

A Study on the Impacts of Thailand-U.S. Free Trade Agreement

Thailand Development Research Institute

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Thailand-U.S. Free Trade Agreement

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ผลกระทบจากการทำความตกลงการค้าเสรีไทย-สหรัฐ¹

(บทสรุป)

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1. บทนำ

ในการประชุมเอเปคครั้งที่ 10 ที่ประเทศเม็กซิโก ประธานาธิบดีบุช แห่งสหรัฐได้ประกาศริเริ่มความสัมพันธ์ทางการค้ากับประเทศอาเซียน ซึ่งเรียกว่า Enterprise for ASEAN Initiative (EAI) โดยสหรัฐและประเทศอาเซียนแต่ละประเทศจะพิจารณาร่วมกันว่า จะดำเนินการเจรจาเพื่อทำความตกลงการค้าเสรี (Free Trade Agreement-FTA) แบบทวิภาคีกันหรือไม่ และเมื่อใด ทั้งนี้ การทำความตกลงการค้าเสรีระหว่างสหรัฐและอาเซียนนั้น จะใช้ความตกลงการค้าเสรีระหว่างสหรัฐและสิงคโปร์ซึ่งได้ลงนามกันไปแล้วเป็นกรอบในการเจรจา ประเทศอาเซียนที่จะสามารถเจรจการค้าเสรีกับสหรัฐได้จะต้องผ่านการลงนามในความตกลงกรอบด้านการค้าและการลงทุน (Trade and Investment Framework Agreement หรือ TIFA) กับสหรัฐก่อน ประเทศไทยได้ผ่านการลงนามความตกลง TIFA แล้ว และแสดงความสนใจที่จะเปิดการเจรจาเพื่อทำความตกลงการค้าเสรีกับสหรัฐ

รายงานการศึกษาเรื่องผลกระทบจากการทำความตกลงการค้าเสรีไทย-สหรัฐนี้ จัดทำขึ้นเพื่อวิเคราะห์ผลกระทบของการทำความตกลงการค้าเสรีดังกล่าวต่อประเทศไทย โดยจะถือว่าการกรอบในการทำความตกลงระหว่างไทย-สหรัฐ ยึดตามกรอบของสหรัฐ-สิงคโปร์ และสหรัฐ-ชิลี (ในกรณีของสินค้าเกษตร) และจะนำเสนอข้อเสนอนะเบื้องต้น เพื่อเป็นข้อมูลพื้นฐานให้ผู้กำหนดนโยบาย และผู้มีส่วนได้เสียต่างๆ ในประเทศไทย ได้รับทราบประเด็นที่เกี่ยวข้อง และสามารถนำเสนอแนวความคิดของตนเข้าสู่กระบวนการเจรจาได้อย่างมีประสิทธิภาพ

2. สภาพแวดล้อมการค้าโลก

การเจรจาความตกลงการค้าเสรีสามารถทำได้ใน 3 ระดับคือ การเจรจาแบบพหุภาคีในองค์การการค้าโลก การเจรจาแบบรวมกลุ่มทางภูมิภาค (regional integration) ต่างๆ เช่น การจัดทำเขตการค้าเสรีแห่งทวีปอเมริกาเหนือ (NAFTA) ซึ่งครอบคลุมถึงสหรัฐ แคนาดา และเม็กซิโก และการเจรจาเพื่อทำความตกลงแบบทวิภาคี (bilateral agreement) ในช่วงที่การเจรจาการค้าในระดับพหุภาคีประสบปัญหา

¹ การศึกษานี้ได้รับการสนับสนุนจาก Thai-US Business Council และ American Chamber of Commerce อย่างไรก็ตามความคิดเห็นในการศึกษานี้เป็นของสถาบันวิจัยเพื่อการพัฒนาประเทศไทย และไม่จำเป็นต้องสอดคล้องกับความคิดเห็นของหน่วยงานทั้งสอง รายงานฉบับเต็มซึ่งจัดทำขึ้นเป็นภาษาอังกฤษมีอยู่ในเว็บไซต์ของสถาบันวิจัยเพื่อการพัฒนาประเทศไทย (www.tdri.or.th)

ประเทศต่างๆ ได้หันมาใช้แนวทางการรวมกลุ่มทางภูมิภาคและการเจรจาแบบทวิภาคีกันมากขึ้นอย่างเห็นได้ชัด

ปัจจุบันมีการเจรจาการค้าระหว่างประเทศแบบภูมิภาคและแบบทวิภาคี ซึ่งรายงานต่อองค์การการค้าโลกแล้ว 259 ความตกลง โดยเป็นความตกลงที่มีผลบังคับใช้แล้ว 184 ความตกลง ความตกลงที่มีผลบังคับแล้วส่วนใหญ่เกิดขึ้นหลังปีค.ศ. 1990 โดยส่วนใหญ่เกิดในยุโรป (82 ความตกลง) และทวีปอเมริกา (10 ความตกลง)

ประเด็นหลักของการเจรจาดังกล่าวโดยทั่วไปคือการลดภาษีศุลกากรและอุปสรรคทางการค้าที่ไม่ใช่ภาษีศุลกากร (NTBs) เช่นการจำกัดปริมาณนำเข้า การอุดหนุนการผลิต การอุดหนุนการส่งออก และมาตรฐานด้านสุขอนามัย ทั้งนี้ รูปแบบในการเจรจามักมีความหลากหลายทั้งการเร่งเปิดเสรีภาคอุตสาหกรรมบางภาคไปก่อน (early harvest) การชะลอการเปิดเสรีสำหรับกลุ่มสินค้าที่มีความอ่อนไหว (sensitive list) การยกเว้นการเปิดเสรีสินค้าบางรายการ (exclusion list) การเลือกเปิดเสรีแบบระบุรายการที่เปิดเสรี (positive-list approach) หรือระบุรายการที่ไม่เปิดเสรี (negative-list approach) เป็นต้น

นอกจากนี้ ความตกลงการค้าเสรีซึ่งเป็นความตกลงระหว่างประเทศพัฒนาแล้วกับประเทศกำลังพัฒนา ยังมีประเด็นที่เกี่ยวกับมาตรการด้านการลงทุน โดยเฉพาะการถือหุ้นของผู้ประกอบการต่างชาติ เงื่อนไขการร่วมทุนและการตั้งบริษัท ความโปร่งใสในกฎระเบียบเกี่ยวกับการลงทุน ความเท่าเทียมระหว่างนักลงทุนต่างชาติกับนักลงทุนในประเทศ นอกจากนี้ ยังมีประเด็นใหม่ๆ ในกรอบการเจรจา เช่น การค้าบริการ ความโปร่งใสของกฎระเบียบต่าง ๆ การคุ้มครองทรัพย์สินทางปัญญา นโยบายแข่งขันทางการค้า (นโยบายต่อต้านการผูกขาด) พิธีการศุลกากร มาตรฐานสิ่งแวดล้อม มาตรฐานแรงงาน การอำนวยความสะดวกทางการค้าและการจัดซื้อจัดจ้างของภาครัฐ

2.1 ความตกลงการค้าเสรีที่สหรัฐมีส่วนร่วม

สหรัฐมีนโยบายการค้าที่เน้นการเปิดเสรีทางการค้าทั้งแบบพหุภาคี ภูมิภาคและทวิภาคี นอกจากลงนามในความตกลง NAFTA และ APEC แล้ว สหรัฐยังอยู่ในระหว่างเจรจากับกลุ่มการค้าเสรีในระดับภูมิภาคกับ 34 ประเทศในทวีปอเมริกาเหนือและใต้ ในส่วนของการเจรจาแบบทวิภาคี สหรัฐได้ทำความตกลงการค้าเสรีไปแล้วกับจอร์แดน อิสราเอล ซิลิ และสิงคโปร์ และอยู่ในระหว่างการเจรจาในอีก 5 ความตกลงกับออสเตรเลีย โมร็อกโก อียิปต์ กลุ่ม 5 ประเทศในอเมริกากลาง และกลุ่ม 5 ประเทศในแอฟริกา

ประเด็นหลัก ๆ ที่มักปรากฏอยู่ในความตกลงการค้าเสรีต่างๆ ของสหรัฐได้แก่ ความตกลงการค้าสินค้าทั้งอุตสาหกรรมและเกษตร การค้าบริการ โดยเฉพาะอย่างยิ่งบริการวิชาชีพ การขนส่งและโทรคมนาคม บริการการเงิน พาณิชยกรรมอิเล็กทรอนิกส์ การลงทุน การคุ้มครองทรัพย์สินทางปัญญา การจัดซื้อ

จัดจ้างของภาครัฐ พิจารณาศักยภาพ นโยบายแข่งขันทางการค้า มาตรฐานแรงงาน มาตรฐานสิ่งแวดล้อม การอำนวยความสะดวกต่อการค้า และกลไกการระงับข้อพิพาท

