

# TDRI

Quarterly  
Review

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*The Thailand-Australia Free Trade Agreement (TAFTA) entered into force in 2005. Passing four years, most privileges provided under TAFTA for trade in services have not been fully utilized. Why is this so? See related article on page 10.*

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# THE ECONOMIC ROLE OF MIGRATION

## Labor Migration in Thailand: Recent Trends and Implications for Development\*

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### 1. THE ECONOMIC ROLE OF MIGRATION

Labor migration is an important source of economic growth for Thailand and has implications for its long term competitiveness in the regional and global arena. Disparities in economic development mean that workers in lesser developed economies are attracted to neighboring countries where conditions are better in their search for work. With the positive economic contributions of migrant workers, migration has become institutionalized by participating governments and agencies. Migration provides a means not only to improve employment opportunities and the livelihood of migrant workers but also to help integrate economies. It allows labor markets to improve their workers' knowledge and skills, and better utilize them in different sectors while allowing women to play a more active role in contributing to their economies and opening up employment opportunities for them in other countries. Moreover, it ensures that labor markets are occupied and economic outputs are sustained. Migration also sustains the inflow of remittances into developing economies – perhaps at higher levels than what migrant workers would have been able to contribute if they were still working in their home countries. Labor migration further contributes to regional economic interaction and investment, which in turn influences the growth and sustainability of economic surplus. On the negative side, however, migration could contribute to brain drain from origination countries, regional inequality (in terms of economic development), unemployment in destination countries, and a high dependence on migrant workers.

### 2. THAILAND'S LABOR MIGRATION TRENDS

#### 2.1 Thailand as a Sending Country

Thailand plays an important yet minor role in sending its own workers to different parts of the world to work. With better opportunities and income available abroad, Thai workers are attracted to job markets elsewhere. As of January 2009, Thailand's unemployment rate stood at 2.36 percent, with many workers in different sectors, especially those in the manufacturing and tourism sectors, having lost their jobs in the first quarter and more of them at risk of losing their jobs in the coming months owing to the potential for political turmoil that the country faces. Fewer options are therefore left for the country's workforce; many are relying on work overseas to sustain their livelihood and that of their families.

Since 1995, Thailand has witnessed a steady increase in the number of workers leaving the country in search of work abroad. With the eruption of Thailand's economic crisis in 1997, the number of Thai workers emigrating for work abroad increased significantly. Likewise, the number of companies and firms requesting workers from Thailand also increased significantly, especially in the past few years (see Table 1 for details). The latest reported data on the number of Thai workers for the first two months of 2009, i.e., January and February, indicated a cumulative total number of 160,851 registered applicants and 28,868 placements. Major destination economies for Thai workers include Taiwan, Singapore, Malaysia, Japan, and Israel. Thai workers who leave the country for work have varying levels of

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education with a relatively large portion of workers having completed at least high school. Other workers hold vocational certificates and diplomas and a significant number of workers also hold bachelor's degrees. Most Thai overseas workers are young and it is evident that more males leave the country for work than females.

The majority of Thais working abroad engage in production, technical work and transport equipment operation; some are classified as laborers. Very few take up professional and administrative positions or perform clerical, sales, and service work. It may be observed that these jobs are a reflection of the workers' educational background and work expectations. Moreover, a significant factor for Thais seeking work abroad is the amount of remittances they will be able to send back to Thailand. Over the years, it is evident that there has been a steady increase in the amount of remittances, with the latest figures reported in 2008 amounting to around 60 billion baht (US\$1 = about 35 baht). For the first two months of 2009, it was reported that Thai workers overseas remitted around 10 billion baht (see trends depicted in Figure 1).

It can therefore be seen that a number of Thai workers choose to work abroad in different countries.

However, in comparing Thailand as a country sending migrants abroad to one that receives labor migrants from other countries, it is clear that Thailand is a significant receiving country. The trends that have surfaced over the past decade hold implications for the local labor market and the country's economy.

## 2.2 Thailand as a Receiving Country

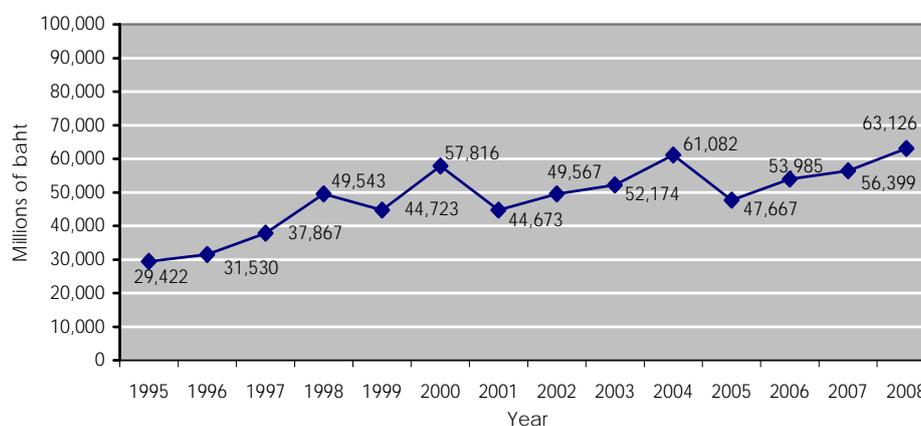
As a receiving country, Thailand plays a major role in taking in workers from different countries but mainly from Myanmar, Cambodia, and the Lao People's Democratic Republic (Lao PDR). Of these three, Myanmar has been a significant sending country for Thailand. It is evident that the number of unregistered migrant workers in Thailand is much larger than that of registered migrant workers putting the total number of migrant workers in Thailand close to around 2 million, with some estimates going as high as 4 million. With such increases in inward migration, Thailand has also experienced various challenges that have yet to be tackled. Figure 2 presents details on the number of registered migrant workers in Thailand.

