Thai Trade Policy: From Non-discriminatory Liberalisation to FTAs

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1. INTRODUCTION

BEFORE the Asian crisis, Thailand, like other southeast-Asian countries, relied on non-discriminatory unilateral liberalisation, reinforced by the Uruguay Round Agreements. Since then, unilateral liberalisation has slowed down, and political attention and negotiating resources have switched from the WTO to preferential trade agreements (mainly bilateral free trade agreements). The latter have come to dominate Thai trade policy since about 2002. This takes place against the backdrop of proliferating FTA initiatives in Asia-Pacific and beyond. Singapore blazed the trail in southeast Asia, with Thailand next to follow.

This throws up a political-economy puzzle of sorts. Thailand is a very open, globally-integrated economy characterised by strong unilateral liberalisation in the 1980s and 1990s (especially in manufacturing, less so in agriculture and services). Since the early 1990s, China’s external liberalisation, unilaterally and through its WTO commitments, has been massive. India’s unilateral opening has also been considerable in the same period. One would expect such movement on both Chinese and Indian flanks to spur further opening in the globalising southeast-Asian economies in between, including Thailand.

So why has liberalisation slowed down in Thailand (and in other southeast-Asian open economies)? Why has it become reliant on discriminatory FTAs? What are the motives for these FTAs, how have they been pursued, and how ‘liberalising’ are they? What knock-on effect do they have on Thailand’s other
trade negotiations and trade agreements, multilaterally in the WTO and regionally in ASEAN (the Association of Southeast Asian Nations)? How do they fit with economic policy at home? Are they a reaction to external forces, such as the Asian crisis, IMF-induced structural adjustment and a stalled WTO? Do they merely reflect the general trend towards FTAs in southeast (and northeast) Asia? Or do they have distinctive Thai characteristics?

The last question relates to the domestic political context. That has become more important as Thai FTAs, especially the US-Thai FTA negotiations, have become politically controversial at home. They became caught up in general opposition protest against Prime Minister Thaksin Shinawatra and his government. At the time of writing (July 2006), FTA policy had stalled as a result of domestic political crisis.

To address these questions, this paper’s focus has to be selective. It provides background on other features of Thai trade policy, but FTAs are centre stage. There the spotlight falls particularly on the US-Thai FTA negotiations. These are by far the most important for Thailand, given the extent of US demands and potentially far-reaching consequences for Thailand.

Section 2 has an overview of the Thai trade-policy framework, focusing on national measures on trade and foreign direct investment in goods and services, and then on Thailand in the WTO and ASEAN economic integration. Section 3 identifies the main actors in Thai trade policy, and briefly describes the trade-policy decision-making process as well as recent developments during the Thaksin administration. This leads to the central section on FTAs. The motives behind Thai FTAs are examined in terms of how they relate to wider regional trends, as well as to domestic political and economic developments. Finally, individual FTAs are examined, with a special focus on the US-Thai FTA negotiations.

2. THE NATIONAL TRADE-POLICY FRAMEWORK

a. Trade, FDI and Trade-related Measures

Thailand’s fundamental shift from import-substitution to export-orientation policies took place in the early 1970s. Since then the economy has become progressively more open, although the real acceleration of external liberalisation dates back to the second half of the 1980s. This fits the broader southeast-Asian pattern. Trade-and-FDI liberalisation has dramatically altered the features of the Thai economy, with swathes of manufacturing becoming integrated into global markets. Merchandise trade accounts for about 100 per cent of overall GDP.

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1 This section draws on WTO (2003), USTR (2006) and Talerngsri and Vonkhorporn (2005).
Stripping out services, goods trade is just over 200 per cent of GDP in goods (NESDB, 2005, p. 4). There is a strong link between FDI and export-based production. That said, Thai external liberalisation has coexisted with extensive ad hoc government intervention at the sectoral level. While this has decreased in manufacturing, it remains pervasive in agriculture and services (Siriprachai, 1998).

Thailand generally resisted a descent back into protectionism in the wake of the Asian crisis, reflecting the wider regional trend. Overall, trade-and-FDI liberalisation has continued since the Asian crisis, but more gradually and fitfully (Sally and Sen, 2005).

According to the last WTO Trade Policy Review in 2003, Thailand’s overall simple average tariff was 14.7 per cent. This breaks down into a tariff average of 25.4 per cent for agricultural products and 12.9 per cent for non-agricultural products (Table 1). Tariffs are lower once weighted by the volume of imports, especially due to tariff exemptions, duty drawbacks and other schemes to attract export-oriented manufacturing FDI. Further reductions of manufacturing tariffs have taken the overall average down to 11–12 per cent. This takes Thailand closer to average tariff levels in Malaysia, Indonesia, the Philippines and China (Table 2).

Nevertheless, Thailand retains a complicated tariff structure with tariff peaks, tariff dispersion (with 46 different rates) and tariff escalation. In general, very low effective rates of protection (ERPs) are found in export-competing sectors where Thailand enjoys strong comparative advantage, but high-to-very-high ERPs are found in several import-competing agricultural and manufacturing sectors (Athukorala et al., 2004).

Classic non-tariff barriers (e.g. import and export licensing, quotas, bans, foreign-exchange restrictions, state-trading monopolies) have come down drastically in tandem with tariff liberalisation and are in line with other new-industrialising countries in southeast and east Asia. However, they do remain a problem in agriculture, especially with complex discretionary import licensing and tariff quotas on some products. This encourages smuggling from neighbouring countries, which is still widespread.

Thailand has a relatively liberal regime for inward investment in manufacturing by developing-country standards, though less so for services and other non-manufacturing activities. There are widespread legal restrictions on foreign ownership, but these are frequently overridden by government-operated investment and export-promotion schemes. In practice, most manufacturing activities are open to 100 per cent foreign ownership.

Restrictions are higher in services. In financial services, all three major sectors – banking, insurance and securities – have foreign ownership, entry, establishment and operating restrictions, with limited liberalisation planned for the future. For example, the Financial Sector Masterplan, unveiled in 2004, holds the maximum foreign-equity limit at 49 per cent, and even that remains at the discretion of the central bank (Supradit et al., 2005).
The Masterplan for Telecommunications Development, announced in 1997, sets out the route to full liberalisation of basic telecommunications services by 2006. However, progress on liberalisation and regulatory reform has been slow. Privatisation of the two state-owned, quasi-monopolistic operators has been delayed. The new regulator, the National Telecommunications Commission, was finally established in 2004 after a delay of several years. Much regulation of licensing, terms of interconnection and standards-setting remains opaque and
### TABLE 2
Summary of the Tariff Structure in Selected Asian Countries

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<td></td>
<td>No Lines</td>
<td>Per Cent</td>
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<td>0–5</td>
<td>440</td>
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<td>2,969</td>
<td>58.1</td>
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<td>6–10</td>
<td>1,353</td>
<td>26.5</td>
<td>749</td>
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<td>496</td>
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<td>20–25</td>
<td>617</td>
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<td>74</td>
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<td>25–30</td>
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<td>30–40</td>
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<td>50–60</td>
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<td>9</td>
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<td>60–80</td>
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<td>0.6</td>
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<td>80–100</td>
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<td>&gt;100</td>
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<td>24</td>
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<td>100</td>
<td>5,110</td>
<td>100</td>
<td>5,106</td>
<td>100</td>
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<td>Tariff bands</td>
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<td>52</td>
<td>45</td>
<td>38</td>
<td>57</td>
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<td>0–1195</td>
<td>0–60</td>
<td>0–80</td>
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<tr>
<td>Average tariff</td>
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<td>10.2</td>
<td>7.6</td>
<td>11.99</td>
<td>18.53</td>
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<tr>
<td>CV</td>
<td>71.3</td>
<td>127.8</td>
<td>340.3</td>
<td>93.9</td>
<td>101.3</td>
<td>120.78</td>
</tr>
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</table>

uncertain, with many controversial issues unresolved (Tangkitvanich and Ratananarumitsorn, 2002).