2.2 ความตกลงการค้าเสรีที่ไทยมีส่วนร่วม

รัฐบาลไทยภายใต้การนำของ พ.ต.ท.ทักษิณ ชินวัตร ใช้แนวทางการทำความตกลงแบบภูมิภาค และทวีภาคเป็นยุทธศาสตร์ทางการค้าที่สำคัญ ในปัจจุบันไทยมีส่วนร่วมในกลุ่มการค้าเสรีที่สำคัญคือ APEC และ AFTA กรอบความร่วมมือ ASEM GMS และ IMT-GT และอยู่ในระหว่างการพิจารณาหรือเจรจากับประเทศต่างๆ ในหลายกรอบ เช่น AFTA-CER ASEAN+3 ASEAN+1 และ BIMST-EC ในระดับทวีภาคไทยได้ทำความตกลงแล้วกับบาหลีเรน จีนและอินเดีย และอยู่ในระหว่างการพิจารณา/เจรจากับประเทศคู่ค้าอีก 16 ราย เช่น ออสเตรเลีย ญี่ปุ่น และสหรัฐ เป็นต้น

3. แบบแผนทางการค้าสินค้าระหว่างไทยและสหรัฐ

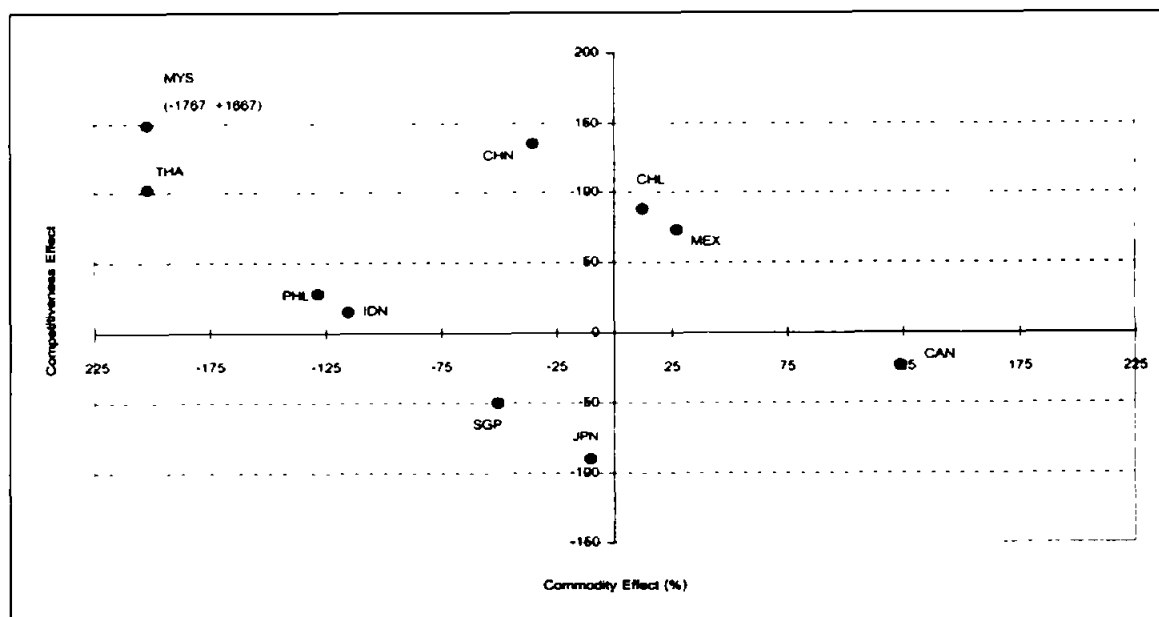
สหรัฐเป็นตลาดที่ใหญ่ที่สุดในโลก โดยมีมูลค่าการนำเข้าสูงถึง 1.16 ล้านล้านดอลลาร์สหรัฐ ในปี 2002 และมีแนวโน้มการขยายตัวเฉลี่ยประมาณร้อยละ 4.3 ต่อปี สหรัฐเป็นตลาดส่งออกที่สำคัญที่สุดของไทยโดยมีสัดส่วนประมาณร้อยละ 20 ของสินค้าส่งออกของไทย ในขณะที่ไทยมีสัดส่วนการนำเข้าจากสหรัฐเพียงร้อยละ 0.75 ของยอดการส่งออกของสหรัฐทั้งหมด การเปิดเสรีทางการค้าระหว่างไทยกับสหรัฐจึงน่าจะมีผลกระทบต่อประเทศไทยมากกว่าสหรัฐ เนื่องจากไทยเป็นประเทศเล็กกว่า

เมื่อวิเคราะห์โครงสร้างการค้า (trade structure) ระหว่างไทยและสหรัฐโดยวัดค่าสหสัมพันธ์ของความได้เปรียบโดยเปรียบเทียบ (rank correlation of revealed comparative advantage) ของสินค้าทั้งหมด 4,967 รายการ พบว่า ไทยมีสินค้าที่แข่งขันหรือทดแทนกับสินค้าของสหรัฐเพียงประมาณร้อยละ 6 เท่านั้น ซึ่งชี้ว่า การเปิดเสรีการค้าระหว่างไทยกับสหรัฐน่าจะทำให้เกิดการขยายตัวของการค้าระหว่างกันได้มาก

อย่างไรก็ตาม การวิเคราะห์ส่วนแบ่งตลาดของสินค้าไทยในสหรัฐชี้ว่า ส่วนแบ่งตลาดของสินค้าไทยในสหรัฐมีแนวโน้มลดลง ในขณะที่ส่วนแบ่งตลาดของบางประเทศเช่น จีน และเม็กซิโกมีแนวโน้มสูงขึ้น ทั้งนี้ เนื่องจาก แม้ว่า สินค้าไทยบางรายการจะสามารถแข่งขันได้ในตลาดสหรัฐ สินค้าไทยส่วนใหญ่เป็นสินค้าที่สหรัฐมีการขยายตัวของการนำเข้าในระดับสินค้าที่ต่ำ (ภาพที่ 1)

ภาพที่ 1 สาเหตุที่สินค้าไทยมีส่วนแบ่งตลาดในสหรัฐลดลง

แกนนอนแสดงอัตราการขยายตัวของสินค้าของประเทศต่างๆ ในสหรัฐ แกนตั้งแสดงถึงความสามารถในการแข่งขันของสินค้าจากแต่ละประเทศ จากภาพจะเห็นได้ว่า สินค้าไทย (THA) มีความสามารถในการแข่งขัน แต่อยู่ในส่วนของตลาดสินค้าของสหรัฐที่กำลังหดตัวลง ในขณะที่สินค้าชิลี (CHL) และเม็กซิโก (MEX) แข่งขันได้ในตลาดที่กำลังขยายตัว ทำให้สินค้าไทยมีส่วนแบ่งตลาดในสหรัฐลดลง



ในด้านของการค้าสินค้า สรุปได้ว่าการทำความตกลงการค้าเสรีระหว่างไทยกับสหรัฐน่าจะมีผลดีต่อทั้งสองประเทศโดยเฉพาะกับประเทศไทยในการขยายมูลค่าการค้า โดยเฉพาะในอุตสาหกรรมที่ไทยมีศักยภาพในการแข่งขัน แต่ถูกจัดเก็บภาษีในอัตราที่สูง ซึ่งจะช่วยเพิ่มส่วนแบ่งตลาดของไทยโดยรวมในสหรัฐ

4. ผลกระทบของความตกลงการค้าเสรีไทย-สหรัฐต่อเศรษฐกิจมหภาคของไทย

ความตกลงการค้าเสรีระหว่างไทย-สหรัฐ มีผลกระทบต่อเศรษฐกิจมหภาคของประเทศคู่ค้า โดยเฉพาะประเทศไทยในวงกว้างในหลายสาขาเศรษฐกิจ การประมาณการผลกระทบจึงต้องใช้แบบจำลองดุลยภาพทั่วไป (Computable General Equilibrium Model) ที่เชื่อมโยงทั้งสองประเทศ และมีรายละเอียดของสาขาต่าง ๆ พอสมควร

ที่ผ่านมา Institute of International Economics (IIE) ซึ่งเป็นสถาบันวิจัยของสหรัฐที่ตั้งอยู่ในกรุงวอชิงตันได้ศึกษาผลกระทบของการทำความตกลงการค้าเสรีระหว่างสหรัฐและประเทศกลุ่มอาเซียน 5 ประเทศคือไทย สิงคโปร์ มาเลเซีย อินโดนีเซีย และฟิลิปปินส์ โดยใช้แบบจำลองดุลยภาพทั่วไประหว่างประเทศที่เรียกว่า GTAP (Global Trade Analysis Project) ควบคู่กับการศึกษาทางเศรษฐมิติ

โดยแบบจำลองที่เรียกว่า Gravity Model การศึกษาพบว่าโดยทั่วไปประเทศในความตกลงการค้าเสรีจะ
ได้ประโยชน์จากปริมาณการค้าที่เพิ่มขึ้น การขยายตัวทางเศรษฐกิจที่สูงขึ้น และผลตอบแทนต่อแรงงาน
ที่มากขึ้น