**Table 1 Overseas Employment Indicators**

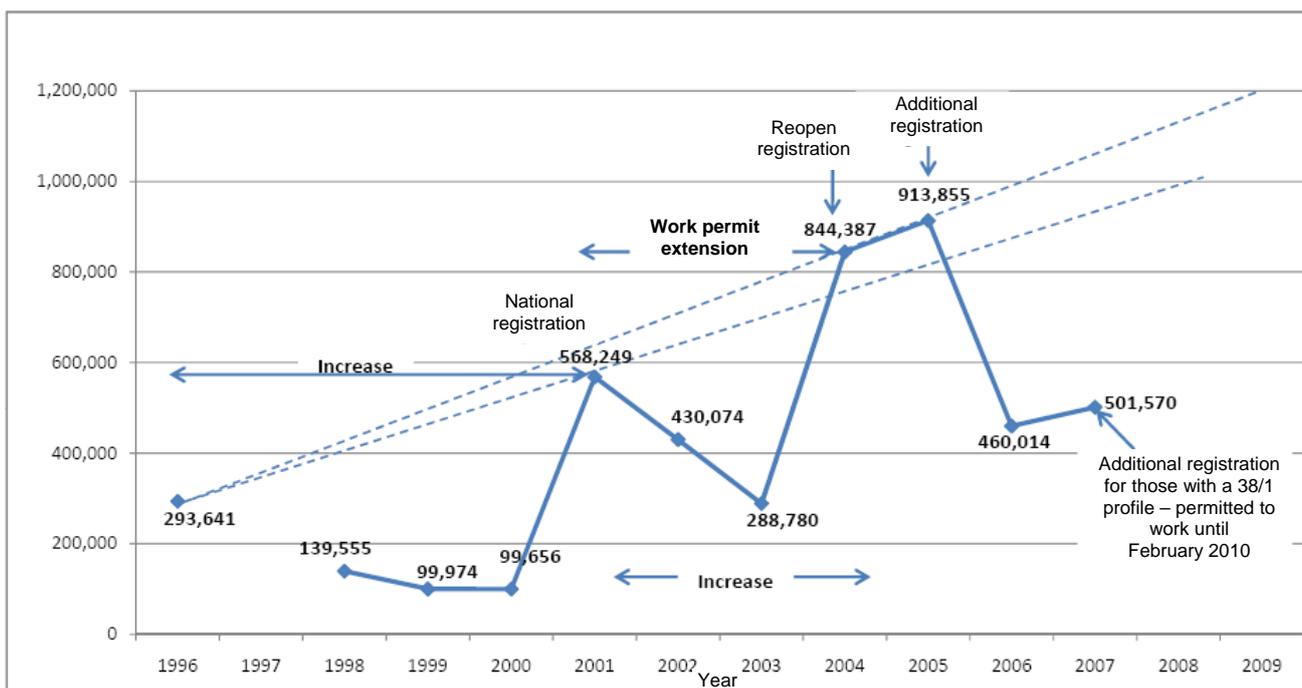
	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Registered applicants	277,303	292,535	245,324	210,772	208,580	354,468	444,021	413,389	391,962	450,865	510,846
Vacancies	32,328	36,149	43,944	42,754	67,067	65,576	69,144	58,215	38,588	28,123	27,162
Placements	144,687	144,145	124,144	110,670	75,853	104,145	151,963	145,677	163,657	183,282	226,868
Number of firms	5,864	5,580	6,747	7,094	17,487	25,840	29,197	30,108	28,932	28,429	22,133
Number of employees	356,367	105,499	174,174	184,802	176,793	219,242	227,064	243,097	250,315	241,499	219,996
Overseas Thai workers	191,735	202,416	193,039	160,252	160,807	147,769	148,596	139,672	159,518	162,017	161,852
-Taiwan	106,828	115,096	107,572	90,358	79,589	75,849	69,982	57,663	61,689	52,193	45,088
-Singapore	17,069	24,525	22,989	21,351	15,354	12,480	11,338	11,780	14,598	16,271	14,934
-Malaysia	9,031	17,716	20,541	3,457	14,619	7,479	5,833	4,915	3,297	3,432	3,476
-Japan	10,790	5,278	4,767	4,972	4,701	5,037	5,857	6,585	7,134	8,002	7,555
-Israel	10,644	11,940	7,617	11,256	12,952	6,327	10,611	8,746	9,305	10,903	7,121
-Others	37,373	27,861	29,553	28,858	33,592	40,597	44,975	49,983	63,495	71,216	83,678

Source: Bank of Thailand and Ministry of Labour (2009).

**Figure 1 Remittances Sent Home by Thai Overseas Workers, 1995-2008**



Source: Bank of Thailand and Ministry of Labour (2009).

**Figure 2 Number of Registered Migrant Workers in Thailand between 1996 and 2008**

Source: Thailand Development Research Institute (2009).

From Figure 2, it is clear that Thailand has gone through different registration periods, with different objectives and outcomes, under different government administrations. From the start of registration in 1996 to the registration that took place in early 2009, Thailand itself has gone through over 10 government administrations, inclusive of the recent administrative body appointed to run the country. These have had an impact on the management of migrant workers within the country. Migrant workers who enter the country work mainly in manufacturing sector, agricultural sector, fishing sector, and domestic work sector. These sectors represent the type of work that migrant workers take up, and the type of work that local Thai workers avoid. Most often the jobs that migrant workers take are categorized as dirty, dangerous, and difficult (the so-called 3D jobs). They pose different types of threats to the migrant worker, ranging from various forms of exploitation to outright abuse, under dangerous and harmful working environments and conditions, lacking the protection of labor laws. Others include abuse by employers, and exploitation by local authorities and police, to name a few. Unregistered migrant workers are more susceptible to such exploitation because they are not recognized by the system and are considered illegal (Pearson et al. 2006). Moreover, given that the majority of migrant workers in the country are Burmese, it has become increasingly evident that their registered status influences the amount of protection they receive while working in Thailand (Supang et al. 2007).

Different internal push and pull factors exist that eventually attract migrant workers from Thailand's neighboring countries to migrate to Thailand in search of

work. In looking at some of the push factors that migrant workers face at home, it is evident that political and economic situations within their own countries influence their decision to find work elsewhere. The remittances they send home amount to around 12.6 billion baht annually. However, this estimation is somewhat ambiguous in view of the fact that there are more unregistered migrant workers than that of registered migrant workers in Thailand; thus any valid estimation of numbers and figures could be challenged and questioned. Besides push factors, pull factors also attract migrant workers to come to Thailand for work and these include better job opportunities and higher incomes. Despite the fact that migrant workers working in Thailand earn wages below the standard minimum wages set by the government, they are still able to earn more than what they usually would back home. This is enough of an incentive for them to seek work in Thailand. Moreover, most unregistered migrant workers are known to stay on in the country and not return home. Eventually migrant workers build new homes and establish new lives in the host country and stay on as long as they are able to avoid local authorities and the police (Pearson et al. 2006; Supang et al. 2007).