There are tight restrictions on foreigners working in professional services such as law, accountancy, architecture, engineering and medicine. Foreign participation is confined at best to joint ventures and minority shareholdings in local firms. The retail, transport, construction and health-care sectors are also protected.

Institutional weaknesses can be as great a barrier as direct protectionist instruments to market access for foreign-owned firms and competition in the domestic market. Policy changes are often made by ministerial announcement, without forewarning or clear explanation. Tariff changes are frequently effected in this way, as are case-by-case decisions on granting investment incentives and relaxing legislative restrictions on foreign ownership. This reinforces the impression of unpredictability and incoherence in policy making.

Competition policy got a significant boost with the passage of the Trade Competition Act of 1999, which covers anti-competitive practices such as abuse of dominant market positions, cartel agreements, mergers and unfair trade practices. The Act does not discriminate between firms on the basis of nationality. It also provides for a Competition Commission. However, the regulator is not independent of government and is housed in the Ministry of Commerce. There is no clear definition of ‘dominance’ in terms of market-share thresholds, rendering the heart of competition enforcement weak. Finally, state-owned enterprises (SOEs) are exempted. About 85 SOEs, many of them quasi-monopolies, are bunched in five sectors: telecoms, water, energy, transport and finance. Some SOEs have been corporatised, but few have been privatised.

b. Thailand in the WTO

Now turn to Thailand in international trade negotiations and trade agreements, starting with the GATT/WTO.

None of the ASEAN members were particularly active in the GATT before the Uruguay Round. Indeed, Thailand only became a GATT member in 1982. But that situation changed with the region’s shift to more outward-oriented trade policies and its increasing integration into the world economy (Ariff and Tan, 1988). Thailand, along with Singapore and Malaysia, was active during the Uruguay Round; and ASEAN collective action was reasonably strong throughout the round (Sally, 2004, pp. 2–6).

ASEAN cooperation has all but broken down since the establishment of the WTO. The reasons are manifold, but they boil down to divisions within an enlarged ASEAN, and to a WTO that is more politicised and polarised (Sally, 2004, pp. 6–10). Intra-ASEAN divisions on launching a new round and on the substance of its negotiating agenda were evident before Seattle and persisted into the Doha Round.
As of 2003, Thailand’s average bound tariff in the GATT is 28.4 per cent, with 72 per cent of tariff lines bound (Table 1). Thailand is a member of the Information Technology Agreement (ITA). It abolished all remaining duties on products covered by the ITA by 2005. This accounts for more than a quarter of Thailand’s total trade. Thailand’s GATS commitments are generally weak. For example, there are foreign equity limits of 49 per cent or less on commercial presence for a range of services sectors, including financial and telecommunications services. Thailand is a signatory to the Reference Paper on basic telecom services. It has listed MFN exemptions on telecommunications, transport and professional services.

All local-content measures that contravened the TRIMS agreement were phased out by 2003. Thailand has enacted legislation to comply with the TRIPS and other Uruguay Round agreements on trade procedures. It has also been quite active in WTO dispute settlement. By 2003 it had been involved in six disputes: five as a complainant and one as a respondent. It was a co-complainant in the landmark Shrimp-Turtle case. More recently, it has been involved in taking the EU to dispute settlement on sugar export subsidies (WTO, 2003; and Talerngsri and Vonkhorporn, 2005).

In the Doha Round, Thailand has occupied a middle position compared with its ASEAN neighbours (Talerngsri and Vonkhorporn, 2005; and Sally, 2004, pp. 47–51). It has not been as clear-cut and offensive on market access as Singapore, but has been less defensive and more flexible than Malaysia, Indonesia and the Philippines.

Topping the list of Thailand’s market-access priorities is agricultural liberalisation to open markets for its exports of staple products such as rice and sugar. Its profile thus fits with that of other major agricultural exporters in the Cairns Group, in which Thailand has been the only really active ASEAN member. Thailand joined the G20 before Cancun but has played an inactive, backseat role in it – obviously with FTA negotiations with the USA in mind. Thailand is more ambivalent than Singapore and Malaysia on industrial goods. It has significant export interests; but, with relatively high tariffs at home on import-competing manufactures, it is also defensive (e.g. on steel and copper). Like Malaysia, Indonesia and the Philippines, Thailand is generally protectionist on services. With the exception of tourism and Mode Four issues (the cross-border movement of temporary workers), it has been defensive in the GATS negotiations, indeed more so since the Asian crisis.

Thailand would like to see stronger GATT disciplines on anti-dumping actions, which obstruct its goods exports. It has been pragmatic on Special and Differential Treatment and implementation issues, on which it has few problems. Given an AIDS problem at home, Thailand campaigned for an agreement on TRIPS that would allow generic imports of essential medicines in public health emergencies. Thailand has also expressed an interest in amending TRIPS to extend geographical indications beyond wines and spirits. It has been generally
pragmatic and flexible on the Singapore issues. Finally, Thailand does not want to see food-safety standards, product labelling and other standards as part of a ‘non-trade’ agenda to restrict its agricultural exports. These issues have cropped up in the trade-and-environment discussions of the Doha Round.

Overall, Thailand is among a score or so of advanced developing countries that have become fairly well integrated into the WTO. Trade-negotiating capacity has improved much in scope and depth since the Uruguay Round (Sally, 2004, pp. 51–53). On the other hand, the Thaksin administration has clearly shifted trade-policy priorities to FTA negotiations. It has been manifestly impatient with snail-like movement in the Doha Round, and views FTAs as a quicker alternative to achieve desired results. In practice this has translated into the diversion of political attention and negotiating resources from the WTO to FTAs: there has been very little political guidance from Bangkok for Doha Round negotiations, which have been left largely to the officials in charge; and many senior, experienced WTO negotiators have been transferred to FTA negotiations. This is why Thailand punches well below its weight in the WTO today.

c. Thailand in ASEAN

Progress towards completing the ASEAN Free Trade Area (AFTA) has been made in the sense that the timetable for the Common-Effective- Preferential-Tariff (CEPT) scheme was brought forward. The ASEAN-6 will eliminate all duties on intra-ASEAN trade, save items on the Exclusion List, by 2010, with a deadline of 2015 for the new members. Some sensitive agricultural products, notably rice, will continue to be protected after 2010. Finally, the CEPT Agreement makes it mandatory to remove quantitative restrictions and other non-tariff barriers on products included in the CEPT (http://www.aseansec.org/viewmail.asp?file=/economic/ov_trd.htm).