เพื่อตรวจสอบผลการวิจัยของ IIE สถาบันวิจัยเพื่อการพัฒนาประเทศไทยได้พัฒนาแบบจำลอง
ดุลยภาพทั่วไปของประเทศไทยที่ออกแบบให้สามารถประมาณการผลกระทบของการปรับลดภาษี
ศุลกากร แบบจำลองนี้ใช้แหล่งข้อมูลในประเทศไทยที่ทันสมัยกว่าแบบจำลอง GTAP

ตารางที่ 1 เปรียบเทียบผลกระทบของความตกลงการค้าเสรีไทย-สหรัฐต่อเศรษฐกิจของไทยภาย
ใต้แบบจำลองและสมมติฐานต่างๆ จากตาราง พบว่าเมื่อใช้แบบจำลอง Gravity Model ผลต่อการ
ขยายตัวของปริมาณการค้าจะอยู่ในระดับสูงมาก กล่าวคือการนำเข้าและส่งออกระหว่างประเทศไทยและ
สหรัฐจะเพิ่มขึ้นถึงร้อยละ 118 คือเพิ่มมากกว่าเท่าตัว ซึ่งน่าจะถือเป็นตัวเลขขั้นสูง

ส่วนผลการศึกษาโดยใช้แบบจำลอง GTAP มีสองกรณีคือ กรณีแรกหากไทยทำความตกลงการค้า
เสรีกับสหรัฐ การส่งออกของไทยโดยรวมจะเพิ่มร้อยละ 3.46 นำเข้าเพิ่มร้อยละ 4.68 การขยายตัว
ทางเศรษฐกิจเพิ่มร้อยละ 0.72 รายได้จากภาษีศุลกากรเพิ่มจำนวน 1,532 ล้านดอลลาร์สหรัฐ และผล
ตอบแทนของปัจจัยการผลิตเพิ่มขึ้นทุกประเภทยกเว้นทรัพยากรธรรมชาติ ในกรณีที่สองหากทั้งประเทศ
ไทยและสหรัฐยกเลิกข้อจำกัดทางการค้ากับทุก ๆ ประเทศ ซึ่งเป็นการเปิดเสรีโดยความสมัครใจเอง
(unilateral liberalization-UTL) จะพบว่าการส่งออกของไทยโดยรวมขยายตัวร้อยละ 9.70 การนำเข้า
ขยายตัวร้อยละ 15.63 รายได้ภาษีลดลง 7,918 ล้านดอลลาร์ ผลตอบแทนของที่ดินลดลงแต่ผลตอบ
แทนต่อปัจจัยการผลิตอื่น ๆ เพิ่มขึ้น

การศึกษาของสถาบันวิจัยเพื่อการพัฒนาประเทศไทย ซึ่งใช้แบบจำลอง TDR/CGE ใช้ข้อสมมติ
ที่ใกล้เคียงกับกรณีแรกของ GTAP โดยสมมติว่าการส่งออกของไทยขยายตัวร้อยละ 3.46 เท่ากับของ
GTAP แต่การนำเข้าขยายตัวน้อยกว่าของ GTAP คือขยายตัวเพียงร้อยละ 1.82 เนื่องจากไม่ได้คิดผล
ของการยกเลิกมาตรการกีดกันทางการค้าที่ไม่ใช่ภาษีของไทย ผลที่เกิดขึ้นคือการขยายตัวที่แท้จริง
(real GDP growth) ของไทยสูงถึงร้อยละ 1.34 (หรือร้อยละ 2.71 เมื่อวัดในรูปตัวเงิน (nominal term))
โดยภาคเกษตรกรรมขยายตัวมากที่สุดคือร้อยละ 2.25 ส่วนภาคบริการขยายตัวน้อยสุดคือร้อยละ 0.85
รายได้ภาษีลดน้อยลง 226 ล้านดอลลาร์ และค่าจ้างแรงงานเพิ่มขึ้นร้อยละ 2.89

โดยสรุป การขยายตัวของเศรษฐกิจไทยจากผลกระทบของความตกลงการค้าเสรีไทย-สหรัฐนำ
จะอยู่ระหว่างร้อยละ 0.72-2.71 เมื่อวัดในรูปตัวเงิน ทั้งนี้ขึ้นอยู่กับผลการเจรจาว่าประเทศไทยสามารถ
ต่อรองเรื่องการยกเลิกมาตรการกีดกันการค้าที่ไม่ใช่ภาษีศุลกากรได้มากเพียงไร

อย่างไรก็ตาม ผลกระทบที่กล่าวถึงข้างต้นเป็นผลกระทบในระยะสั้น โดยไม่ได้พิจารณาถึงผล
กระทบของการเปิดเสรีทางการค้าต่อการลงทุนในประเทศและจากต่างประเทศ ตลอดจนผลกระทบของ
การแข่งขันที่มากขึ้นอันจะทำให้ระดับการผูกขาดในเศรษฐกิจไทยลดน้อยลง การจัดสรรทรัพยากรดีขึ้น
ซึ่งจะทำให้ประโยชน์ทางเศรษฐกิจในระยะยาวสูงกว่าที่ประมาณการด้วยแบบจำลองข้างต้น

ตาราง 1 ผลกระทบต่อเศรษฐกิจมหภาคของไทยของความตกลงการค้าเสรีไทย-สหรัฐ

เปลี่ยนแปลง (ร้อยละ)	Gravity Model ¹	GTAP Model ¹		TDR/CGE ²
	Bilateral FTA	Bilateral	UTL ³	
ผลต่อการค้า				
การส่งออก		3.46	9.70	3.46
ส่งออก ไปยังสหรัฐ	118			5.41
ส่งออก ไปยังประเทศอื่นๆ				2.91
การนำเข้า		4.68	15.63	1.82
นำเข้า จากสหรัฐ	118			4.99
นำเข้า จากประเทศอื่นๆ				1.37
ผลต่อการเจริญเติบโต และรายได้ภาษีศุลกากร				
ผลผลิตมวลรวมภายในประเทศที่แท้จริง (Real GDP)				1.34
เกษตรกรรม				2.25
อุตสาหกรรม				1.70
บริการ				0.85
ผลผลิตมวลรวมภายในประเทศในรูปตัวเงิน (Nominal GDP)		0.72	-5.34	2.71
การเปลี่ยนแปลงรายได้ภาษีศุลกากร (ล้านดอลลาร์)		1,531	-7,918	-226
ผลต่อผลตอบแทนของปัจจัยการผลิต (Return on Factors)				
ที่ดิน		0.21	-2.56	
ทุน		0.02	0.24	
แรงงาน				2.89
แรงงานทักษะต่ำ		0.02	0.23	
แรงงานทักษะสูง		0.03	0.30	
ทรัพยากรธรรมชาติ		-0.17	2.43	

ที่มา: 1. ผลจาก DeRosa, Dean A. (2003a), "US Free Trade Agreements with ASEAN," Institute for International Economics, (Draft) April 14, 2003.

2. ผลจากแบบจำลอง TDR/CGE Model

3. UTL หมายถึงการเปิดเสรีทางการค้าโดยสมัครใจให้แก่ทุกประเทศ โดยไม่เลือกปฏิบัติ

แม้ความตกลงการค้าเสรีจะมีผลดีในภาพรวมต่อการขยายตัวทางเศรษฐกิจของประเทศคู่ค้าก็ตาม ยังมีประเด็นที่ต้องพิจารณาอีกมาก เช่นความสามารถและต้นทุนในการปรับตัวของภาคการผลิตต่างๆ ของไทยที่อาจต้องเผชิญการแข่งขันที่รุนแรงขึ้น และประเด็นที่มีความอ่อนไหวต่างๆ ซึ่งจะกล่าวถึงในหัวข้อต่อไป

5. ผลกระทบต่อสาขาการเกษตร

สหรัฐเป็นประเทศคู่ค้าสินค้าเกษตรที่สำคัญมากที่สุดประเทศหนึ่งของไทย โดยมูลค่าการส่งออกสินค้าเกษตรของไทยไปสหรัฐสูงเป็นอันดับสองรองจากญี่ปุ่น ในขณะที่ไทยนำเข้าสินค้าเกษตรจากสหรัฐมากกว่าจากประเทศอื่นๆ อย่างไรก็ตาม ในช่วง 10 ปีที่ผ่านมา มูลค่าการค้าสินค้าเกษตรระหว่างทั้งสองประเทศมีแนวโน้มผันผวนมาก กล่าวคือ สินค้าส่งออกของไทยไม่สามารถรักษาส่วนแบ่งตลาดในสหรัฐได้ ในขณะที่สินค้าส่งออกจากสหรัฐก็ไม่สามารถรักษาส่วนแบ่งในตลาดไทยได้เช่นเดียวกัน ปรากฏการณ์นี้เกิดจากสาเหตุหลายประการ โดยส่วนหนึ่งอาจเกิดจากการกีดกันทางการค้า การทำความตกลงการค้าเสรีระหว่างไทย-สหรัฐจะช่วยลดอุปสรรคดังกล่าว และทำให้มูลค่าการค้าสินค้าเกษตรระหว่างทั้งสองประเทศเพิ่มขึ้น