### 3. NATIONAL POLICIES AND LAWS AND THE CONTRIBUTION OF REGIONAL AND GLOBAL FRAMEWORKS ON LABOR MIGRATION IN THAILAND

While different policies and laws exist to manage the labor migration situation in Thailand, it has become

increasingly evident that these policies and laws are more passive than active in their interventions and protection. With Thai workers going abroad for work, very few policies and laws exist to protect them with the local Labor Protection Act, which provides a basis for the protection to which local Thai workers are entitled. Nevertheless, in managing the Thai labor migration situation, the following are some of the policies and laws that are utilized:

- Constitution of the Kingdom of Thailand B.E. 2550 (2007)
- Labor Protection Act B.E. 2551 (2008)
- Alien Employment Act B.E. 2551 (2008)
- Nationality Act B.E. 2551 (2008)
- Immigration Act B.E. 2522 (1977)

For migrant workers working in Thailand, the most relevant policy is that of the Alien Employment Act 2008. Recently updated, it contains a few changes to the previous Act in order to accommodate certain groups of migrant workers and also to make the system more accessible to all parties involved. These policies guide all participants in the labor migration process in the recruitment, protection, and return of migrant workers. While the policies and laws themselves provide a sound basis for implementation, Thailand has yet to make a committed stance in implementing some of the most important policies and laws that protect migrant workers while they work in Thailand as well as guiding employers in abiding by the policies and laws set by the government. The existence of a large number of unregistered migrant workers in the country speaks for the gaps that still exist in the policies and laws. Some of the reasons why these policies and laws are ineffective are related to the costs involved both for the migrant worker as well as for the employer, the lengthy process involved in recruiting/hiring migrant workers, the implications of repatriation for the migrant workers, the lack of clarity in the objectives and purpose of the policies and laws, and the lack of information dissemination to all parties involved.

Most migrant workers as well as employers are unable to meet those costs and feel that in the long run they are not truly benefiting from the system as the policies and laws in place to protect them do not really function well. The system also involves a lengthy process for both parties and some migrant workers often have to wait for many weeks or months before they are granted their work permits to work in the country. (Vittit 2005; Supang et al. 2007). Additionally, there is a lack of clarity in the objectives and purpose of the policies and laws as well as the roles and responsibilities of the governing bodies. Agencies put in charge of overlooking the implementation of these policies and laws often have their own objectives and agenda, which differ from those of other agencies also involved. (Huguet 2008).

Besides the national policies and laws that exist in Thailand, the government has also signed memorandums of understanding (MOUs) with neighboring Greater Mekong Subregion (GMS) countries and has participated in ratifying some conventions that have implications for the labor migration situation in Thailand. Major MOUs signed are with Myanmar, Cambodia, and Lao PDR. Besides the MOUs that Thailand has signed with major sending countries, the country has also ratified 14 conventions with the International Labour Organization (ILO). Just how effective these MOUs or conventions are is questionable. Obstacles still remain in implementing these bilateral agreements, some of which include the legal status of migrant workers; their recruitment under the framework; the recruitment expenses incurred; trends in illegal labor migration; conflict among workers, employers, and recruitment agencies; and the protection of the rights of migrant workers (Pracha 2008). Implementation of these MOUs has been limited despite the benefits attached to them. Additionally, cooperation from neighboring countries also means that more initiatives need to be taken on both sides to ensure the effectiveness and implementation of the MOUs in a timely and consistent manner, and that they actually deliver on what is promised.

#### 4. POSITIVE AND NEGATIVE EFFECTS OF LABOR MIGRATION IN THAILAND

It is indisputable that labor migration in Thailand has produced positive effects for the country. Although only limited study has been undertaken on the actual economic contribution of migrant workers to Thailand, different perspectives exist on the types of positive effects migrant workers have had on the country's economic sustainability and success at the subregional level. It is agreed that migrant workers contribute to Thailand's national output. This is especially true for sectors such as agriculture and construction (Pungpond 2009). The value of Thailand's agricultural exports have increased significantly over the years, by 75 percent in 2005 to 280 billion baht. Migrant workers contributed greatly to this sector and to the manufacture of garments and textiles worth 175 billion baht (Martin 2007). Moreover, with the increase of migrant workers in Thailand, employers in labor-intensive sectors have access to workers that they need. Since most the jobs taken up by migrant workers are dirty, dangerous, and difficult, employers do not have to worry about being able to hire sufficient numbers of workers for such jobs. Hiring migrant workers in Thailand also means lower costs for employers. It is evident that migrant workers are much cheaper to hire than local Thai workers given the wage differentials and the output gained from hiring migrant workers versus Thai workers. Lower costs incurred by employers translate into lower prices of

goods sold, which helps to keep the country's national inflation rate low. Opportunities to exchange knowledge and information are also another benefit of migration. These include the sharing of specialized skills, knowledge, working methods, and new working processes. Moreover, with the availability of migrant workers in the country and employers to hire them in labor-intensive sectors, Thai workers are able to move up to sectors that require higher skills and benefit from the work and training gained from working in those sectors (Pearson et al. 2006; Pungpond 2009).

Labor migration also has negative impacts. While some of these negative impacts are accounted for in view of their nature, others are more difficult to pinpoint but often result in social costs that affect the migrant worker as well as those involved in the labor migration process. With the continued availability of migrant workers in the country as well as the easy, if not illegal, access to migrant workers, employers have been known to prefer hiring migrant workers rather than local Thai workers and this has implications for the utilization of the skills of Thai workers (Pungpond 2009). The high number of migrant workers in Thailand (registered and unregistered) can also have negative implications that result in social problems/costs: migrant workers who work in the sex industry, engage in drug trading, human trafficking, and other forms of crime; it may also result in the transmission of dangerous diseases. Unregistered migrant workers also lose out on the benefits that can help protect them.

## **5. IMPLICATIONS FOR FUTURE GMS DEVELOPMENT INITIATIVES: LESSONS LEARNED FROM THAILAND**

The effects of the current global financial crisis have already begun unfolding around the world and Asian nations are also witnessing its impacts on their economies and development. With the spread of the crisis in the last quarter of 2008, Thailand had already started to experience its effects on labor migration. One significant effect has been the decrease in remittance flows for the first two months of 2009. Whereas the incoming remittance flow for January and February 2008 was worth about 10.36 billion baht, for the same two months in 2009 remittances were valued at 8.86 billion baht, which represents a significant reduction in the remittances from Thai workers overseas. This should come as no surprise as many Asian countries have already begun experiencing the negative impacts of the global financial crisis, with some receiving countries already placing restrictive policies on the number of migrant workers they will accept. For Thailand, a reduction in Thai workers overseas is already being experienced with regard to receiving countries such as the Republic of Korea and Malaysia, both of which are now restricting the hiring of foreign workers. The Thai

government has also been cautious about its labor migration policies, initially leaning toward restrictive measures in curbing the number of migrant workers that may be hired. This has meant a delay in policy implementation and the initial postponement of the registration of migrant workers in the country. Besides these effects, migrant workers also risk poorer working conditions and lower wages combined with an increase in discrimination against migrant workers in the country who are perceived as taking jobs away from local workers. Moreover, the country has already put restrictions on new admissions, gauging from the local labor market situation and how many local workers are unemployed. With such restrictive policies and measures being taken along with the already high number of unregistered migrant workers in the country, migrant workers face pressures that would eventually drive them to resort to using illegal channels for acquiring work in order to be able to remain in Thailand. This could ignite future problems, such as human trafficking and the violation of migrant workers' rights, not to mention produce negative economic impacts on Thailand given that labor migration itself does not take away jobs from local workers but rather creates economic activity and jobs for many sectors.