However, the acceleration of the AFTA timetable is the only concrete sign of progress in ASEAN economic integration. Hardly any progress has been made on AFTA-plus issues such as the ASEAN Investment Area (AIA), the ASEAN Framework Agreement on Services (AFAS), harmonisation of standards, mutual recognition agreements, movement of skilled labour and other NTBs (Menon, 2000, pp. 58–70; Soesastro, 2000, pp. 43–47; and Sally and Sen, 2005).

ASEAN member-governments seem to realise that the AFTA/AFTA-plus framework is making too little progress in breaking down commercial barriers within the region. Hence the recent ASEAN ‘vision’ to create an ASEAN Economic Community (AEC) by 2020, with a single market for goods, services, capital and the movement of skilled labour. Like other ASEAN Visions, however, this one, while ambitious in general statements of principle and rhetoric, falls short on practical goals, methods and deadlines en route to 2020 (Sally and Sen, 2005).
Where does Thailand fit in? All Thailand’s listed tariff lines are in the CEPT Inclusion List, with no tariffs in the Temporary-Exclusion, General-Exclusion and Sensitive Lists. Eighty per cent of Thailand’s tariff lines should have zero duty by 2007. Thailand’s average AFTA tariff was 4.64 per cent by 2003, compared with its MFN average tariff of 14.7 per cent that year, but still higher than the average AFTA tariffs of other old ASEAN members. Thailand has made commitments in seven priority sectors in AFAS, but these do not go much beyond GATS commitments and generally do not go as far as existing national practice, i.e. they do not involve net liberalisation (ASEAN CEPT database, http://www.aseansec.org; and Talerngsri and Vonkhorporn, 2005).

Overall, Thailand, Malaysia and Singapore have been the most active members of ASEAN since the Asian crisis. But, with bilateral FTAs the main trade-policy priority in Thailand, ASEAN economic integration, like the WTO, has fallen down the government’s priority list.

3. TRADE-POLICY DECISION MAKING: ACTORS, INTERESTS, PROCESS

Now turn to the actors involved in Thai trade policy and their interaction in the policy-making process. Such a political economy, at least in outline, should help explain the forces behind the policy shift towards FTAs.

Trade policy making in Thailand remains rather centralised, as it does in other southeast-Asian countries. There is little input from legislatures, trade unions and NGOs. Some business interests, on the other hand, are influential through direct political contacts: government-business relations are often described as ‘clientelistic’. Technocratic strength and autonomy within government is found in core government agencies (the central bank and the ministry of finance), but less so in the ministries of commerce, industry and agriculture, and in agencies responsible for domestic trade-related regulation (e.g. customs administration, intellectual-property protection, services sectors). The latter tend to be more inward looking and close to domestic business interests.

The Ministry of Commerce (MOC) leads on trade policy through its Department of Trade Negotiations. It coordinates WTO and ASEAN-related policy with other ministries and regulatory agencies, coordinates some (but not all) FTA negotiations, consults with business and NGOs, and liaises directly with Thailand’s mission to the WTO in Geneva. The Ministry of Foreign Affairs (MFA) has become more involved in trade policy through FTA negotiations. It provided the chief negotiators for the key bilateral negotiations with Japan and the USA.

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2 On the institutional setting for trade and wider economic policy in Thailand and in southeast Asia more generally, see Hill (2002, pp. xxxiv–xxxvi) and Haggard (2002, pp. 5–27).
The inter-agency Committee on International Economic Relations Policy coordinates trade, investment and other international economic policies. The Joint Standing Committee on Commerce, Industry and Banking (JSCCIB) brings together government agencies and three private-sector associations (the Federation of Thai Industries, the Thai Chamber of Commerce and the Thai Bankers Association) on trade-policy issues. The JSCCIB has a WTO Committee to provide business input to Thai positions in multilateral trade negotiations. A new Committee on FTA Strategy and Negotiations was formed in 2004 and reports directly to the Prime Minister (Talentgsri and Vonkhorphorn, 2005).

After two decades of active involvement in multilateral trade negotiations, Thai trade-policy capacity is clearly stronger than before. The decision-making circle has widened: there are more trade negotiators and back-up staff in Geneva and in the MOC in Bangkok; more input from ministries and regulatory agencies on trade-related issues; and more consultation with business. But weaknesses persist. The pool of senior and experienced negotiators in the MOC is relatively small. Input from other parts of government and from business is patchy and inadequate, as is the capacity to implement policy changes.

Finally, and perhaps most importantly, the tension between technocratic decision making and populist politics spilled over into trade policy, especially during the Thaksin administration. Before, the bureaucracy was more powerful in the context of weak and short-lived governments. Mr. Thaksin’s Thai Rak Thai party came into power with a strong popular mandate, in the wake of a deep recession and painful reforms following the Asian crisis. It rode a wave of nationalist, anti-IMF sentiment; and it was dominated by Thai-Chinese business interests. The new government moved swiftly to take full charge of policy, which meant subordinating the bureaucracy to its will. Power and policy were centralised in the Prime Minister’s hands. Mr. Thaksin emphasised a ‘CEO style’ of government: he would take decisions lightning-fast, and expected officials to carry them out quickly and unquestioningly (Baker and Pasuk, 2004).

This new political situation had its impact in all major areas of policy: trade policy was no exception. Would the slowdown of unilateral liberalisation, the neglect of the WTO and the switch to FTAs have happened as a reaction to the Asian crisis and a stalled WTO, regardless of domestic political vicissitudes? Or did the latter make a distinctive mark on Thai trade policy? That will be explored in the following section on FTAs.

4. THAILAND AND FTAs

Having examined other aspects of Thai trade policy, this section turns to its central priority in the last 3–4 years: FTA negotiations. First it assesses Thai FTA
policy in general, before looking at individual negotiations and agreements, with a special focus on the US-Thai FTA negotiations.

a. Thailand’s FTA Policy: An Overview

FTA initiatives have spread like wildfire through Asia-Pacific in the past six years. All the major regional powers – China, India and Japan – are involved, as are the USA, South Korea, Australia, New Zealand, Hong Kong, other south-Asian countries and the ASEAN countries. Singapore blazed the FTA trail in southeast Asia, with Thailand next to follow, and now Malaysia, Indonesia and the Philippines trying to catch up. In addition, ASEAN collectively has negotiations with China, India and Japan, and negotiations with Australia-New Zealand CER and South Korea are in their early stages. As of 2005, it was estimated that ASEAN as a regional grouping, China and India were involved in 7, 9 and 15 FTA agreements or negotiations respectively (Angtkeiwicz and Whalley, 2005). If individual ASEAN-member FTA initiatives are counted, there are 17 FTAs in force and 60 more in the pipeline in China, India and southeast Asia (Sen, 2006).

The Thai government began to think about bilateral FTAs in the late 1990s (Nagai, 2002, p. 10). But FTAs became a serious policy consideration about a year after the Thaksin government took office in 2001. Since then they have occupied centre stage in Thai trade policy.

A frenzy of FTA activity has ensued: no fewer than nine FTA negotiations have been launched (Table 3). FTAs with Australia and New Zealand have been in force since 2005; a framework agreement with Bahrain, with phased tariff liberalisation, is also in force; early-harvest tariff-liberalisation packages are under way with China and India; negotiations with Japan were finished in early 2006; they are ongoing with Peru and have started with EFTA; and negotiations with the USA were getting to the serious, nuts-and-bolts stage when they were suspended in early 2006. Thailand is part of the BIMSTEC group of south and southeast-Asian countries that has an FTA framework agreement. And it is part of collective ASEAN FTA negotiations with China, Japan, India, South Korea and Australia-New Zealand CER. Finally, Thailand is considering bilateral FTA negotiations with South Korea, Chile, South Africa and others.