อุปสรรคสำคัญในการนำเข้าสินค้าเกษตรของประเทศไทยคือ การมีกำแพงภาษีเฉลี่ยสูงที่สุดแห่งหนึ่งในเอเชีย (ร้อยละ 23.6) โดยกว่าร้อยละ 43 ของสินค้าเกษตรของไทยมีอัตราภาษีสูงกว่าร้อยละ 20 สินค้าที่มีอัตราภาษีสูงมากได้แก่ เนื้อสัตว์ ผลิตภัณฑ์นม น้ำตาล เครื่องดื่มและแอลกอฮอล์ เป็นต้น ส่วนสหรัฐมีอัตราภาษีศุลกากรของสินค้าเกษตรโดยเฉลี่ยประมาณร้อยละ 7 ซึ่งยังสูงกว่าอัตราของสินค้าอุตสาหกรรมมาก ในจำนวนนี้ สินค้าเกษตรของสหรัฐหลายรายการเช่น ยาสูบ ผักและผลไม้ พืช น้ำมัน ยังมีอัตราภาษีสูงกว่าร้อยละ 100 และสินค้าส่งออกที่สำคัญของไทยเช่น สับปะรด ปลาและผลิตภัณฑ์ปลา ผักและผลไม้ถูกจัดเก็บภาษีในอัตราร้อยละ 10-30 นอกจากนี้ สหรัฐยังมีอัตราภาษีตามสภาพ (specific tax rates) จำนวนมาก (746 รายการเทียบกับ 34 รายการของไทย) อัตราภาษีตามสภาพนี้จะแปรผันตามมูลค่าสินค้าซึ่งก่อให้เกิดปัญหาความไม่แน่นอนแก่ผู้นำเข้า

นอกจากนี้ สหรัฐยังมีอุปสรรคที่ไม่ใช่ภาษีศุลกากรมากกว่าไทย ทั้งโควตาภาษีซึ่งจำกัดโอกาสการส่งออกน้ำตาลของไทย และมาตรการด้านสุขอนามัยและสุขอนามัยพืช ซึ่งมีผลกระทบต่อการส่งออก ผัก ผลไม้ และอาหารทะเลของไทย เช่นในปี ค.ศ. 2001 มีสินค้าจากไทยถูกสหรัฐกักถึง 1,340 ครั้ง นอกจากนี้สินค้าจากไทยเช่น กุ้ง ยังถูกการไต่สวนในข้อหาทุ่มตลาดและการอุดหนุนของรัฐ อุปสรรคทางการค้าอีกประการหนึ่งคือ ข้อห้ามการนำเข้าเนื้อไก่ ดังปรากฏว่า กรมปศุสัตว์ และภาคเอกชนไทยพยายามขอให้หน่วยงานราชการของสหรัฐอนุมัติการนำเข้าเนื้อไก่จากไทย แต่กระบวนการดังกล่าวใช้เวลาเกินกว่า 2 ปี สินค้าบางชนิดของสหรัฐเช่น ข้าว ยังมีการอุดหนุนทั้งการส่งออกและการผลิต ซึ่งทำให้ข้าวจากสหรัฐแข่งขันกับข้าวไทยอย่างไม่เป็นธรรม

ฝ่ายสหรัฐก็แสดงความกังวลเกี่ยวกับอัตราภาษีศุลกากรของไทยที่อยู่ในระดับสูงมาก ความล่าช้าและความไม่โปร่งใสของกระบวนการศุลกากร และปัญหาความโปร่งใสของการจัดเก็บภาษีสรรพสามิต ปัญหาเหล่านี้ล้วนมีผลต่อการส่งออกสินค้าเกษตรของสหรัฐ โดยเฉพาะผลิตภัณฑ์อาหาร ผลไม้เมืองหนาว และไวน์ อย่างไรก็ตามแม้ไทยจะมีโควตาภาษีที่จัดเก็บจากสินค้าเกษตร 23 รายการ แต่สินค้าจากสหรัฐที่สำคัญ เช่น ข้าวโพด และถั่วเหลือง ซึ่งนำเข้าตามระบบโควตาภาษีกลับเสียภาษีในอัตราค่าและโควตานำเข้าจริงสูงกว่าโควตาที่ผูกพันมาก

การประมาณการผลกระทบของการลดภาษีศุลกากรให้เหลือศูนย์และขจัดอุปสรรคที่มีใช้ภาษีพบว่า ไทยและสหรัฐต่างก็จะมีการส่งออกเพิ่มขึ้นค่อนข้างสูงไม่ต่ำกว่าร้อยละ 10 ต่อปี หรือในบางกรณีอาจสูงถึงร้อยละ 30 เนื่องจากสินค้าเกษตรของทั้งสองฝ่ายมีลักษณะเกื้อหนุนกัน (complementary) กล่าวคือ สหรัฐมีความได้เปรียบในการผลิตสินค้าเกษตรเมืองหนาว ส่วนไทยมีความได้เปรียบในการผลิตสินค้าเกษตรเขตร้อน เป็นไปได้ว่าการส่งออกของสหรัฐอาจเพิ่มมากกว่าการส่งออกของไทย (เพราะไทยมีอัตราภาษีศุลกากรสูงกว่าสหรัฐ) นอกจากนี้การลดภาษีและอุปสรรคที่มีใช้ภาษีของสินค้าทุกประเภทตามความตกลงการค้าเสรีจะทำให้ ผลผลิตของภาคเกษตรเพิ่มขึ้นในอัตราที่สูงกว่าของเศรษฐกิจสาขาอื่น

แม้ความตกลงการค้าเสรีไทย-สหรัฐจะช่วยเพิ่มปริมาณการค้าและการขยายตัวทางเศรษฐกิจ ซึ่งเป็นผลดีต่อผู้บริโภคและผู้ผลิตที่ใช้สินค้าเกษตรเป็นวัตถุดิบ แต่ก็อาจส่งผลกระทบต่อเกษตรกรจำนวนมาก โดยเฉพาะเกษตรกรที่ผลิตสินค้าที่แข่งขันกับสินค้าส่งออกของสหรัฐ เช่น ไข่ และผู้ผลิตอาหารสำเร็จรูปบางรายการ รัฐบาลไทยจึงควรเร่งปรับโครงสร้างภาษีและกระบวนการศุลกากร เพื่อให้สินค้าไทยมีต้นทุนวัตถุดิบลดลง และเร่งเพิ่มผลิตภาพในภาคเกษตร ตลอดจนช่วยเหลือให้เกษตรกรรายย่อยสามารถปรับตัวได้

ในการเจรจา รัฐบาลไทยควรให้ความสนใจกับการต่อรองเพื่อรักษาผลประโยชน์จากการส่งออกสินค้าสำคัญของไทย ในเรื่องโควตาน้ำตาล การตรวจสินค้าตามมาตรการด้านสุขอนามัย และการลดมาตรการกีดกันด้านอื่นๆ ในขณะเดียวกัน รัฐบาลไทยควรมุ่งลดผลกระทบด้านลบต่อเกษตรกรไทย เช่น การชะลอการลดอัตราภาษี การแก้ปัญหาเรื่องการอุดหนุนการส่งออก ตลอดจนปรับปรุงมาตรการคุ้มครองการค้า (safeguards) ต่างๆ ให้มีประสิทธิภาพ

6. ผลกระทบต่ออุตสาหกรรมยานยนต์

อุตสาหกรรมยานยนต์และชิ้นส่วนของไทยถือว่าเป็นอุตสาหกรรมหลักซึ่งมีบทบาทสำคัญต่อการพัฒนาเศรษฐกิจของประเทศ เนื่องจากมีอุตสาหกรรมต่อเนื่องและอุตสาหกรรมสนับสนุนจำนวนมาก ที่ผ่านมา การลงทุนจากต่างประเทศและนโยบายของรัฐบาลไทยมีส่วนสนับสนุนอุตสาหกรรมนี้มาโดยตลอด ซึ่งส่งผลให้ประเทศไทยมีขีดความสามารถในการผลิตยานยนต์และชิ้นส่วน จนกลายเป็นฐานในการส่งออกได้ในปัจจุบัน