These emerging trends, combined with the country's previous development initiatives, shed light on some of the lessons learned and their implications for future development initiatives as shown below:

- In order for policy implementation to be effective, all governing bodies must be aligned in their objectives and missions and reach consensus on the priorities they set with regard to labor migration. Strategies must represent those that are practical, timely, and measurable so that it would be possible to assess the success and effectiveness of the policies implemented. This includes bilateral cooperation and initiatives taken within the GMS and collective efforts that are complementary and beneficial to all parties involved.
- Given that the jobs that migrant workers take up in the country are those that local workers themselves eschew, an implication to be considered is the availability of these jobs, the labor demand of employers as well as the interest of local workers in taking up such jobs. These factors could shape the nature of the restrictive policies introduced by the government, which in turn could have dire effects on the country's economy if mishandled. This is in view of the fact that some of the sectors in which migrant workers seek employment represent those from which the country benefits economically and which translate into positive GDP growth for Thailand.

- Protecting the rights of migrant workers in Thailand needs to be spelled out in the country's active labor market policies in order to ensure that migrant workers are given equal rights and are not underrepresented in local policies and laws as well as by local authorities. These aspects are also spelled out in the expenses that migrant workers incur while working in Thailand, including the amount they spend on remitting money to their countries of origin. Transaction costs need to be lowered while creating cost-effective services, with various financial bodies taking into account how migrant workers send money to their families at home. For this, the empowerment of migrant workers is necessary. It is important for migrant workers to be able to effectively demand their rights and defend themselves in times of trouble and exploitation. Joint cooperation in development initiatives geared toward empowering migrant workers is therefore crucial in protecting the rights of migrant workers.
- Maximizing the utilization of the skills and knowledge of local workers is also key to ensuring that Thai workers will be able to actively and productively contribute to the country's economic activities, thereby negating the need to seek work abroad and face all the risks associated with labor migration. Job creation is essential in this case, along with the education and training provided for Thailand's current and future labor force. Social conflicts and violations can be reduced if jobs are available for local workers to take up that do not disrupt those filled by migrant workers. This would become even more crucial in times of unexpected adverse circumstances such as that of the current global financial crisis which has affected labor migration trends in the GMS. With countries imposing restrictive policies, reintegration also becomes a crucial aspect in ensuring that social conflicts and tensions do not erupt among the various categories of workers.
- Another crucial implication for future development initiatives within the GMS is the solidarity that exists among all the economies within this framework and the collective efforts to ensure that everybody involved, especially migrant workers, would be able to truly benefit from all the initiatives introduced and implemented. Such solidarity should emerge through joint efforts to consider new ways of effectively integrating labor migration within the subregion, thereby paving the way for the increased sharing of knowledge and skills along with practical frameworks aimed at ensuring sustainable development for each economy within the subregion.
- Regional and bilateral cooperation should involve creating effective programs that are manageable and sustainable while creating proper migration channels for migrant workers, including fair and safe remittance channels that benefit migrant workers. In terms of reintegration, all participating countries need to increase their efforts in reintegrating migrant workers into their economies, ensuring that their newfound skills and knowledge are utilized and maximized, while also ensuring that the labor markets would be able to benefit from their reintegration. Bilateral agreements and regional cooperation should also work toward enhancing the skills of their own workers and focus less on restrictive measures that tend to favor the notion that "only a limited number of jobs are available and occupations cannot be widened." They should ensure that the management of labor migration in the subregion is effective and efficient through its local policies, laws, and systems so that the costs will not outweigh the economic benefits. Bilateral and regional policies should integrate all aspects of the migration process: entry, settlement, social and economic integration, return, and reintegration, and ensure that these can be implemented, and are measurable, consistent, effective and manageable.
- Decisions also need to be made about refugees and asylum seekers regarding their permanent settlement and integration into receiving countries, given that some are working and actively contributing to the economies of their countries of residence but losing out on the protection that they need. The host countries incur costs that could be alleviated if the migrants could acquire nationality status or citizenship. Cooperation must also resolve around increasing opportunities for women to participate in labor migration by expanding labor market roles and occupations. Moreover, cooperation must also involve the active sharing of information on best practices and how these can be adapted and integrated into the participating countries' migration management systems.

## 6. CONCLUSION: BALANCING THE ECONOMIC COSTS AND BENEFITS OF LABOR MIGRATION IN THAILAND

Labor migration is an important source of economic growth for Thailand and has implications for its long-term competitiveness in the subregional and global arenas. It is therefore important that the economic costs and benefits incurred from labor migration be properly managed and balanced so that all parties involved in the process would benefit from it, and that the underrepresented are not taken advantage of. It is evident that Thailand still lacks this balance owing to its weak policy implementation and lack of consistency in managing the system designed to create such a balance. A crucial step for the country would be to carefully assess the effectiveness of all its policies and laws designed to manage labor migration, and identify all the stakeholders and parties involved in the process. In doing so, Thailand also needs to create sound coordination among all governing bodies, aligning core objectives and missions in implementing the most important national policies and laws. Cooperation from employers and migrant workers needs to constantly be encouraged and supported, while such persons need to be included in policy formation and dialogues. The formulation of all policies and laws also needs to take into consideration the empowerment of migrant workers in Thailand as well as Thai workers who go abroad to work. These measures would have significant implications for the ability of such workers to protect themselves and their rights as workers in a foreign land. Through careful assessment, sound coordination, strong cooperation, and the empowerment of workers, Thailand can move closer to achieving this balance that would prove highly useful to its long-term growth as a nation and as a major destination for foreign workers, enabling them to be a part of such accomplishments, to help build the nation, and to give back value to the system.