What of the potential economic costs and benefits of Thailand’s FTAs? Since 2003 the Thai government has commissioned econometric studies to quantify the gains from FTAs. One set of estimates, from economists at Chulalongkorn University, predicts significant gains, e.g. a 113.9 per cent increase of exports to India; and increases of 63.3 per cent to China, 25.9 per cent to Australia-New Zealand CER, and 20 per cent to Japan and South Korea. Imports to Thailand would also increase strongly. In addition, Thai exports to the USA would be boosted by collective ASEAN FTAs with Japan, South Korea and Australia-New Zealand CER through cost reductions and increased competitiveness. Thailand’s
Table 3: Thailand’s Trade Agreements

<table>
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<th>Type of Cooperation</th>
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<tr>
<td>Regional Trade Agreement</td>
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<tr>
<td>ASEM Economic cooperation</td>
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<tr>
<td>AFTA Free trade area (in force)</td>
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<tr>
<td>AFTA-CER Closer economic partnership (FTA) (to be negotiated)</td>
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<tr>
<td>ASEAN-MALAYSIA Free trade area (under negotiation)</td>
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<tr>
<td>ASEAN-JAPAN Comprehensive economic partnership (FTA) (under negotiation)</td>
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<td>ASEAN-INDIA Free trade area (under negotiation)</td>
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<tr>
<td>ASEAN-KOREA FTA (to be negotiated)</td>
</tr>
<tr>
<td>BIMST-EC Economic cooperation/FTA by 2017</td>
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<tr>
<td>BIVC Economic cooperation</td>
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<td>GMS Economic cooperation</td>
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<td>IMT-GT Economic cooperation</td>
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</tbody>
</table>

| Bilateral Trade Agreement | Australia Free trade agreement (in force) |
| New Zealand Free trade agreement (in force) |
| Bahrain Free trade agreement (under negotiation) |
| Peru Free trade agreement (under negotiation) |
| EFTA Free trade agreement (to be negotiated) |
| China Partial free trade agreement (in force) |
| Japan Free trade agreement (negotiations completed) |
| India Free trade agreement (under negotiation). Early harvest in force |
| US Free trade agreement (under negotiation) |

| Bilateral Trade Agreement under Consideration | Bangladesh FTA |
| Chile FTA |
| Mexico FTA |
| Pakistan FTA |
| Republic of Korea FTA |
| South Africa FTA |
| Sri Lanka FTA |

Source: TDRI (2003); updated by the author.

Overall international trade would expand sharply as a result of an ASEAN-Japan FTA, and even more so with an ‘ASEAN-plus-three’ FTA uniting ASEAN, Japan, Korea and China (Chirathivat and Mallikamas, 2004, pp. 44–48; and Mallikamas, 2002).

These estimates should be treated with extreme caution. Aside from familiar reservations about CGE modelling exercises, these and other studies assume that FTAs will be comprehensive in sectoral coverage and removal of tariff and non-tariff barriers, with rules of origin that do not significantly impede market access. However, the emerging FTA picture, from Thailand and elsewhere in Asia-Pacific, could look rather different.
What about the most important FTA of all – with the USA? A study by the Thailand Development Research Institute (TDRI) estimates that a comprehensive FTA would generate gains for both countries in trade in goods, given their complementary North-South, inter-industry bilateral trade structure. For Thailand, merchandise exports and imports would increase by 3.4 per cent and 4.7 per cent respectively, with Thai gains in agriculture, processed food, textiles and automobiles. Real GDP growth would increase by 1.34 per cent. These allocative-efficiency gains are relatively small, but the same study does note that dynamic gains could be considerable – though these are not quantified (TDRI, 2003).

Now turn to the politics of Thai FTAs. The government’s position – similar to that of other governments in southeast Asia and beyond – is that it is pursuing a mutually-reinforcing multi-track trade policy: FTAs are supposed to complement established WTO and ASEAN tracks. More generally, they fit into Prime Minister Thaksin’s ‘dual-track’ strategy: the domestic track emphasises fiscal and industrial policies to boost demand and strengthen competitiveness in targeted sectors; the external track is geared to the aggressive pursuit of markets for Thai exports (WTO, 2003, p. viii).

For the most part, the Thai government’s motives for pursuing FTAs seem to be similar to those of other governments in Asia-Pacific and elsewhere. Foreign-policy aspirations loom large. Thailand wants to show that it can be up there with Singapore and others in negotiating with ‘big beasts’ like the USA, Japan, China and India; and it wants to strengthen political alliances as well as commercial relations with these and other countries. Hence it is not surprising that the impulse for FTAs came from the Prime Minister’s Office and the MFA, not the MOC. There are also defensive economic concerns. The Asian crisis induced greater reluctance to undertake further unilateral liberalisation, especially in services. Like others, the Thai government is impatient with agonisingly slow WTO negotiations and with lack of progress in ASEAN economic integration. And it does not want to be left behind by Singapore and others in using FTAs to secure preferential market access to established and potential markets.

Hence Thailand is swept along by a regional and global trend. This suggests that FTAs would have become the centrepiece of Thai trade policy regardless of the complexion of the government. But domestic political changes have influenced the speed, process and content of Thai FTA policy. Factors mentioned earlier – the increasing political control and centralisation of policy making, the greater political influence of Thai-Chinese business interests – come into play.

Most important, perhaps, is Prime Minister Thaksin’s ‘CEO style’ and its dominant imprint on government. An initial sign was Mr. Thaksin’s decision to launch several major – and less major – FTA negotiations more-or-less

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3 The following discussion relies mainly on the author’s conversations with Thai politicians, negotiators, business and NGO representatives, journalists and academic experts in 2004 and 2005.
simultaneously, with tight deadlines for completion. This was done in a rush, without careful preparation, and without anticipating the technical as well as political problems that would result from complex, resource-intensive and (as it turned out) politically controversial FTA negotiations. Arguably, there has been very little sense of overall economic strategy. Specific weaknesses in FTA politics and policy process come to mind:

First, ministerial direction on negotiating positions has been lacking. Aside from wanting FTAs concluded quickly, ministers have not given clear instructions to their negotiators; rather decision making has been ad hoc and unpredictable. Second, the starting point of careful preparation for negotiations is research and analysis to assess the economic costs and benefits, as well as the legal implications, of individual negotiating positions and overall agreements with this-or-that negotiating partner. On the economic front this was done belatedly, and then not exactly in a thorough and systematic manner. Government in-house legal capacity to scrutinise potential agreements remains limited. Third, coordination among government ministries and regulatory agencies has been rather messy, exacerbated by the uncertain division of labour between the MFA and the MOC. The MFA became very active and assertive in FTAs, but its inexperience and lack of expertise in trade negotiations showed. Fourth, so many rushed and concurrent FTA negotiations have severely stretched Thai negotiating resources.