การศึกษาในอุตสาหกรรมยานยนต์ได้แยกการวิเคราะห์ออกเป็น 3 อุตสาหกรรมย่อยคือ อุตสาหกรรมประกอบรถยนต์ (assembly) อุตสาหกรรมชิ้นส่วนและอะไหล่รถยนต์ (spare parts and components) และ อุตสาหกรรมมอเตอร์ไซด์ (motorcycle) ผลการศึกษาชี้ว่าความตกลงการค้าเสรีน่าจะมีผลในการเพิ่มปริมาณการค้าระหว่างไทยกับสหรัฐ โดยเฉพาะในอุตสาหกรรมชิ้นส่วนรถยนต์และมอเตอร์ไซด์ เนื่องจาก โครงสร้างการผลิตของทั้งสองประเทศมีลักษณะหนุนเสริมกัน (complementary) อย่างไรก็ตาม ผู้ผลิตชิ้นส่วนบางรายการที่ต้องใช้เทคโนโลยีสูงแต่มีปริมาณการผลิตน้อยจะไม่สามารถ

แข่งขันกับชิ้นส่วนที่นำเข้าจากสหรัฐที่มีราคาถูกกว่าได้ ในส่วนของอุตสาหกรรมประกอบรถยนต์ โครงการสร้างการผลิตของทั้งสองประเทศมีลักษณะแข่งขันกันบ้าง แต่มีรายละเอียดของสินค้าที่แตกต่างกัน จึงมีความเป็นไปได้ที่ไทยจะมีโอกาสในการส่งออก รถยนต์ไปสหรัฐ ในขณะที่สหรัฐจะสามารถส่งออกรถยนต์บางส่วนบุคคลมายังประเทศไทย นอกจากนี้ ความตกลงการค้าเสรีไทย-สหรัฐน่าจะส่งผลดีต่อไทย ในด้านการลงทุนในอุตสาหกรรมยานยนต์ที่เพิ่มขึ้น

อย่างไรก็ตาม ประโยชน์ที่จะได้ในการส่งผลิตภัณฑ์ด้านยานยนต์ไปยังตลาดสหรัฐนั้นจะไม่เกิดขึ้นโดยอัตโนมัติ หากผู้ประกอบการในประเทศไทยไม่สามารถปรับสินค้าให้สอดคล้องกับความต้องการของตลาดสหรัฐ เช่น ปรับประเภทของรถที่ส่งออกไปยังตลาดสหรัฐ นอกจากนี้ การที่ผู้ผลิตชิ้นส่วนในประเทศไทยจะได้ประโยชน์จากการส่งออกชิ้นส่วน หรือป้อนให้แก่ผู้ผลิตรถยนต์สหรัฐที่อาจเพิ่มการลงทุนในประเทศไทยได้นั้น ผู้ผลิตชิ้นส่วนในประเทศไทยจะต้องสามารถลดต้นทุนการผลิตลงอย่างต่อเนื่อง พร้อมกับการปรับปรุงคุณภาพสินค้าและลดเวลาในการส่งมอบสินค้า

นอกจากนี้ รัฐจะต้องเร่งปรับปรุงโครงสร้างภาษีศุลกากรและลดการคุ้มครองอุตสาหกรรมต้นน้ำ เช่น เหล็ก เพื่อลดต้นทุนของวัตถุดิบให้อยู่ในระดับที่แข่งขันได้กับต่างประเทศ ตลอดจนต้องปรับปรุงกลไกในการอำนวยความสะดวกทางการค้า โดยเฉพาะพิธีการด้านศุลกากร

7. ผลกระทบต่อการค้าบริการ

ข้อตกลงว่าด้วยการค้าบริการในความตกลงการค้าเสรีมีสาระสำคัญคล้ายคลึงกับที่ปรากฏใน Treaty of Amity and Economic Relations ระหว่างประเทศไทยกับสหรัฐที่มีมาตั้งแต่ปี พ.ศ. 2509 ซึ่งให้สิทธิแก่ผู้ประกอบการสหรัฐเทียบเท่าผู้ประกอบการไทย อย่างไรก็ตาม ข้อตกลงด้านการค้าบริการในความตกลงการค้าเสรีมีขอบเขตที่จำกัดกว่าใน Treaty of Amity เนื่องจาก ให้การยกเว้นในประเด็นดังต่อไปนี้

- (ก) มาตรการต่างๆ ที่บังคับใช้อยู่ในเวลาที่มีการทำความตกลง
- (ข) บริการทุกสาขาที่รัฐวิสาหกิจดำเนินการอยู่ในเวลาที่ทำความตกลง (ในขณะที่ Treaty of Amity ให้การยกเว้นเพียง 3 สาขาบริการ ได้แก่ การเงิน ขนส่งและสื่อสาร-ดูรายละเอียดของ Treaty of Amity เพิ่มเติมได้ในหัวข้อที่ 12) การที่ความตกลงการค้าเสรีมีความครอบคลุมสาขาบริการน้อยกว่า เนื่องมาจากการที่ข้อตกลงด้านการลงทุนภายใต้ความตกลงการค้าเสรีมีความครอบคลุมกว่าใน Treaty of Amity มาก ซึ่งทำให้ประเทศคู่เจรจาต้องการสงวนสิทธิการเปิดเสรีในสาขาบริการที่อาจได้รับผลกระทบในทางลบ²

² ข้อตกลงด้านการลงทุนมีผลกระทบโดยตรงต่อการค้าบริการ เนื่องจากการค้าบริการโดยทั่วไปจะต้องมีการลงทุนโดยตรง การที่ข้อตกลงด้านการลงทุนเปิดกว้างให้นักลงทุนสหรัฐสามารถเข้าไปลงทุนในประเทศอื่นได้ จึงมีผลทำให้เกิดการเปิดเสรีในสาขาบริการนั้นทันที เว้นแต่จะมีข้อกำหนดเป็นอย่างอื่น

ความตกลงการค้าเสรียังมีข้อกำหนดที่มีได้ปรากฏใน Treaty of Amity อีก 3 ประเด็น คือ

1. การกำกับดูแลในประเทศ ซึ่งจะต้องดำเนินการอย่างโปร่งใสและเป็นธรรม
2. การแปรรูปรัฐวิสาหกิจซึ่งห้ามมิให้รัฐวิสาหกิจที่แปรสภาพเป็นบริษัทจำกัด (corporatized) แล้ว ได้รับสิทธิพิเศษใดๆ จากรัฐ และการให้นักลงทุนสหรัฐมีสิทธิเท่าเทียมกับนักลงทุนไทยในการถือหุ้นของรัฐวิสาหกิจ เมื่อมีการกระจายหุ้นต่อสาธารณะ
3. การโอนเงินข้ามประเทศ ซึ่งห้ามมิให้รัฐมีมาตรการใดๆ อันเป็นการขัดขวางมิให้ผู้ประกอบการโอนเงิน ดอกเบี้ย ค่าร้อยละ ค่าจ้างและอื่นๆ ออกนอกประเทศ

คาดว่า ผลกระทบของความตกลงด้านบริการที่จะมีต่อภาคธุรกิจและผู้บริโภคไทยจะค่อนข้างน้อยในระยะสั้น เนื่องจากข้อยกเว้นดังกล่าวข้างต้น 2 ประการ และการที่ผู้ประกอบการสหรัฐสามารถประกอบการได้เต็มที่อยู่แล้วภายใต้ Treaty of Amity อย่างไรก็ตาม ประเด็นที่ต้องให้ความสนใจคือข้อห้ามมิให้รัฐวิสาหกิจที่แปรสภาพแล้วได้รับสิทธิพิเศษและสิทธิในการโอนเงินออกนอกประเทศของผู้ประกอบการสหรัฐ ส่วนในระยะปานกลางและระยะยาวนั้น ประเด็นที่น่าเป็นห่วงคือการให้สิทธิแก่นักลงทุนสหรัฐเท่าเทียมกับนักลงทุนไทยแต่เพียงชาติเดียวอาจส่งผลให้เกิดการผูกขาดในบางตลาดได้

เพื่อป้องกันปัญหาดังกล่าว รัฐบาลไทยควรดำเนินการดังต่อไปนี้

1. เร่งบังคับใช้กฎหมายการแข่งขันทางการค้าอย่างจริงจังเพื่อป้องกันการผูกขาดโดยบริษัทข้ามชาติสหรัฐ
2. เรียกร้องให้บริษัทสหรัฐปฏิบัติตามความตกลงพหุภาคีว่าด้วยหลักการและกฎควบคุมพฤติกรรมการค้าที่เป็นการค้าการแข่งขันของ UNCTAD
3. เปิดให้ผู้ประกอบการจากประเทศอื่นสามารถเข้าประกอบการในสาขาบริการที่มีแนวโน้มที่จะมีการผูกขาดโดยบริษัทสหรัฐ เพื่อสร้างให้เกิดการแข่งขันอย่างแท้จริง
4. ตัดข้อห้ามมิให้รัฐวิสาหกิจที่แปรสภาพแล้วได้รับสิทธิพิเศษใดๆ เนื่องจากรัฐวิสาหกิจส่วนใหญ่ยังคงมีภารกิจทางด้านสังคมอยู่ แม้จะได้รับการแปรสภาพแล้วก็ตาม หรือ กำหนดระยะเวลาในช่วงเปลี่ยนผ่านที่นานเพียงพอ
5. ให้มีข้อยกเว้นในเรื่องของการส่งเงินออกนอกประเทศในกรณีที่ประเทศไทยประสบปัญหาขาดดุลการชำระเงิน ซึ่งเป็นข้อยกเว้นในความตกลงว่าด้วยการค้าบริการขององค์การการค้าโลก (GATS)

