

Abstract

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Project Name: “Environmental Review in Preparation for Thai-US FTA Negotiations: A Case Study of Natural Resources and Environmental Service”

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The project entitled “Environmental Review in Preparation for Thai-US FTA Negotiations: A Case Study of Natural Resources and Environmental Service” has two major objectives. The first is to study the effects of the Thailand-US Free Trade negotiations on (1) natural resources and the environment, (2) the ownership of natural resources and (3) competitive capacity in the area of environmental services in the following three sectors: water resource management, tourism, and the management of wastewater and hazardous waste. The second objective is to suggest mechanisms which can effectively implement environmental regulations so as to improve the standard of environmental protection in Thailand.

The study is divided into three parts. The first - water resource management - will be based upon the consideration of the current water resource management in Thai society and an assessment of the impacts of the Thai-US FTA as a catalyst to the state’s policy in regard to the privatization of water resources allocation. The second part – the tourism services industry - will be based upon Agenda 21 for sustainable development, which promotes the preservation and rehabilitation of natural resources and the environment as a basis for tourism business development. At the same time, the study will also refer to agreements and standard practices between investors and eco-tourism entrepreneurs and equitable accessibility for Thai tourism business operators. The third part of the study - hazardous waste and waste water management - will use mind-mapping, matrix, and slides to focus on topics such as investment and co-investment, provision of services via appropriate technologies and the significance of having in place supporting regulations and laws in regard to local authorities’ abilities to manage their environmental concerns.

This study also focuses on investment in the service industry, particularly with regard to mode 3: Commercial Presence According to the General Agreement on Trade and Service of the WTO. The researchers recognize the importance of domestic and foreign legal frameworks that are related to environmental issues and of finding ways to improve and implement effective environmental laws in order to decrease the obstacles arising from FTA agreements as well as to raise the standard of national environment protection in general. Because of the limitations set by the confidentiality of the Thai-US FTA agreement, comparative case studies are used namely US-Singapore, US-Chile, and the Central America-Dominican Republic, since the Americans are expected to adopt a similar framework for their FTA negotiations with Thailand.

In regard to border measures and national treatment in term of internal measures (clause III of GATT), the study concludes by indicating that there is a problem with respect to whether or

not the true nature of environmental protection cases and non-tariff barriers cases is covered under exemptions rules according to clause XX of GATT.

Legal issues on the ratification of the Thai-US FTA arise from the Foreign Business Act B.E. 2542, (which the US urges other party practice on national treatment in pre-establishment and post-establishment). This allows American investors to freely open up any kind of business. The Agreement has also been extended to cover the investors who are not party to the FTA and requests the party not to define a performance requirement which exceeds the TRIMs conditions of the WTO. As a consequence, if Thailand accepts the US conditions, Thailand will not be able to define investment according to Art. 18 of the Foreign Business Act B.E. 2542 in the case of other countries who invest in Thailand. In connection with the Expropriation of Property Act B.E. 2530, the US bars parties from being able to take direct or indirect measures equivalent to expropriation or nationalization, unless this is in the public interest and provides for fair treatment and compensation at the market price with interest. Such compensation comes under the Arbitration Act B.E. 2545, which contains a provision allowing the private sector to sue the government (public) by giving prior consent.

On specific issues such as The Enhancement and Conservation of National Environmental Quality Act B.E. 2535, the study indicates that the Agreement might enhance sewage and hazardous chemical treatment. However, the Agreement should not include a performance requirement with respect to the issue of technology transfer. Regarding the issue of tour guides and hotels, the Agreement does not seem to have any additional effect, due to the fact that Thailand has an Amity and Economic Relations Treaty and also has already opened up a free market to some extent, according to the Tour and Guide Act B.E. 2535, the Hotel Act B.E. 2547, and the Hire of Immovable Property for Commerce and Industry Act B.E. 2542. These Acts already compensate foreign investors for not being able to have full ownership of land.

With regard to effects arising from the opening-up of the service sector by the FTA, the study indicates that the competitive advantage of Thai investors is inferior to that of foreign countries because of several important factors such as the bureaucratic system (i.e. trade competition law and government policies) and the competitiveness of Thai enterprises. The FTA has forced the Thai government to increase investment protection for foreign investors. This would benefit foreign investors more than Thai investors, especially in the area of solid and hazardous waste treatment, which requires high technology; at the same time foreign firms are allowed to conduct their business freely. Moreover, the investment chapter, which makes a

performance requirement unable to prescribe conditions for technology transfer, will benefit US investors, while discouraging Thai investors.

Regarding the impact on the improvement of environmental quality and standards in Thailand, the study indicates that business profit is the most important goal for foreign investors. Therefore, it is not easy to appeal to foreign enterprises to operate in accordance with environmental standards that are not specified by the law. In addition, technology advancement is merely another important factor that helps promoting and protecting environmental conditions. It does not necessarily bring about better environmental quality and standards.

Impacts on the improvement of environmental services among local service providers are mostly interpreted in terms of joint investment between foreign private enterprises and domestic companies or government organizations. However, it is quite difficult to enhance and develop the internal service quality of each organization. The study of ownership and fairness in resources accessibility indicates that American investors have greater sources of capital, management system, and technology than Thai investors. Therefore, the FTA may lead to trade monopoly by foreign investors and hence obstruct local business. The tourism industry is one good example of what happens without good governance: the influx of major American investors can distort the decision-making and system control by government officials involved due to the bribery factor. Eventually, environmental conditions and people's way of life will be affected, which will cause severe social conflict and one-sided dominance in the service sector.

Finally, the recommendations arising from this research are that government has to ensure that the measures used in the Thai–U.S. FTA negotiations are congruent, in terms of both policy and the legal aspect. Also, they must be applicable to central government, provincial government, and local government in the U.S. In the legal text, there should be an additional clause as follows: “Prevention of the relocation and transfer to the other Party’s territory of any activities and substances that may cause severe environment degradation or may be found to be harmful to human health.” In the preamble of the Thai–U.S FTA, the following should be inserted: “Use sustainable trade and responsible investment to promote sustainable development”. Moreover, the text should address the impacts of investment by foreign countries on people's rights to livelihood in terms of Non-Conforming Measures (NCMs). The government should enforce measures to protect and promote technologies that are applicable or can be developed in Thailand in the coming future. If this is done, the country will be able to compete with imported

technologies and gain effective mechanisms and law enforcement measures in order to accommodate large-scale foreign investment.

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