Given this combination of factors, it is not surprising that ministers and officials have gone into negotiations without adequately-informed or detailed positions, and without a clear sense of what would be a good end result. This has put them at a disadvantage with better-prepared negotiating partners – most glaringly obvious in the negotiations with the USA. It has increased the danger of ending up with quick-fix, low-quality agreements, and stored up implementation problems.

Fifth, there has been very little thinking about how FTA policy relates to the national economic framework in terms of domestic policies, supporting institutions and priorities for reform. Instead, FTAs seem to have been tacked on to national economic policy with little aforesight. Their residual economic logic seems to be narrowly mercantilist: the government seeks export market access in a narrow range of sectors (e.g. agribusiness, automobiles, and hotel, restaurant and health-related services), for which it may be willing to concede access to the Thai market in other sectors (such as dairy, beef, fruit and vegetables), while otherwise defending the status quo of domestic protection.

Such narrow mercantilism is a recipe for ‘trade-light’ FTAs that will make little positive difference to competition and efficiency in the domestic economy. Politically (if not economically), it works when negotiating partners are comfortable with trade-light agreements. But it will not work with the USA, whose mercantilism is far broader and more aggressive: it will concede little itself, but demand far-reaching, trade- and regulation-heavy concessions from the weaker negotiating partner.
Sixth, there has been inadequate consultation with interested parties outside government.\(^4\) To begin with, the government said it could put FTAs into effect by executive decree, i.e. without parliamentary scrutiny or ratification. Parliamentarians and NGOs subsequently mounted a legal challenge on the grounds that this would violate the Thai constitution.\(^5\) More generally, relevant Senate committees, academics, NGOs (such as FTA Watch and the HIV/AIDS Infected Group Network), representatives of small rural farmers and others have complained of lack of consultation and transparency. Also, the government has not made a serious attempt to explain the issues intelligently to the public. The main business associations and some individual business groups (the CP Group in particular) have, in contrast, been reasonably well plugged into FTA consultations.

Given the issues at stake for Thai society, especially in a far-reaching FTA with the USA, such lack of consultation and engagement with public opinion was short-sighted. It invited a political backlash. It bred accusations that the government was favouring big-business interests while willing to sacrifice less influential rural farmers and HIV/AIDS victims. This deep politicisation of FTAs contributed to the wider Thai political crisis in 2006, which in turn stalled FTA policy overall.

\(b. \) Individual FTAs: The State of Play

Having surveyed Thai FTA policy in general, it is time to look at individual FTAs. This begins with the FTAs already in force with Australia and New Zealand; proceeds to the more partial FTAs with China and India; then to the (still unsigned) agreement with Japan; after that to the relatively minor FTAs with Bahrain, Peru and EFTA; and ends with the crucial negotiations with the USA.

\(i. \) Thailand-Australia and Thailand-New Zealand

The Thailand-Australia Closer Economic Relations FTA (TAFTA), which came into force in January 2005, is Thailand’s first FTA with a developed country and Australia’s third FTA. The Thailand-New Zealand Closer Economic Partnership Agreement (TNZCEPA), which came into force in July 2005, is rather similar to TAFTA. Both are advertised as consistent with GATT Article XXIV and GATS Article V.\(^6\)

\(^4\) For a flavour of such criticism, see ‘Debate, Poll on FTA Demanded’, \textit{Bangkok Post} (2 April, 2005); ‘There’s Little Trust in Trade Talks’, \textit{Bangkok Post} (5 April, 2005). Also see FTA Watch (2004).


\(^6\) For a summary of TAFTA, the full text of the agreement and guides to it, see www.dfat.gov.au/trade/negotiations/aus-thai/. For summaries and the full text of the Thailand-NZ CEPA, as well as the New Zealand government’s National Interest Analysis of it, see http://www.mfat.govt.nz/foreign/tnd/ceps/cepindex.html
Both FTAs are reasonably comprehensive on trade in goods, with almost exactly the same provisions and commitments. Most tariffs have already been eliminated, with most of the rest to be phased out by 2010 and 2015. Thailand has transition periods to 2020 and 2025 for some agricultural products. Both FTAs have a limited transitional-safeguards mechanism for goods; and a more open-ended special safeguards mechanism for sensitive agricultural products.

In contrast, TAFTA’s commitments on services and investment are weak. They mirror both parties’ existing (relatively weak) GATS commitments, with marginal GATS-plus commitments on a positive list. Thailand and New Zealand have agreed to postpone immediate agreement on services and investment, and commence negotiations within three years. Both FTAs establish investor-state dispute settlement. In both FTAs there are modest commitments on the temporary entry of business people, and Thai specialist chefs and masseurs, that go beyond GATS Mode Four commitments.

TAFTA does not strengthen existing WTO disciplines on the use of sanitary and phytosanitary standards (SPS). The Thai-NZ CEPA does go slightly further in expediting access in certain products. Both FTAs refer to information exchange, consultation and regulatory cooperation in competition policy, intellectual-property protection, customs procedures and other areas, but again without WTO-plus disciplines. None of these areas, including SPS, are subject to dispute settlement. Government procurement is not covered, but Working Groups are to explore the possibility of future negotiations. Arrangements for labour and environmental standards have been negotiated in parallel to the TNZCEPA – in contrast to TAFTA, which has no such provisions. However, bilateral commitments on ILO core labour standards and international environmental obligations are declaratory and not subject to dispute settlement.

Overall, these FTAs will make little difference to Thailand, Australia and New Zealand, given low bilateral trade volumes. Australia accounts for 2.3 per cent of Thailand’s total exports, and Thailand accounts for 1.8 per cent of Australia’s total exports. Thai-NZ merchandise trade barely exceeded US$1 billion in 2004. In goods, Australia and New Zealand stand to gain in sectors with high Thai tariffs. Thailand stands to gain in fewer sectors as Australian and New Zealand tariffs are mostly low or zero. On the other hand, there is concern in Thailand among NGOs and farmers’ organisations about the FTAs’ impact on vulnerable agricultural sectors, particularly dairy farming (FTA Watch, 2004; and Moxham, 2004).7

(ii) Thailand-China

Thailand and China have a limited agreement which eliminated tariffs on some 116 agricultural items (in HS 01–08 categories) by October 2003. This is an

7 Also see ‘Trade Talk Details to be Revealed’, The Nation (19 July, 2004), ‘Farmers Petition the King’, The Nation (20 July, 2004).
‘earlier-harvest’ than the early-harvest package in the ASEAN-China FTA, which eliminated tariffs in the same categories for all countries concerned by January 2006 (en route to the completion of the FTA by 2010).