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# An Assessment of Growth in the Trade in Services between Thailand and Australia after the Implementation of the Thailand-Australia Free Trade Agreement\*

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**T**he Thailand-Australia Free Trade Agreement (TAFTA), Thailand's very first bilateral trade agreement, which covers trade in both goods and services, entered into force on January 1, 2005. This study is aimed at assessing the extent to which Thai and Australian persons and businesses have exploited the trade privileges provided under TAFTA as they are related to the service sector. Since both parties decided to open negotiations every three years in order to phase in liberalization in the service sector, the results of this study will provide useful information to help guide future commitments aimed at promoting the trade in services between the two countries.

## 1. THAILAND'S LIBERALIZATION COMMITMENTS UNDER TAFTA

Unlike goods that can be traded across borders, the delivery of most services requires that suppliers be in physical proximity to their final customers. Hence, service sector liberalization involves the freeing of capital and labor flows across borders in order to enable foreign service suppliers to establish a commercial presence in the host country.

Under the agreement, Thailand has made marginal commitments in opening up its service sector to Australia. As can be seen in Table 1A, TAFTA allows Australian investors to hold an equity share of up to 60 or 100 percent in a few service sectors; by contrast, the Foreign Business Act 1999, Thailand's main foreign investment law, prohibits foreign persons from owning a majority equity share in any business in the service sector.

In observing the list of service businesses for which Thailand has provided concessions to Australia, one can see that, with the exception of mining, they are

of relatively minor economic significance. Education, and distribution and installation may appear to be businesses of economic importance, but the conditionalities attached to these services severely limit the scope of the liberalization to a minimal level. For example, liberalization of distribution and installation services applies only to those in-house or captive services provided by Australian companies that produce manufactured products in Thailand. Given that Australia has a very small manufacturing base in Thailand, such liberalization is in effect rather insignificant. Similarly, the scope of liberalization of the education sector is limited to very specialized fields. Concessions made in other service sectors have also been circumscribed by the minimum scale of investment required in terms of their financial contributions and physical dimensions.

Concerning the movement of persons, although the TAFTA text shows extensive commitments (summarized in Table 1B), this study found that most commitments do not go beyond the status quo already afforded by existing laws or other regulations. For example, the visa provisions for Australian nationals, contractual suppliers, intra-corporate transferees, business visitors, and Asia-Pacific Economic Cooperation (APEC) Business Travel Card (ABTC) holders are consistent with the existing regime. The only special privileges provided under TAFTA are provisions that (a) allow spouses of Australian intra-corporate transferees and contractual service suppliers to work as executives, specialists or managers, and (b) allow Australian intra-corporate transferees and contractual service suppliers to access the "one-stop service for visas and work permits."

Now that we have identified the major privileges accorded under TAFTA to Australian persons and businesses, the key question is: "To what extent have Australian persons and businesses made use of such privileges?"

\* This article summarizes a report on the same subject that had been submitted to the Department of Business Promotion in December 2008. The report was prepared by Dr. Deunden Nikomborirak, Research Director for Economic Governance, with Weerawan Paibuljitt-aree, Senior Researcher, Boonwara Sumano and Pornchai Linhavess, Researchers, Sectoral Economics Program, TDRI.

**Table 1 Thailand's Trade in Services Commitments under TAFTA****A: Commitments on Investments**

Sector	Equity share (%)	
<b>Foreign equity participation (Mode 3)</b>		
<b>Sector-specific commitments</b>		
General management consulting services	100	- Provision of service must be provided exclusively through a regional operating headquarters (ROH), the ROH's associated company or foreign branch
Distribution and installation services	100	- Distribution and installation services related to products manufactured by Australian juristic persons established in Thailand only
Hotel lodging services	60	- Service supplier must have minimum paid-up registered capital of 800 million baht (US\$1 = about 35 baht). The facility must have a minimum of 100 rooms
Restaurant services	60	- The facility must have a minimum area of 450 square meters - The provider must have minimum paid-up registered capital of 50 million baht
Convention services, excluding catering and beverage services	60	- Total area must be not less than 4,000 square meters - Total area of the largest hall must be not less than 3,000 square meters
International exhibition services	60	- Total area of not less than 50 rai (1 rai = 1,600 square meters) - Total area of the indoor exhibition area must be not less than 25,000 square meters
Construction services relating to basic public services in public utilities or transport requiring special tools, machinery, technology or construction expertise	100	- Minimum paid-up registered capital must be not less than 1 billion baht
Higher education services	60	- Tertiary education services must be provided only by institutions specializing in science and technology, including life sciences, bio-technology and nanotechnology - Service supplier must be situated outside Bangkok and its metropolitan area - At least half the members of the university council must be Thai nationals
- Theme park services - Zoological garden services	60	- A total area of not less than 200 rai is required - Service supplier must have minimum paid-up registered capital of 1 billion baht
Aquarium services	60	- A total area of not less than 10 rai is required - Service supplier must have minimum paid-up registered capital of 200 million baht
Support services for maritime transport (excluding cargo-handling) Port and waterway operation services, including marina facilities	60	- Service supplier must have facilities, including ship lifter, inland berthing, and shipyard, for maintenance and repair
<b>Non-service sector</b> Mining (including operations undertaken on land or under water to obtain minerals from an area, by any method or methods, but not including individual mining or panning for minerals)	60	- Concessions must be granted by the Department of Primary Industries and Mines, Ministry of Industry, as provided by the Mineral Act B.E. 2510 (1967), as amended subsequently by - Mineral Acts (No.2) B.E. 2516 (1973); - (No.3) B.E. 2522 (1979); - (No.4) B.E. 2534 (1991); and - (No.5) B.E. 2545 (2002) - At least two fifths of the members of the board of directors must be Thai nationals

(Continued on page 12)

Table 1 (Continued)