8. ผลกระทบต่อบริการโทรคมนาคม และพาณิชย์อิเล็กทรอนิกส์

8.1 โทรคมนาคม

ตลาดโทรคมนาคมไทยเป็นตลาดที่ขาดการแข่งขันที่มีประสิทธิภาพ ซึ่งมีสาเหตุมาจากปัญหาต่างๆ เช่น กฎเกณฑ์ในการกำกับดูแลของรัฐที่ไม่ได้มาตรฐาน พฤติกรรมผูกขาดของผู้ประกอบการรายใหญ่ที่มีอำนาจเหนือตลาด และเงื่อนไขในสัญญาสัมปทานระหว่างรัฐและเอกชน ปัญหาเหล่านี้ทำให้บริการโทรคมนาคมในประเทศไทยมีราคาสูงกว่าประเทศเพื่อนบ้าน และมีปัญหาการร้องเรียนจากผู้บริโภคในด้านต่างๆ มาก

ข้อตกลงด้านโทรคมนาคมในความตกลงการค้าเสรีมีสาระสำคัญดังต่อไปนี้

- การให้หลักประกันแก่ผู้ประกอบการของแต่ละฝ่ายในการเข้าถึงโครงข่ายโทรคมนาคมสาธารณะในประเทศหรือข้ามพรมแดน โดยไม่เลือกปฏิบัติ
- การให้หลักประกันแก่ผู้ประกอบการของแต่ละฝ่ายในการเชื่อมต่อกับโครงข่ายโทรคมนาคมหรืออุปกรณ์ของผู้ประกอบการอีกฝ่าย
- การกำหนดภาระหน้าที่ของผู้ประกอบการรายใหญ่ (major supplier) ในการให้บริการโดยไม่เลือกปฏิบัติภายใต้เงื่อนไขที่สมเหตุสมผล ในด้านต่อไปนี้
 - การเชื่อมต่อโครงข่ายโดยแยกส่วน (unbundled) และให้เชื่อมต่อได้ทั้งแบบ physical และ virtual collocation
 - การจำหน่ายต่อบริการ (resale) ในราคาที่คิดอ้างอิงตามต้นทุน
 - การให้ผู้ประกอบการอื่นใช้เสา หรือท่อ ซึ่งอยู่ภายใต้การควบคุมของผู้ประกอบการ
 - การจัดทำและเปิดเผยข้อเสนอการเชื่อมต่อโครงข่ายมาตรฐาน (Reference Interconnection Offer)
 - การให้บริการวงจรเช่าในราคาที่สมเหตุสมผล โดยอยู่ในระดับที่สามารถเปรียบเทียบได้กับราคาของผู้ประกอบการในประเทศอื่น
- การมีมาตรการคุ้มครองการแข่งขัน (competitive safeguards) กลไกในการระงับข้อพิพาทเรื่องการเชื่อมต่อโครงข่าย สิทธิในการร้องเรียนและอุทธรณ์ต่อหน่วยงานกำกับดูแล และสิทธิในการฟ้องร้องต่อศาลให้ทบทุนการตัดสินใจของหน่วยงานกำกับดูแล
- การจัดความเกี่ยวข้องระหว่างหน่วยงานกำกับดูแลและผู้ประกอบการ และการมีแผนในการแปรรูปรัฐวิสาหกิจให้เป็นกิจการเอกชน

- การมีความโปร่งใสในการให้ใบอนุญาตประกอบการ การจัดสรรทรัพยากรที่มีจำกัด และกระบวนการออกกฎระเบียบต่างๆ
- การให้อิสระแก่ผู้ประกอบการในการเลือกเทคโนโลยีที่ใช้ในการให้บริการ

อย่างไรก็ตาม ความตกลงระหว่างสหรัฐและสิงคโปร์ไม่ได้ครอบคลุมถึงสิทธิในการเข้าสู่ตลาดของผู้ประกอบการต่างประเทศ ซึ่งอาจเนื่องจากการที่สิงคโปร์ได้เปิดเสรีกิจการโทรคมนาคมแล้ว

ประเทศไทยไม่น่าจะได้รับประโยชน์จากข้อตกลงด้านโทรคมนาคมในแง่ของโอกาสในการลงทุนในกิจการโทรคมนาคมในสหรัฐ เนื่องจากผู้ประกอบการของไทยส่วนใหญ่ไม่น่าจะมีความพร้อมในการลงทุนในตลาดที่มีการแข่งขันมาก อย่างไรก็ตาม ประเทศไทยน่าจะได้รับประโยชน์จากข้อตกลงด้านโทรคมนาคมใน 2 ลักษณะคือ

1. การแข่งขันที่จะเพิ่มขึ้นโดยตรงจากการลงทุนของผู้ประกอบการจากสหรัฐ การแข่งขันทางอ้อมที่จะเกิดจากการจำหน่ายค่าบริการ และเงื่อนไขที่เอื้อต่อการแข่งขันต่างๆ
2. มาตรฐานการกำกับดูแลที่สูงขึ้น เนื่องจากข้อกำหนดด้านความโปร่งใสและการมีกลไกตรวจสอบ ตัวอย่างต่างๆ

อย่างไรก็ตามประเทศไทยจำเป็นต้องมีการแก้ไขกฎหมายที่เกี่ยวข้องเช่น กฎหมายการประกอบกิจการโทรคมนาคมให้ได้มาตรฐานของข้อตกลงดังกล่าว เพื่อป้องกันการให้สิทธิแก่ผู้ประกอบการสหรัฐเหนือกว่าผู้ประกอบการไทย และผู้ประกอบการชาติอื่น เช่น กำหนดให้หน่วยงานกำกับดูแลมีหน้าที่ต้องให้เหตุผลเมื่อปฏิเสธการให้ใบอนุญาตแก่ผู้ประกอบการทุกราย ไม่จำกัดเฉพาะผู้ประกอบการสหรัฐ และต้องปรับปรุงกฎหมายแข่งขันทางการค้าเพื่อป้องกันพฤติกรรมการค้าที่อาจเกิดขึ้นจากการเข้าสู่ตลาดของผู้ประกอบการรายใหญ่จากสหรัฐ

8.2 การพาณิชย์อิเล็กทรอนิกส์

ข้อตกลงด้านการพาณิชย์อิเล็กทรอนิกส์แบ่งออกเป็นข้อตกลงที่เกี่ยวข้องกับการค้าสินค้า และการค้าบริการ ในส่วนของการค้าสินค้า ข้อตกลงกำหนดให้สินค้าดิจิทัลที่นำเข้าประเทศทางกายภาพผ่านด่านศุลกากรถูกเก็บภาษีโดยประเมินตามมูลค่าของสื่อที่บรรจุ (ไม่ใช่ตามมูลค่าของสินค้าดิจิทัล) ซึ่งสอดคล้องกับแนวทางของประเทศไทยในปัจจุบัน ส่วนสินค้าดิจิทัลที่จัดส่งทางเครือข่ายอิเล็กทรอนิกส์จะได้รับการยกเว้นภาษีศุลกากร ซึ่งจะมีผลกระทบตามมาคือ ประเทศไทยจะสูญเสียรายได้จากการจัดเก็บภาษีศุลกากรต่อสินค้านำเข้าดังกล่าว อย่างไรก็ตาม จากการคำนวณพบว่ารายได้จากภาษีศุลกากรต่อรายได้

ทั้งหมดของรัฐบาลไทยอยู่ในระดับเพียงร้อยละ 0.03 เท่านั้น ข้อกำหนดดังกล่าวจึงไม่น่ามีผลต่อฐานะการคลังของรัฐมาก

ในส่วนของบริการการค้าบริการ ข้อตกลงดังกล่าวกำหนดให้ทั้งสองฝ่ายคุ้มครองการให้บริการผ่านเครือข่ายอิเล็กทรอนิกส์ข้ามพรมแดนเช่น บริการการเงิน ตลอดจนการลงทุนตามความตกลงที่เกี่ยวข้อง เช่น ข้อตกลงด้านการค้าบริการและการลงทุน (ดูหัวข้อที่ 7-9 และ 12) ผลกระทบที่เกิดขึ้นก็คือ ผู้บริโภคในประเทศไทยจะมีทางเลือกในการรับบริการมากยิ่งขึ้น แต่อาจเกิดความเสียหายต่อระบบเศรษฐกิจจากการไหลเวียนทางการเงินจากการเปิดเสรีสาขาการเงินและการลงทุน ที่ไม่สามารถกำกับดูแลได้ง่าย ประเทศไทยจึงไม่ควรที่จะยอมรับความตกลงดังกล่าวโดยทันที แต่ควรมีเวลาศึกษาถึงผลกระทบที่อาจจะเกิดขึ้นก่อน