This agreement has little aggregate impact, but within the sectors concerned the effects have been noticeable. In Thailand, there have been loud complaints about a flood of Chinese imports of apples, pears, garlic and onions, which are alleged to endanger the livelihoods of small farmers, particularly in the north of the country. Others counter that much of the import ‘flood’ is pre-existing black-market trade that has become open and legal as a result of tariff elimination.8

(iii) Thailand-India

The Thailand-India FTA is intended to be comprehensive, covering tariff and non-tariff barriers in trade in goods with a targeted completion date of 2010 – a year before the targeted completion of the ASEAN-India FTA. It also covers services, investment, trade facilitation, mutual recognition agreements and other economic-cooperation measures. The agreement specifically refers to ‘substantially all trade’ and ‘substantial sectoral coverage’ criteria in GATT Article XXIV and GATS Article V respectively. However, there will be no formal dispute settlement mechanism, only ‘consultations’ to resolve bilateral disputes. That reduces the strength of the agreement considerably.9

Thailand and India agreed an early-harvest liberalisation package, which will eliminate tariffs on 82 (mostly manufacturing and a few agricultural) items by September 2006. However, due to Indian pressure, the rules of origin for the early-harvest package are very restrictive. The wider Thai-India FTA negotiations have made very little progress.10

Overall, gains from the FTA are unlikely to be high. Thailand and India do very little trade with each other: India accounted for 0.8 per cent of Thai exports and 1.16 per cent of Thai imports in 2003. There should be gains in areas where both sides have high tariffs. However, given the slow progress of the talks and the ‘dirty’ elements of a likely deal, such as on rules of origin and Indian exemptions in agriculture, one should not expect too much.

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9 The full text of the agreement is available at www.bilaterals.org/article.php3?id_article=15

10 ‘Thaksin Asks India to Speed Up FTA deal’, Bangkok Post (5 June, 2005); ‘Trade Pact with Thailand Hits a Fresh Bump’, Financial Express (18 July, 2005); ‘Massive India has Massive Appeal’, The Nation (4 September, 2004); ‘Firms Want India to Lift Hurdles’, Bangkok Post (27 July, 2004).
(iv) Thailand-Japan

Negotiations on the Japan-Thailand Economic Partnership Agreement (JTEPA) were concluded in early 2006. However, the agreement remains unsigned due to the Thai political crisis in 2006.\textsuperscript{11} The JTEPA covers trade in goods and services, investment, trade facilitation (e.g. paperless trading in customs administration and mutual recognition agreements), and economic-cooperation measures in education, human-resources development, tourism, science and technology. It is intended to be consistent with GATT Article XXIV and GATS Article V.

Prime Minister Thaksin agreed to exclude rice from the negotiations. Negotiations on sugar, beef and wheat will take place at a future date. Japan will reduce but not abolish duties and increase quotas for chicken and molasses. Japan has insisted on extremely restrictive rules of origin on agricultural and fisheries products that are subject to tariff reduction or elimination. It is also defensive on clothing, shoes and leather goods, with long transition periods before tariffs are phased out and restrictive rules of origin. Thailand is defensive on some industrial goods. Thai tariffs will continue on certain types of cars; and tariffs on hot-rolled steel will only be phased out after ten years. Both sides have agreed to have a positive list for services and investment. There will be investor-protection and investor-state dispute-settlement provisions.\textsuperscript{12}

A comprehensive Thailand-Japan FTA would be much more significant than FTAs with Australia, New Zealand, China and India. Japan is Thailand’s biggest merchandise-trading partner, and it is the leading source-country for FDI in Thailand. Bilateral merchandise trade stood at US$25 billion in 2002. Furthermore, Japan and Thailand have a largely complementary North-South bilateral trading structure, which would deliver bigger gains from free trade compared with the less complementary South-South trade (i.e. trade in similar products) Thailand has with China and India. In reality, however, it looks like the JTEPA is quite weak: there are exemptions on goods, especially agriculture, restrictive rules of origin, unambitious commitments on services and investment, and little advance

\textsuperscript{11} ‘Thai-Japan FTA Off Until 2007’, Bangkok Post (17 May, 2006); ‘FTA Could Be Met With Court Action’, Bangkok Post (7 June, 2006); ‘Activists Concerned by Meeting’, Bangkok Post (23 June, 2006); ‘FTA Watch Letter to Japanese PM on JTEPA’ (www.ftawatch.org).

on WTO regulatory disciplines (e.g. SPS, MRAs, competition policy, government procurement). This would substantially limit two-way gains.

(v) Minor FTAs: Bahrain, Peru, EFTA, BIMSTEC

Thailand has FTA negotiations with Bahrain and Peru covering goods, services, investment and economic-cooperation measures. Both have been on hold since 2004. It started negotiations with EFTA in 2005. And it is part of the BIMSTEC grouping, whose target is to complete an FTA by 2017.

None of these FTAs is to be taken too seriously. The economic logic of FTAs with tiddlers like Bahrain and Peru, both small, far-away countries with which Thailand does very little trade, is dubious. The argument that Bahrain and Peru will be ‘gateways’ to their wider regions is nonsense: ROO restrictions will prevent Thai producers from gaining preferential access to nearby markets. EFTA is slightly more serious but trade volumes are still small, and probable exemptions of agricultural products will limit market access. Finally, not much can be expected from BIMSTEC. It is going to be very tough to fulfil the ‘substantially all trade’ criterion (in GATT Article XXIV), given high levels of protection in nearly all the countries concerned. Gains will also be limited due to the roughly similar South-South trading structures within the group: all are dependent on agriculture and/or labour-intensive manufactures. Rules of origin will be problematic, and will likely compound ROO problems in other bilateral and plurilateral FTAs involving BIMSTEC members in the region. Thailand, it should be noted, is involved in three separate FTA negotiations with India, each with different ROO provisions.

(vi) Thailand-USA

The Thailand-USA FTA (TUSFTA) is far and away the most important set of FTA negotiations for Thailand. Unlike Thailand’s other FTAs, TUSFTA is deadly serious, with potentially far-reaching consequences.

President Bush has an Enterprise for ASEAN Initiative, a framework for bilateral FTAs with ASEAN countries with the end-goal of a US-ASEAN FTA. The USA considers the US-Singapore FTA, which came into force in 2004, as the model for its FTAs with other ASEAN countries – starting with Thailand. TUSFTA negotiations started in June 2004. This followed the conclusion of a bilateral Trade and Investment Framework Agreement (TIFA) in 2002, which is usually considered the prelude to full-blown FTA negotiations with the USA (USTR, 2004). The USA’s target was to complete negotiations by April 2006, so that the agreement could be submitted for Congressional ratification before the expiry of Trade Promotion Authority (TPA) in 2007. However, a storm of

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anti-TUSFTA protest in Thailand, and the subsequent Thai political crisis, led to the suspension of talks. They are highly unlikely to be resumed until the domestic political situation is resolved; and it is almost impossible for an eventual agreement to be ready before the expiry of TPA.\footnote{‘US Won’t Negotiate with Caretaker Government’, \textit{Bangkok Post} (24 May, 2006); ‘DPM Instructs Postponement of US-Thai FTA Talks’, \textit{MCOT News} (18 April, 2006); ‘Is Time Running Out for a Thai-US Free Trade Agreement?’, \textit{The Nation} (2 May, 2006).}

If TUSFTA ever materialises, it will be highly significant for Thailand for two reasons. First, the USA is a major trading partner. It is Thailand’s largest export market, accounting for 20 per cent of exports. Bilateral trade is of the complementary North-South variety: Thailand exports agricultural products and labour-intensive manufactures to the USA; the latter exports high-value, knowledge- and capital-intensive services and manufactures to Thailand. Bilateral free trade would deliver big gains especially in areas where tariff and non-tariff barriers are high, e.g. in agriculture, services and pockets of manufacturing in Thailand, and in textiles, clothing and certain agricultural products in the USA.