## B: Commitments on Movement of Labor

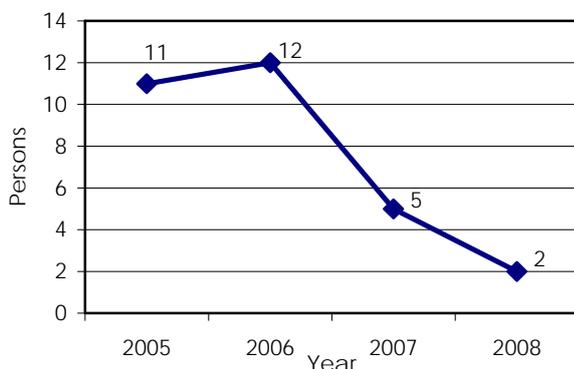
Movement of natural persons (Mode 4)		
Intra-corporate transferee	TAFTA	Domestic law/regulation
Australian nationals	Allows granting of work permit for one year Extension on an annual basis for not more than five years	<ul style="list-style-type: none"> <li>- Work permit for one year allowed if (a) employer observes the 4-to-1 ratio of local to foreign employees, and (b) 2 million baht of paid-up capital per worker is maintained</li> <li>- No limit on the specific number of times a visa can be extended (hence, no legal restriction)</li> </ul>
Branch or affiliate of Australian juristic person	Allows the hiring of up to 10 foreign employees. For each foreign worker employed, the undertaking must import foreign currency into Thailand equivalent in value to not less than 3 million baht	The specific provision is identical to the Department of Employment's "Rules Governing the Issuance of Alien Work Permits, 2004"
Spouses	Permits them to work as managers, executives or specialists	Not available under the current law
Contractual service supplier		
Australian nationals	Allows granting of work permit for one year. Extension on an annual basis for not more than three years	<ul style="list-style-type: none"> <li>- Work permit for one year</li> <li>- No limit on the specific number of times a visa can be extended (hence, no legal restriction)</li> </ul>
Juristic person registered in Thailand	Allows the hiring of up to 10 foreign employees. For each foreign worker employed, the undertaking must import foreign currencies into Thailand equivalent in value to not less than 3 million baht	The specific provision has been made available for foreign natural persons but is not yet available for foreign juristic persons under the current law. However, juristic persons can hire foreign workers as long as they maintain 2 million baht in paid-up capital for each foreign worker employed
Spouses	Permits them to work as managers, executives or specialists	Not available under the current law
Business visitor	Work permit/non-immigrant B visa, for 90 days that can be extended for one year	Thailand does not offer a "business visa." Business travelers need to apply for a non-immigrant B visa that is valid for 90 days. Thereafter, the visitor may apply to the Immigration Bureau for an extension of the visa for one year. Any stay beyond that requires a work permit from the Ministry of Labour that has a maximum validity of two years. However, the visitor would still have to renew his non-immigrant B visa every year
Asia-Pacific Economic Cooperation (APEC) Business Travel Card (ABTC)	Australian business travel card holders can stay up to 90 days and non-ABTC holders can stay up to 15 days	Foreign business travel card holders can stay up to 90 days and non-ABTC holders can stay up to 15 days
One-stop service center	<p><i>Eligible persons:</i></p> <ul style="list-style-type: none"> <li>(1) <u>Australian investors</u> with paid-up capital of at least 2 million baht</li> <li>(2) <u>Australian intra-corporate transferee</u> of a branch or affiliate importing foreign currency into Thailand equivalent in value to not less than 3 million baht</li> <li>(3) <u>Australian contractual service suppliers</u> of a juristic person with fully paid-up capital of 2 million baht</li> </ul>	<p><i>Eligible persons:</i></p> <ul style="list-style-type: none"> <li>(1) <u>Investors who:</u> <ul style="list-style-type: none"> <li>- Import foreign currencies into Thailand equivalent in value to not less than 2 million baht are allowed a one-year permit</li> <li>- Import foreign currencies into Thailand equivalent in value to not less than 10 million baht for a stay of two years each</li> </ul> </li> <li>(2) <u>Executives and specialists</u> of undertakings with paid-up capital exceeding 30 million baht</li> </ul>

Source: Collected by TDRI.

First, in terms of investment, this study found that during the four years since the agreement came into effect, only one Australian company has taken up the preferential foreign equity share in product distribution and installation services. This particular case involves an Australian company that manufactures steel products for structural applications. TAFTA privileges have allowed it to integrate its post-sale distribution and installment services unit into its main production unit. Prior to the implementation of the agreement, the company had to operate its after-sales service businesses through a separate Thai legal entity in which it holds a 49 percent equity share. Owing to the TAFTA privilege, such a joint venture is no longer necessary.

Second, with regard to the movement of workers, the study found that the number of Australian workers granted work permits under TAFTA has been negligible, with only 11 permits having been granted in 2005, the first year of the agreement's implementation. Since then, the number has been declining, with only two permits having been granted in 2008, as may be observed in Figure 1. These investment and work permit figures reveal the failure of TAFTA to attract Australian capital and labor into Thailand. Why is this so?

**Figure 1** Number of Australian Workers Granted Work Permits in Thailand under the Thailand-Australia Free Trade Agreement



Source: Office of Foreign Worker Administration, Ministry of Labour, Thailand.

The five main reasons why Australian investors have not taken up the privilege of holding a majority share in the business services that Thailand had offered under the agreement are as follows:

1. The privileges accorded by TAFTA are less attractive than those provided by Thailand's Board of Investment (BOI). TAFTA allows Australian investors to hold a majority equity share-holding in the specific services shown in Table 1A, whereas the BOI can provide exemptions to foreign equity restrictions for multiple services for promoted investments. In addition, the BOI can also permit foreign juristic persons to own land, which is normally prohibited by the land code, not to mention that it can provide tax incentives, including

exemptions from corporate income tax, and import duties on machinery and equipment. As a result, potential Australian investors would seek to obtain a "comprehensive" promotional package from the BOI rather than "piecemeal" privileges under TAFTA.

2. Certain domestic regulations are unfavorable to foreign juristic persons. For example, Australian investors are allowed to hold a majority share in the mining business, but Royal Forestry Department regulations deny foreign persons exploration permits in economic forest zones. Furthermore, a foreign company cannot own land, or operate any related services other than those committed in the schedule. As a result, to avoid the multiplicity of regulatory hurdles, Australian investors may prefer to operate as a Thai juristic person rather than a foreign alternative, especially when corporate control can still be had under such a joint venture structure.<sup>1</sup>

3. As mentioned previously, the scope of liberalization in each of the service sectors shown in Table 1A has been circumscribed by the conditions attached. For example, investment in education services has been confined to services for tertiary education provided by institutions specializing in science and technology. Moreover, the service supplier must be located outside Bangkok and its metropolitan area. In other service sectors, minimum capital requirements confine the scope of liberalization to large-scale investments only.

4. Other domestic rules and regulations in Thailand that pose major barriers to foreign investment have not been removed. For example, the requirement that four Thai employees must be hired for every foreign person employed discourages potential investment in service businesses that rely on skilled professionals or specialists. While this restriction applies to local and foreign companies alike, it does not help to promote the establishment of skills or knowledge-intensive services in Thailand. Another law that needs to be reviewed is the Foreign Business Act 1999, which bars foreign operators from operating in any service business in Thailand.