9. ผลกระทบต่อบริการการเงิน

ข้อตกลงด้านบริการทางการเงินประกอบด้วย การไม่เลือกปฏิบัติต่อผู้ประกอบการของแต่ละฝ่าย และให้ผู้ประกอบการของแต่ละฝ่ายเข้าประกอบการในตลาดบริการทางการเงินของกันและกันในสาขาธนาคาร การประกันภัยและบริการที่เกี่ยวข้องกับการประกันภัย และบริการทางการเงินอื่นๆ นอกจากนี้ประเทศคู่สัญญาจะต้องคุ้มครองธุรกรรมทางการเงินที่ถูกต้องตามกฎหมายให้ได้รับสิทธิพิเศษภายใต้ข้อสัญญานี้ โดยอนุญาตให้รัฐสามารถดำเนินนโยบายเศรษฐกิจมหภาคและกำกับดูแลความมั่นคงของสถาบันการเงินให้เกิดเสถียรภาพในระบบเศรษฐกิจได้

โดยหลักการแล้ว ข้อตกลงดังกล่าวน่าจะช่วยสร้างโอกาสใหม่ๆ ในการประกอบการให้แก่สถาบันทางการเงินและนักลงทุนของประเทศคู่สัญญาและเพิ่มช่องทางในการให้บริการทางการเงินข้ามพรมแดน ตลอดจนช่วยให้ผู้บริโภคมีทางเลือกที่เพิ่มขึ้น ข้อตกลงดังกล่าวยังน่าจะช่วยเพิ่มความโปร่งใสในการกำกับดูแลและลดข้อจำกัด และความไม่ชัดเจนต่างๆ ในการแข่งขันในตลาด ตลอดจนช่วยลดข้อพิพาทต่างๆ

ในทางปฏิบัติ ผู้ประกอบการไทยอาจได้ประโยชน์น้อยมากในการเข้าสู่ตลาดสหรัฐ เนื่องจากสถาบันการเงินของไทยส่วนใหญ่ยังไม่มีความสามารถในการแข่งขันในตลาดต่างประเทศ อย่างไรก็ตาม ข้อตกลงด้านบริการทางการเงินน่าจะช่วยกระตุ้นให้ธนาคารพาณิชย์ บริษัทประกันภัย และผู้ประกอบการอื่นๆ ของไทยต้องเร่งพัฒนาคุณภาพบริการ ปรับค่าบริการให้อยู่ในระดับที่เหมาะสม และพัฒนาเครื่องมือทางการเงินใหม่ๆ ตลอดจนรับการถ่ายทอดเทคโนโลยีจากต่างประเทศ ซึ่งจะเพิ่มขีดความสามารถในการแข่งขันของสถาบันการเงินไทยในระยะยาว

อย่างไรก็ตาม การทำธุรกรรมข้ามพรมแดน (cross-border transaction) อาจส่งผลกระทบต่อความเสี่ยงของระบบการเงินไทย รัฐบาลไทยควรเปิดเสรีในสาขาการเงินโดยการเปิดเสรีแบบระบุรายการที่เปิดเสรี (positive-list approach) เนื่องจาก บริการด้านการเงินเป็นบริการที่มีนวัตกรรมใหม่ๆ อยู่

ตลอดเวลา ซึ่งไม่เหมาะสมการเปิดเสรีแบบขบวนการที่ไม่เปิดเสรี (negative-list approach) ในกรณีที่บริการใหม่ๆ เหล่านั้น นำความเสี่ยงมาสู่ระบบเศรษฐกิจไทย และไม่สอดคล้องกับแผนแม่บทพัฒนาระบบการเงินที่จัดทำโดยธนาคารแห่งประเทศไทย

10. นโยบายการแข่งขันทางการค้า

ข้อตกลงด้านนโยบายการแข่งขันทางการค้าในความตกลงการค้าเสรีมุ่งหมายให้ทั้งสองประเทศมีมาตรการในการป้องกันพฤติกรรมกีดกันการแข่งขันทางการค้า และส่งเสริมให้เกิดการค้าที่เป็นธรรม โดยมาตรการดังกล่าวจะต้องไม่เลือกปฏิบัติระหว่างบริษัทต่างชาติกับบริษัทไทย นอกจากนี้ ข้อตกลงดังกล่าวยังมุ่งสร้างความร่วมมือเบื้องต้นระหว่างสำนักงานแข่งขันทางการค้าของทั้งสองประเทศในการบังคับใช้กฎหมายการแข่งขันทางการค้าอีกด้วย

ประเทศไทยมีกฎหมายการแข่งขันทางการค้ามาตั้งแต่ปี พ.ศ. 2542 โดยมีสำนักงานการแข่งขันทางการค้า กระทรวงพาณิชย์เป็นผู้บังคับใช้กฎหมาย กฎหมายดังกล่าวมิได้เลือกปฏิบัติระหว่างบริษัทไทยกับบริษัทต่างชาติ นอกจากนี้ การดำเนินการของเจ้าหน้าที่ตามกฎหมายการแข่งขันทางการค้า และกฎหมายวิธีปฏิบัติราชการทางปกครอง พ.ศ. 2539 ยังมีข้อกำหนดเกี่ยวกับความโปร่งใสในการดำเนินการทางปกครอง โดยเปิดโอกาสให้คู่กรณีสามารถแสดงหลักฐานของตนได้ หากคู่กรณีไม่เห็นด้วยกับคำตัดสินของคณะกรรมการแข่งขันทางการค้าในชั้นอุทธรณ์ก็สามารถฟ้องต่อศาลปกครองได้

อย่างไรก็ตาม กฎหมายการแข่งขันทางการค้าของไทยยังมีสาระบางประการขัดแย้งกับความตกลงการค้าเสรีคือ

1. คณะกรรมการแข่งขันทางการค้ายังไม่ได้กำหนดเกณฑ์ส่วนแบ่งตลาดของผู้มีอำนาจเหนือตลาด และส่วนแบ่งตลาดก่อนการรวมกิจการ ทำให้ไม่สามารถบังคับใช้กฎหมายได้ ซึ่งอาจขัดกับความตกลงที่กำหนดให้มีมาตรการป้องกันพฤติกรรมกีดกันการแข่งขัน
2. กฎหมายการแข่งขันทางการค้าของไทยให้ข้อยกเว้นแก่รัฐวิสาหกิจ ซึ่งขัดกับความตกลงการค้าเสรีที่ห้ามรัฐวิสาหกิจมีพฤติกรรมกีดกันหรือใช้อำนาจผูกขาด
3. รัฐวิสาหกิจไทยบางแห่งมีภารกิจด้านสังคม จึงอาจมีพฤติกรรมนอกเหนือจากพฤติกรรมในเชิงพาณิชย์ ซึ่งขัดกับความตกลงการค้าเสรีที่กำหนดให้การดำเนินงานของรัฐวิสาหกิจต้องคำนึงหลักการเชิงพาณิชย์ทั้งเรื่องกำหนดราคา คุณภาพและการตลาด
4. รัฐวิสาหกิจไทยต้องซื้อสินค้าหรือบริการที่ผลิตภายในประเทศหรือจากรัฐวิสาหกิจอื่น ซึ่งขัดกับความตกลงการค้าเสรีที่มีให้รัฐวิสาหกิจเลือกปฏิบัติในการซื้อสินค้าและบริการระหว่างต่างชาติกับไทย

เพื่อแก้ไขปัญหาดังกล่าว รัฐบาลไทยควรดำเนินการดังต่อไปนี้

1. กำหนดเกณฑ์ส่วนแบ่งตลาดของผู้มีอำนาจเหนือตลาด และส่วนแบ่งตลาดก่อนการรวมกิจการให้ใช้ได้กับทุกสาขาอุตสาหกรรมและผู้ประกอบการทุกกลุ่ม
2. ปรับปรุงแก้ไขกฎหมายการแข่งขันทางการค้าของไทยให้สามารถบังคับใช้กับรัฐวิสาหกิจได้
3. ตัดข้อกำหนดที่บังคับให้รัฐวิสาหกิจต้องประกอบการตามหลักการเชิงพาณิชย์เท่านั้น เนื่องจากจะไม่มีผลจำเป็นอีกต่อไป ทั้งนี้เพราะหากรัฐวิสาหกิจไทยอยู่ภายใต้กฎหมายการแข่งขันทางการค้าแล้ว รัฐวิสาหกิจเหล่านั้นก็จะไม่สามารถใช้อำนาจเหนือตลาดในทางมิชอบได้อีกต่อไป