The second reason why TUSFTA is highly significant for Thailand is that it is likely to have strong commitments driven by US negotiating demands. In particular, the USA is demanding Thai commitments that reach deep into domestic regulation and institutions. These deep-integration commitments affect politically sensitive and administratively complex domestic regulatory procedures on investment, services, government procurement, intellectual property, competition policy and other areas. They are standard fare in the US’s FTAs but go well beyond light-to-minimal Thai commitments in its other FTAs. Other Thai FTAs can be implemented by executive decrees and modifications to existing administrative practice, but without major legislative changes – so the government argues. They will result in few changes in domestic regulatory practice. Commitments under TUSFTA, on the other hand, are likely to involve major legislative amendments in Thailand, especially in investment, services and intellectual-property regulations. In other words, they entail changing key rules of the game by which business is conducted in Thailand (Thaicharoen and Malik, 2005).

Having considered some general features of TUSFTA, now look at specific negotiating issues.

- \textit{Trade in goods}: Both the USA and Thailand stand to gain from agricultural liberalisation as existing trade barriers are high at both ends. Some key Thai concerns will not be dealt with in the FTA negotiations, especially agricultural subsidies, and anti-dumping and countervailing duties. It will be very difficult for Thailand to get rid of US tariff and other non-tariff barriers on headline agricultural exports like rice and sugar. Following precedents set in the USA’s existing FTAs, these are likely to be subject to very long

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transition periods (perhaps up to 20 years); and sugar might be carved out altogether (as was the case in the US-Australia FTA). It also looks unlikely that the USA will seriously accommodate Thai concerns on SPS procedures.

Thailand also has defensive concerns, especially in meat and dairy products. It fears that small-scale producers in these and other sectors will be overwhelmed by US agribusiness – with the help of lavish US farm subsidies. Finally, Thailand might have to lift its ban on imports of genetically-modified (GM) products.

Thailand’s main offensive interests in the industrial-goods negotiations are in cars, car parts, motorcycles, and especially pick-up trucks, which face a US tariff of 25 per cent. Finally, the devil in the detail of the goods negotiations will, as always, be ROO provisions.

- Services and investment: The USA is making very ambitious demands in the negotiations on cross-border services trade and investment. These reflect commitments in the US-Singapore FTA.

On services, the USA wants a negative list, as it has in its other FTAs. Its baseline is that there should be full reciprocal commitments, i.e. no restrictions on market access, except in sectors specifically exempted. The USA is also insisting on transparency provisions along the lines of those in the US-Singapore FTA. These go beyond GATS in terms of concreteness and implementation, e.g. to make licensing procedures more transparent and non-discriminatory. These disciplines would be a significant departure from the Thai norm of regulatory discretion and non-transparency.

Thailand’s main interest in the US services market is in the temporary movement of workers. It would like to gain entry to the US labour market for its chefs and masseurs, preferably with mutual-recognition agreements (MRAs) to reciprocally recognise professional qualifications. Getting serious US concessions on Mode Four issues will, however, prove very difficult; and MRAs will be even more difficult to achieve, given large differences in national procedures.

US demands on investment are as sweeping as they are in services, and of course the two are intimately related in services sectors.

Thailand has had a Treaty of Amity and Economic Relations with the USA dating back to 1966. This accords non-discriminatory treatment to US investors, thereby exempting them from most FDI restrictions in Thai laws and regulations. The Treaty required a special waiver from GATS’s MFN obligation in order to accord preferential treatment to American investors in services sectors, but this lapsed in January 2005.

The USA intends the investment chapter of TUSFTA not just to replace the Treaty of Amity but also to go well beyond it. It wants some sectors exempted

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from the Treaty to be covered, notably banking and telecommunications services. It is holding out for a broad definition of the scope of ‘covered investment’, including portfolio investment and short-term capital movements in addition to FDI. Investor-state dispute settlement and bans on performance requirements (e.g. technology transfer, local content, export sales, discretionary tax breaks and tariff concessions) are also on the wishlist. Abolishing performance requirements would seriously circumscribe Thai industrial-policy discretion on investment incentives. The US-Singapore FTA also has investment-related provisions on state-owned enterprises. Those engaged in commercial operations should not have special treatment compared with privately-owned enterprises; and US investors have an equal right to acquire shares in them when they are privatised. If adopted in TUSFTA, this would require an overhaul of relevant Thai legislation, which grants special privileges to state-owned enterprises.

- **Intellectual property rights:** Very strong intellectual-property protection, going beyond the WTO’s TRIPS agreement, is a distinguishing feature of the USA’s new FTAs. As on other issues, the USA is using the US-Singapore FTA as its negotiating template for IP in TUSFTA. This poses a real dilemma for Thailand.

Among the US’s demands are: an extension of patent protection to 25 years (compared with 20 years in TRIPS); data-exclusivity rights (to protect clinical trial data from being used by generic manufacturers) for several years after the expiry of patent protection; the extension of patent protection to plants and animals; the extension of copyright protection to 70 years (compared with 50 years in TRIPS); the criminalisation of certain IP offences; and Thai ratification of several international IP conventions to which it is not a signatory (e.g. The Patent Cooperation Treaty, The Trademark Law Treaty and The International Convention for the Protection of New Varieties of Plants). An Oxfam report, based on an allegedly leaked US negotiating proposal, argues that US demands (e.g. on the extension of patent life and the scope of patents, information covered by data exclusivity, restrictions on compulsory licensing) go beyond provisions in other US FTAs, and even beyond US domestic legislation (Oxfam, 2006). These demands would require an extensive overhaul of Thai IP legislation. Legislative changes, it should be noted, would have to be applied ‘horizontally’, i.e. on a non-discriminatory basis and not just with US companies in mind.

It is questionable that such TRIPS-plus provisions are in Thailand’s interest. Unlike Singapore, it is a developing economy at some distance from knowledge-intensive specialisation. It has no comparative advantage in inventions, but has a generic pharmaceutical industry that would be at risk from TRIPS-plus obligations. Long-term gains from the latter, such as attracting IP-related FDI, are speculative, but short-term losses would be real and immediate. These would
include the costs of overhauling legislation and beefing up the enforcement of laws and regulations – at a time when the legal system is already overburdened.

Not least, NGOs have raised fears that a TRIPS-plus agreement at the behest of the USA would limit the ability of the Thai government to issue compulsory licences to override patents and produce cheaper generic drugs. In Thailand, the state-run pharmaceuticals agency provides anti-retroviral-drug cocktails to about 50,000 HIV patients at a small fraction of the cost of equivalent patented drugs. This could be at risk if compulsory licences were to be limited as part of TUSFTA. The USA has given assurances that the Doha Declaration on TRIPS will be respected, but the issue remains to be clarified in negotiations.16 Thai unease is understandable.

There are other specific IP-related concerns. Some NGOs argue that extending patent protection to plant varieties would allow foreign entities to patent hybrid products (such as jasmine rice) cultivated by Thai small farmers and reliant on traditional knowledge. Also, the extension of copyright protection would increase the price of software and limit access to educational materials.17

- Other issues: Using competition provisions in the US-Singapore FTA as a baseline, US negotiators may ask for Thai commitments to strengthen both competition legislation and enforcement. Like IP provisions, this would be done in a horizontal, non-discriminatory manner. The USA is also likely to make strong demands for greater access to the Thai government-procurement market, and for regulatory transparency and cooperation on trade-facilitation issues, especially customs administration. Finally, any FTA with the USA has to contain provisions on labour and environmental standards under the terms of the US Trade Promotion Authority Act of 2002. This obliges FTA partners to enforce existing domestic laws effectively. In the US-Singapore FTA, these provisions are overseen by a Joint Committee and subject to dispute settlement. If this is to be the case in TUSFTA, the Thai government will have to strengthen the enforcement of existing laws on labour and environmental standards.