5. Australian equity participation in certain sectors is limited to only 60 percent. Most investors find the restriction, although more relaxed than it had been previously, still overly burdensome as they still would have to find a local partner.

6. Thailand lacks vital supporting services that would make the operation of main businesses viable. For example, investment in mining requires many supporting services that are simply not available in Thailand as they are off-limits for foreign operations. These include, for example, geological exploration and survey services, environmental services, and mining engineering services.

As for visa and work permit-related privileges, the study found that the reasons why very few work permits have been issued under TAFTA are as follows:

1. Most privileges accorded under TAFTA, such as access to the one-stop service center and the granting of a work permit, could be obtained easily by investing 2

million baht in Thailand, without any conditionality being placed on the nature of the investment. The commitment to allow the extension of work permits for intra-corporate transferee and contractual service suppliers for a specific number of years is not more preferential than the existing law, which does not specify the number of times that a visa can be extended.

2. Owing to inadequate publicity, most Australians are unaware of the special privileges to which they are entitled, such as the permission for spouses to work in the specific capacities mentioned previously.

3. Major visa problems have not been solved under TAFTA. For example, it is not clear whether Australian business visitors with a “non-immigrant B visa” would need to obtain a work permit for attending conferences and meetings, or being involved in other activities that do not involve remuneration. According to the Thai labor law, the definition of work that would require a permit includes activities that require an “exertion of effort” and “employment of knowledge...” “whether or not for wages or other benefits.” Because the law is vague, interpretation is subject to the judgment of the administrator of the day. Another major visa problem is that, while a work permit issued by the Ministry of Labour is valid for up to two years, the maximum duration of the non-immigrant B visa issued by the Immigration Bureau is only one year. As a result, the work permit holder still must renew his/her visa on a yearly basis.

It may therefore be concluded that the liberalization commitments in the service sector that Thailand made under TAFTA have not resulted in a greater inflow of Australian investment or workers into Thailand.

## 2. AUSTRALIA’S LIBERALIZATION COMMITMENTS UNDER TAFTA

Australia is one of the countries in the world most open to foreign investment. Foreign investment may flow freely into Australia with little restriction. Foreign equity share limitations apply to a few sectors that are considered to be sensitive, such as banking, media, and broadcasting services, domestic and international airlines, airports, and residential real estate developments. Investments above a certain size would also have to be screened by the Foreign Investment Review Board (FIRB) established under the Foreign Acquisitions and Takeovers Act (FATA) to ensure that a particular investment project does not run counter to national interests.

Concerning its labor market, Australia is a country that faces persistent shortages of unskilled labor to work in its sizable agricultural sector, and of semi-skilled labor to work in its mines and construction industries. Recently, it has taken steps to relax its visa policy with the introduction of the Standard Business Sponsorship Subclass 457, which allows a foreign worker sponsored by a business registered in Australia

to obtain a non-renewable work permit valid for four years.<sup>2</sup> Moreover, his or her family members are also allowed to apply for jobs or pursue education in Australia during that four-year period.

At the same time, to promote the availability of short-term workers, Australia has introduced the “Work and Holiday Visa” which allows students who graduated with a bachelor’s degree or a diploma from an institution in Australia to work in Australia for one year. Also, the “Working Holiday Visa” allows foreigners who are tourists to pick up temporary work, such as picking fruit in orchards in Australia. As of 2008, 680 Thai workers were residing in Australia,<sup>3</sup> a little over half of whom were in the hotel and restaurant business, with 8 percent in health-related businesses (working mainly as masseurs or masseuses), as can be seen in Figure 2.

This study examines Australia’s commitment in opening up its service sector to Thailand under TAFTA. The review reveals that, in terms of investment, Australia’s commitments do not exceed its domestic regulations. In other words, Thai investors are not granted any special investment privilege in the service sector as a result of TAFTA. In fact, owing to Australia’s recent unilateral moves to open up its service sector, certain commitments made under TAFTA already lag behind the country’s domestic laws. For example, the previously mentioned foreign equity participation limitation in the media sector, which includes newspapers and broadcasting services, has already been lifted. The threshold size of investment that would trigger the investment screening by the FIRB has also been increased from A\$50 million to A\$100 million for investments in existing Australian businesses, and from A\$50 million to A\$200 million for investments in multinational companies in Australia.

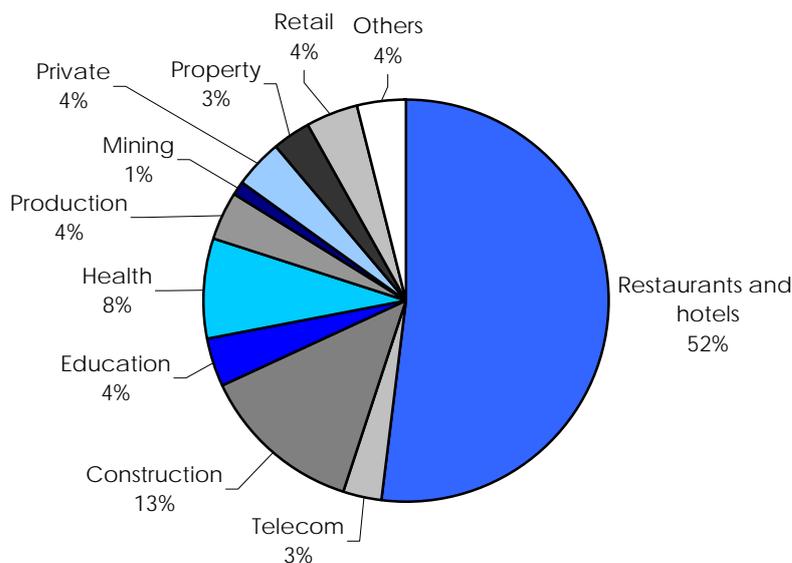
In terms of the movement of natural persons of Australia, business visas are classified into two types: (a) a short-term business visa, and (b) a long-term business visa. The long-term business visa consists of the general visa, namely the previously mentioned subclass 457 visa, and a visa for intra-corporate transferees, service sellers, and contractual service suppliers. Australia also requires testing for the employment of foreign workers. Since July 2007, foreign workers have been required to pass an English-language ability test prepared by the International English Language Test System (IELTS), except for those employees whose annual salary exceeds the minimum threshold of A\$70,000.

TAFTA provides Thai workers with the following privileges beyond what domestic laws accord to other nationals:

(1) Thai chefs holding a certificate from Thailand’s Department of Skill Development, Ministry of Labour, may maintain their work permit for a maximum of four years whereas other contractual service suppliers may do so for only three years.

