from the consumers' side, that major industrial sectors are dominated by limited number of large enterprises, e.g. steel, cement and food supply. The anxiety for fair market competition has been expressed.

J. O. Haley<sup>4</sup> pointed out that objectives of competition policy have two aspects, economic and political aspects, in "Competition Policy and Economic Development in APEC Countries"<sup>5</sup>. The economic objective is to achieve higher efficiency and optimum allocation of resources, and political objective is for

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<sup>4</sup> John. O. Haley, Professor, Washington University

<sup>5</sup> Iyori et al, Chuo University Press, June 2002 (in Japanese)

prohibition of economic concentration and democratization in economy. He discussed that APEC countries, including Thailand, are required to make it clear that their competition policies to have one or two of these objectives<sup>6</sup>. However, an industrial development policy is not considered as part of the competition policy, but to the contrary, a government intervention is positioned as an obstacle for competitive market environment.

On the other hand, if we take a look at Japanese historical experience, there was a period that competition policy was weakened relative to industrial development policy, in which government intended to protect and encouraged gaining international competitiveness. There is a claim that some subsectors of industry, e.g. automobile and electronic industries, gained international competitiveness as a result of such tilt. But there is a fact that those industries went through fierce competition among domestic competitors, and with imported products gradually entering in with liberalization policy for opening the market, only by being technologically innovative could enterprises have survived. Furthermore, those industries under long-lasting government protection tend to lose competitive edge to the international market.

Industrial development is a high priority policy for any developing country in Asia, and governments have armed itself with strategy in developing particular industrial subsectors with sets of policies to give chances to gain international competitiveness. On the other hand, it must be emphasized that competition policy is a policy for increasing total efficiency of national economy and economic democratization, which particularly works for consumers' interest. It must be fair to say that competition policy is not designed to cover industrial policy which is supposed to be handled by economic and industrial development policy by the respective authorities in charge. As the Japanese historical experience suggests, evolution of competitive policy is recognized as a dynamic process; however, the competition authorities are to be aware of their role as a counter-balancing to economic development "and" fair market creation.

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<sup>6</sup> ref. page 4-5, Chapter for "Competition Policy in APEC Countries", said literature