The Thaksin government clearly did not expect the storm of domestic protest against TUSFTA, and the subsequent suspension of talks. Even if the domestic political crisis is resolved, high hurdles will have to be cleared before talks can resume and an eventual agreement concluded. One political problem for the Thai government is that TUSFTA has the makings of a one-sided deal. Thailand is under pressure to make big concessions on market access, trade rules and

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17 Chinvarakorn ‘Free or Even Fair?’ (www.ftawatch.org), ‘Look Who’s Selling Out the Country’, Bangkok Post (26 August, 2004); ‘Thailand has Little to Gain in Trade Pact with US’, Bangkok Post (29 April, 2004).
intellectual-property rights, but the US will not budge or is inflexible on Thai offensive interests such as rice, sugar, pick-up trucks, Mode Four issues, agricultural subsidies, SPS measures and anti-dumping duties.

Hence it is not surprising that there has been a domestic backlash. Some arguments against TUSFTA are nonsensical anti-market polemics. It is asserted that Thai sovereignty is ‘for sale’; that US multinationals will take over whole swathes of the Thai economy, with the aid of investor-state dispute settlement; that public services in education, health and some of the utilities will be privatised and stripped to the bone; and that agricultural liberalisation and GM products will destroy small-scale farming. Other arguments deserve to be taken more seriously, especially on the implications of TRIPS-plus obligations.18

However, anti-market NGO opposition is the predictable result of government policy and its approach to decision making. The underlying Thai weakness, in this as in other FTA negotiations, is the absence of a credible economic strategy on the part of the government. Given that TUSFTA is much more important than all the other FTAs put together, the potential consequences of government failure in the TUSFTA negotiations are correspondingly more serious and damaging. There seems to have been little appreciation of the domestic regulatory and institutional implications of the US’s sweeping demands, in addition to inadequate direction on Thailand’s negotiating positions.

c. Thai FTAs: Overall Assessment

There is an emerging picture of east-Asian countries becoming entangled in a web of weak and partial FTAs. Some product areas, especially in agriculture, are likely to be excluded from goods liberalisation, or have very long transition periods. Regulatory barriers on goods, services and investment may not be tackled with disciplines that go much deeper than existing WTO commitments. And it is already apparent that agreements in force and those being negotiated are creating a ‘noodle bowl’ of complex and restrictive ROO requirements that differ between agreements and will prove cumbersome and costly for businesses to implement (Baldwin, 2006; and Sally, 2006).

The Thai FTAs reflect the wider regional pattern. But they do have specific local characteristics – a product of recent domestic political developments, especially the decision-making style of the Thaksin government. FTAs have been ill-prepared and rushed. There has been little forward planning and policy direction, and the

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18 For arguments against TUSFTA, see FTA Watch (2005); ‘Sovereignty Not For Sale Say Thailand’s Civil Society in Opposing the Government’s Free Trade Agreements’ (www.ftawatch.org), ‘1200 March to Urge Dropping of Intellectual Property from US Deal’, Bangkok Post (6 April, 2005); ‘Civic Groups Oppose FTA Negotiations’, Bangkok Post (29 March, 2005); ‘Debate, Poll on FTA Demanded’, Bangkok Post (2 April, 2005); ‘There’s Little Trust in Trade Talks’, Bangkok Post (5 April, 2005).
decision-making process has been messy, mostly ad hoc and sometimes chaotic. There have been too many FTA negotiations with unrealistically tight deadlines. Vague foreign-policy goals and narrow, short-term mercantilism have been substitutes for a credible FTA policy that would link trade-and-investment liberalisation to market-based national economic and institutional reforms. This approach has resulted in a series of trade-light FTA negotiations and agreements. Negotiations with the USA were the sole and highly significant exception – until they were suspended in early 2006. In any case, Thailand seems ill-prepared for a US-style deep-integration FTA.

Once the domestic political crisis is resolved, the Thai government may revive stalled FTA negotiations, including TUSFTA. What can be done to improve FTA policy and make it more credible?

Ideally, Thai political leaders would do the following. First, devise a policy for FTAs that hitches them firmly to a national economic-and-institutional reform agenda. Second, listen to and coordinate better with its experienced negotiators; solicit policy advice from outside experts; consult seriously with Parliament and the more sensible NGOs; and explain relevant issues intelligently to the public. Third, have fewer negotiations with longer timelines in order to focus political capital and negotiating resources on what is important. The central focus should be on the crucial negotiations with the USA. Trade-light negotiations with India, EFTA, Bahrain and Peru, and in some of the collective ASEAN FTAs, should be put on the backburner. And there should be a moratorium on future FTA negotiations.

Fourth, ask the USA for a longer negotiating timeframe, say two years after negotiations resume. Whether negotiations resume depends on Thai domestic politics, and the willingness and ability of the US administration to conduct FTA negotiations after the expiry of TPA. The virtue of a longer horizon is that it would allow the Thai side to prepare a better negotiating strategy. In the meantime, the government should examine the desirability and feasibility of domestic regulatory reforms that a deep-integration TUSFTA would require. Fifth, strengthen existing FTAs with Australia, New Zealand, and in the (as yet unsigned) agreement with Japan, in terms of market-access commitments and WTO-plus issues. And Sixth, examine how rules of origin in Thailand’s FTAs can be simplified and harmonised to make them less costly and trade distorting.

5. CONCLUSION

Thai trade policy is highly unbalanced, as it is elsewhere in east Asia. Before the Asian crisis, liberalisation relied primarily on unilateral measures, complemented by the Uruguay Round agreements and AFTA. This mix was upset after the Asian crisis. Unilateral liberalisation ran out of steam and was replaced with reliance on preferential trade agreements.
Hence Thai trade policy has been standing on one shaky FTA leg. FTAs are a reality; they cannot be wished away; but they can be improved; and they can fit better with trade policy on unilateral and multilateral tracks. Thai trade policy needs to stand on its WTO leg too, but the latter seems to have gone to sleep. Ideally, there would be a stronger ASEAN arm of Thai trade policy, but that is lame and prospects for future strength are weak. Finally, Thailand needs to rebuild core strength through further unilateral liberalisation and regulatory change as part of a domestic reform agenda. That is probably more important than trade negotiations. The latter are not unimportant; they can be complementary; but they are of secondary importance.

Anti-FTA protests have played their part in the political turbulence that has rocked Thailand in 2006. This threatens to snowball into widespread anti-market sentiment. That will diminish the chances for further market-based reforms, including unilateral trade and FDI liberalisation. Therefore a clear, persuasive case needs to be made in Thailand for new unilateral reforms. If that is even half-accomplished, it will feed into better trade policy in the WTO and in FTAs. The winds of globalisation, blowing more strongly with the rise of China and India, create pressure to move faster with unilateral reforms. Whether that will be strong enough to change policy in Bangkok remains to be seen.

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