(2) Intra-corporate transferees, service sellers, and contractual service suppliers (including cooks) are exempt from the previously mentioned language testing.

**Figure 2 Thai Workers with Australian Work Permits Grouped by Employers' Business Classification (July 2008)**



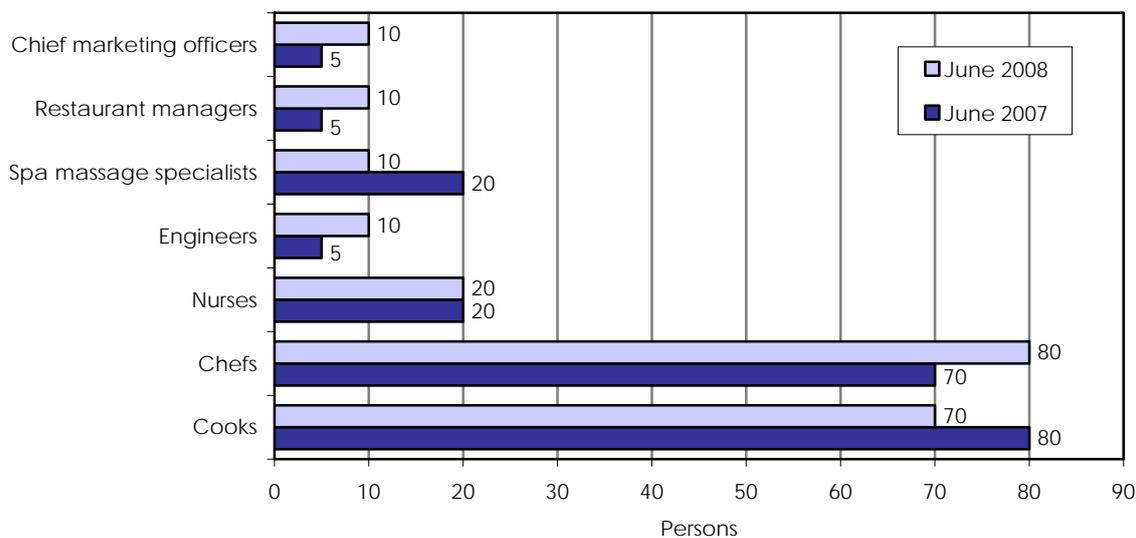
Source: Department of Immigration and Citizenship, Australia.

Statistics on the number of Thai workers granted work permits in Australia, which are shown in Figure 3, indicate that:

(1) The number of Thai workers in skilled professions, such as marketing, management, engineering and working as a chef, increased from July 2007 to July 2008, although from a relatively small base for certain professions. This may be attributed to the abolishment of the language testing requirement accorded under TAFTA. For example, the number of Thai chefs increased from 70 to 80, and the number of engineers, chief marketing officers, and restaurant managers increased from five to 10.

(2) The number of Thai workers declined in professions that require lower levels of skill, such as massage therapists and cooks. This is probably a result of the English-language proficiency requirement that came into effect in July 2007. According to an interview with officials from Australia's Department of Immigration and Citizenship and several interviews with Thai workers in Melbourne, it was confirmed that many Thai cooks, and masseurs and masseuses were unable to renew their work permit as they had failed to pass the English-language proficiency test.

**Figure 3 Number of Thai Workers Granted Work Permits in Australia, Classified by Professional Services**



Source: Department of Immigration and Citizenship, Australia.

This study also explored the opportunities to expand the scope of skill recognition under TAFTA beyond that of Thai chefs. The study found that there is a strong demand for skilled technicians, such as foremen, electricians, plumbers, welders, and engineers, in Australia. While there is no doubt that Thailand has an abundant supply of such technicians, the problem lies in the recognition of these skills, as no certification programs are available yet in Thailand. For these technicians to be able to take up jobs in Australia, they must possess certain skills that meet the standards and requirements established by relevant associations or institutions in Australia.

In conclusion, the study found that Thai investors have not benefited from TAFTA but highly skilled Thai workers were able to take advantage of the labor test requirement waiver granted to Thai contractual workers.

### 3. RECOMMENDATIONS

This study has revealed that much of the commitment to liberalize the service sector made by both Thailand and Australia accords only marginal preferential treatment to national persons and businesses. Moreover, most privileges accorded under TAFTA have not been fully exploited for several reasons, ranging from unaccommodating domestic rules and regulations to a general lack of awareness among those who could potentially utilize them.

In looking forward to the next round of service trade negotiations, the following steps are recommended in order to promote greater flows of investment and employment between the two countries:

#### *Negotiation Method*

1. Sectoral service liberalization needs to cover not only the issue of equity share, but also pertinent sector-specific regulations that are imperative to the decision whether or not to invest. To ensure that legal commitments do translate into increased economic activities between the two countries, the scope of the liberalization must be “comprehensive” rather than “piecemeal.”

2. Factors that pose major obstacles to the flow of investment and movement of workers across borders need to be defined beforehand. Negotiations should then concentrate on the removal of these obstacles rather than

on issues that may appear conceptually significant but practically trivial.

#### *Promoting Opportunities for Thai Workers in Australia*

3. Thai vocational and technical institutions as well as professional associations need to work closely with their counterparts in Australia in order to have certain professions, such as Thai therapeutic massage, officially recognized in Australia as being on par with alternative therapies and with Chinese and Japanese massage.

4. Thai workers clearly face a major disadvantage in terms of English-language proficiency. The Ministry of Labour needs to promote English-language proficiency among Thai workers in order for them to gain employment and work experience abroad. Once an English-language certification program is well established, the Thai government may seek to negotiate with Australia concerning recognition of the English-language proficiency certificate issued by the Department of Skill Development so that the Thai workers holding that certificate would not need to take the English-language proficiency test in Australia. It should be noted that English-language proficiency not only would broaden employment opportunities abroad for Thai workers, but also would enable them to defend their rights and avoid exploitation in foreign lands.

5. The Department of Skill Development should also consider establishing certification programs for technicians, such as electricians, plumbers, and welders, so that, in the longer run, it would be possible to have such certifications recognized by Australia and other countries where these skills are in demand.

#### ENDNOTES

- <sup>1</sup> The definition of a foreign juristic person according to the Foreign Business Act 1999 is a person whose majority equity share is held by foreign natural or legal persons. The law does not consider a “foreign controlled” business to be a foreign juristic person.
- <sup>2</sup> If the worker would like to continue working after this period, his/her employer would once again have to go through the whole process of justifying the hiring.
- <sup>3</sup> Department of Immigration and Citizenship, Australia



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