

Abstract

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Project Name: "Environmental Review in Preparation for Thai-US FTA Negotiations"

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The purpose of the project entitled “Environmental Review: Preparation for Thai-US FTA Negotiations” is to prepare for the negotiations between Thailand and the US with a particular focus on the area of the environment. The study proposes a position and solution for solving problems that may arise from the negotiations in relation to the environment. It also includes directions and guidelines to solve environmental problems, with which the Thai government should comply in order to achieve sustainable development and to maintain competencies to compete with other players in the US market.

The Research Team studied a number of documents relating to “Environmental Review” that the US had drawn up with Chile, Australia, Singapore, Morocco and the CAFTA, analyzing and gathering material on the environmental issues affecting the Thai-US FTA negotiations. This included the positive and negative impacts of the negotiations as well as cooperation between Thailand and the US in relation to environmental issues. The project also included activities in the form of a public forum in which the government sector, private sector, public, experts, academics and stakeholders participated in order to exchange opinions and information in order to put forward the Thai position on these negotiations between Thailand and the US.

Apart from analyzing the implications of the Thai-US FTA in the Environment Chapter, this project includes other five Chapters that are also related to the environment namely Investment and Legal Matters in relation to Investment, Agriculture, Services, Intellectual Property, and Arbitration. Moreover, the project studied other environmental issues that Thailand and the US are interested in negotiating such as marine shrimp, coral reefs, trade in wild animals, logging (legal and illegal), Genetically Modified Organisms (GMOs), bio-diversity, energy, climate change, hazardous waste and used goods. Conclusions were made with respect to the following areas:

1. Issues raised by the US
2. Environmental, social and economic effects in relation to natural resources and the environment including effects on national law relating to natural resources and the environment.
3. Recommendations in order to prepare for and mitigate the impacts of the FTA.

The major result of the research indicates that, even though the Environment Chapter requires that the government provide a high level of environmental protection and enforce its environmental laws effectively, which at first sight might lead to the enhancement of national environmental standards in Thailand, the results from other Chapters related to the environment suggest otherwise. These issues, which are very complicated and in conflict with the designated purpose of the Environment Chapter, are as follows:

1. Effects on the Environment

1.1 Direct effect means an effect on the environment that results from the increasing amount of trade and investments arising directly from the FTA. A quantitative analysis and methodology, which is required in order to assess such impacts, is beyond the scope of this project.

1.2 Indirect effect means an effect that is derived from regulations or other mechanisms which have an impact on the environment such as the effect of an Investor-State Dispute Settlement. This may lead to the problem of the state being sued by the private sector of the other party of the FTA, even when the government is protecting the environment. It can also result in the “Roll-back Hypothesis”, which means the state cannot issue laws to protect its environment or set any conditions for environmental protection if such laws and regulations are considered in conflict with trade and investment. The study on indirect effects is a major part of this project.

2. Effects on Environmental Management Capacity

The effects relating to this issue are mostly positive, especially in the area of enhancing cooperation between two parties on exchange of knowledge and support of technology transfer in the area of the environment.

An important result of the study that should be a major concern is the inconsistency between the Environment Chapter and other Chapters. This includes the inconsistency in context and implementation, which seem to affect the negotiations especially in the Investment Chapter. This Chapter aims to impose equal treatment of US and local investors including other countries' investors in Thailand (non-discrimination treatment). Moreover, it protects the US investors from being bound by the conditions that the Thai side may impose on such investors (e.g. Performance Requirement); it also protects the US investors from expropriation. Chapters tend to have an effect on the environment in such a way that the Thai government may not be able to introduce strict environmental laws or regulations since if they affect US investors the latter can bring a lawsuit through the Investor-State Dispute Settlement channel. This is called the “Roll-back Hypothesis”, which can hinder environmental protection.

Another Chapter that creates inconsistency is the Intellectual Property Right (IPR) Chapter. This Chapter aims to cover patents of Life Form which do not consider the rules of origin and source of genetic resources that are used for innovation. This will prevent the government from issuing equal access to bio-diversity and from sharing the benefits of bio-diversity. A strict IPR policy may also hamper the transfer of clean technology. Moreover, the study also indicated that Thailand may not be able to fully comply with Multilateral Environmental Agreements (MEAs), especially those MEAs to which the US has not become party. The Thai government may be sued by US private citizens through the Investor-State Dispute Settlement.

According to the study, the weaknesses of the Thai-US FTA negotiations centred around the following: lack of readiness to negotiate the FTA, and lack of policy direction and economic strategies for transparent, effective and beneficial FTA negotiations. The negotiations have been conducted rapidly and hastily without prior study of the effects that may arise from it. Furthermore, the US has a specific strategy and policy on the FTA as follows:

- (1) The US negotiation technique is a so-called “Divide and Rule” technique that seeks to overrule the WTO Preferential Trading System, creating more bargaining power than multilateral agreements;
- (2) The US successfully negotiates for better access to the Thai market while it is much harder for Thailand to have access to the US market due to non-tariff barriers, unilateral measures, SPS measures, anti-dumping etc.

So it seems that the Thai side is at a disadvantage. Furthermore, by allowing the US access to the Thai market, Thailand also allows the US to have access to its natural resources. As a consequence, an open market for the US is not fair for Thailand. Moreover, the FTA pushes Thailand into changing and overhauling its domestic laws, if Thailand accepts all the US requests.

Finally, there are further suggestions arising from what the representative of the researchers observed at the Thai-US FTA negotiations on the environment held in Thailand: the third round of negotiations at the Royal Cliff Beach Resort, Pattaya, Cholburi, and the sixth round of negotiations at the Westin Hotel, Chiangmai. Both rounds show that the US is well prepared both in context and strategy. The research team suggests that all Thai authorities involved in trade negotiations should work together harmoniously. A unit should be set up to co-ordinate and gather data regarding all aspects of trade negotiations. To enhance the efficiency of negotiation strategies, it is necessary to appoint promote qualified

personnel to this task and encourage local academic institutions to produce graduates who are not only knowledgeable about trade negotiations in term of strategy but who can also perceive the opposition's weaknesses.

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