ในด้านการแลกเปลี่ยนข้อมูลระหว่างสำนักงานแข่งขันทางการค้าของทั้งสองประเทศนั้น ความตกลงการค้าเสรีให้ความสำคัญกับข้อมูลของรัฐวิสาหกิจมากเกินไป รัฐบาลไทยควรเสนอให้สหรัฐต้องให้ข้อมูลเกี่ยวกับบริษัทที่จดทะเบียนในสหรัฐที่มีพฤติกรรมผูกขาดและส่งผลกระทบต่อผู้บริโภคในประเทศไทยแก่ฝ่ายไทย เพื่อให้สำนักงานการแข่งขันทางการค้าของไทยสามารถพิจารณาบังคับใช้กฎหมายในการจัดการกับบริษัทข้ามชาติที่มีพฤติกรรมผูกขาดได้ง่ายขึ้น

11. การคุ้มครองทรัพย์สินทางปัญญา

ข้อตกลงเรื่องการคุ้มครองทรัพย์สินทางปัญญาในความตกลงการค้าเสรีกำหนดให้ทั้งสองประเทศต้องเข้าเป็นภาคีสมาชิกของความตกลงระหว่างประเทศที่เกี่ยวข้องกับการคุ้มครองทรัพย์สินทางปัญญาต่างๆ ดังต่อไปนี้

- Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974) ซึ่งเป็นความตกลงคุ้มครองรายการที่แพร่ภาพผ่านสัญญาณดาวเทียม
- International Convention for the Protection of New Varieties of Plants (1991), หรือที่เรียกกันว่า UPOV Convention ซึ่งเป็นความตกลงคุ้มครองพันธุ์พืช
- WIPO Copyright Treaty (1996) ซึ่งเป็นความตกลงด้านลิขสิทธิ์ที่เน้นให้ความคุ้มครองสินค้าดิจิทัล
- WIPO Performances and Phonograms Treaty (1996) ซึ่งเป็นความตกลงด้านสิทธิของนักแสดงและสิ่งบันทึกเสียง
- Patent Cooperation Treaty (1984) ซึ่งเป็นความตกลงที่อำนวยความสะดวกให้สามารถยื่นจดสิทธิบัตรในหลายประเทศพร้อมกันในการยื่นเพียงครั้งเดียว

ข้อตกลงเรื่องการคุ้มครองทรัพย์สินทางปัญญายังกำหนดให้ประเทศทั้งสองต้องปฏิบัติตามความตกลงดังต่อไปนี้

- มาตรา 1-6 ของ Joint Recommendation Concerning Provisions on the Protection of Well-known Marks ซึ่งได้รับการรับรองจาก Assembly of the Paris Union
- The Trade Mark Law Treaty

ความตกลงดังกล่าวข้างต้นล้วนเป็นความตกลงที่ประเทศไทยยังไม่ได้เป็นภาคีสมาชิกทั้งสิ้น นอกจากนี้ความตกลงการค้าเสรี ยังให้ความคุ้มครองต่อทรัพย์สินทางปัญญาในแต่ละด้านเป็นการเฉพาะดังต่อไปนี้อีกด้วย

ลิขสิทธิ์

- ให้สิทธิแก่เจ้าของลิขสิทธิ์แต่ผู้เดียวในการเผยแพร่ผลงานต่อสาธารณะ ซึ่งรวมถึงการนำเอาผลงานไปใส่ในเว็บไซต์ที่ผู้อื่นสามารถเรียกดูได้ในเวลาที่ต้องการ
- ห้ามการเผยแพร่รายการโทรทัศน์ในสื่ออินเทอร์เน็ตโดยไม่ได้รับอนุญาตจากเจ้าของลิขสิทธิ์
- ขยายเวลาในการคุ้มครองงานอันมีลิขสิทธิ์จากปัจจุบัน 50 ปีหลังผู้สร้างสรรค์เสียชีวิตเป็น 70 ปี
- ให้การคุ้มครองมาตรการทางเทคนิค (technological measure) เช่น การเข้ารหัสข้อมูลต่างๆ ซึ่งป้องกันการละเมิดงานอันมีลิขสิทธิ์ และให้การคุ้มครองข้อมูลที่ใช้ในการบริหารสิทธิ (right management information) โดยกำหนดโทษอาญาสำหรับผู้ฝ่าฝืน

เครื่องหมายการค้าและสิ่งบ่งชี้ทางภูมิศาสตร์

- คุ้มครองเครื่องหมายการค้าให้ครอบคลุมถึงเครื่องหมายที่ไม่อยู่ในรูปที่มองเห็นได้ เช่น จะต้องพยายามคุ้มครองเครื่องหมายที่อยู่ในรูปของกลิ่น (เช่น สำหรับผลิตภัณฑ์น้ำหอมต่างๆ)
- ให้สิทธิแก่เจ้าของเครื่องหมายการค้าแต่ผู้เดียวในการใช้เครื่องหมายของตน และห้ามบุคคลอื่นใช้เครื่องหมายการค้าหรือสิ่งบ่งชี้ทางภูมิศาสตร์ที่อาจทำให้เกิดความสับสนแก่ผู้บริโภค

สิทธิบัตร

- ขยายการคุ้มครองตามกฎหมายสิทธิบัตรให้ครอบคลุมถึงการประดิษฐ์ทุกประเภท ซึ่งรวมถึงพืชและสัตว์ ซอฟต์แวร์ และวิธีการดำเนินการทางธุรกิจ (business method)
- ขยายเวลาในการคุ้มครองสิทธิบัตรในกรณีที่มีการพิจารณาปรับจดทะเบียนมีความล่าช้าเกินควร เช่น เกินกว่า 5 ปีภายหลังจากยื่นขอจดทะเบียน หรือเกินกว่า 3 ปีภายหลังจากยื่นคำร้องให้ตรวจสอบสิทธิบัตร
- ในกรณีที่มีการพิจารณาอนุญาตให้ผลิตภัณฑ์ยาหรือสารเคมีที่ใช้ในการเกษตรวางตลาดใช้เวลานาน ให้ยืดอายุในการคุ้มครองสิทธิบัตรที่เกี่ยวข้องออกไปเพื่อเป็นการชดเชยความล่าช้าดังกล่าว

มาตรการที่เกี่ยวข้องกับผลิตภัณฑ์ที่ถูกกำกับดูแล

- ห้ามผู้ประกอบการอื่นจำหน่ายผลิตภัณฑ์ยา หรือสารเคมีที่ใช้ในการเกษตรที่เหมือนหรือคล้ายกับผลิตภัณฑ์ที่ต้องยื่นข้อมูลที่ไม่เปิดเผยในการขออนุญาตวางตลาด ในเวลาที่กำหนด (5 ปีสำหรับยา และ 10 ปีสำหรับสารเคมีที่ใช้ในการเกษตร) นับตั้งแต่ผลิตภัณฑ์นั้นได้รับอนุญาตให้วางตลาด

จะเห็นได้ว่า ข้อตกลงดังกล่าวจะทำให้ประเทศไทยต้องยกระดับมาตรฐานการคุ้มครองทรัพย์สินทางปัญญาให้สูงขึ้นในระดับที่ทัดเทียมกับของสหรัฐ ซึ่งน่าจะมีผลทำให้ระบบการคุ้มครองทรัพย์สินทางปัญญาของไทยมีมาตรฐานสูงเกินกว่าระดับการพัฒนาประเทศ ผลที่จะตามมาก็คือ ประเทศไทยจะขาดความยืดหยุ่นในการกำหนดนโยบายทรัพย์สินทางปัญญาต่างๆ ที่เกี่ยวข้องกับการศึกษา (เช่น การจัดหาตำราเรียน หรือโปรแกรมคอมพิวเตอร์ราคาถูกให้แก่สถาบันการศึกษา) นโยบายสาธารณสุข (เช่น การจัดหาการรักษาโรคราคาถูกให้แก่ผู้ป่วย) ตลอดจนนโยบายเกษตร (เช่น การเข้าถึงเมล็ดพันธุ์พืชของเกษตรกร) เป็นต้น

ประโยชน์ที่ประเทศไทยจะได้จากความตกลงดังกล่าวจึงมีน้อยมาก ในขณะที่ต้นทุนที่สังคมไทยต้องแบกรับจำนวนมากจะเกิดขึ้นในทันที ทั้งต้นทุนในการปรับปรุงแก้ไขและบังคับใช้กฎหมายต่างๆ ที่เกี่ยวข้อง และต้นทุนของสินค้าหรือบริการที่สูงขึ้นจากการผูกขาดอันเนื่องมาจากสิทธิในทรัพย์สินทางปัญญา

รัฐบาลควรเจรจาและดำเนินการดังต่อไปนี้

- ยืดเวลาในการปฏิบัติตามข้อตกลงให้ยาวออกไปเช่น เกินกว่า 10 ปีภายหลังจากลงนามทำความตกลงการค้าเสรี
- กำหนดมาตรการป้องกันผลเสียที่จะเกิดขึ้นจากการผูกขาด โดยปรับปรุงกฎหมายการแข่งขันทางการค้าให้มีประสิทธิภาพ

- ต่อรองให้ประเทศไทยยังไม่ต้องเป็นสมาชิกของ UPOV Convention 1991 ซึ่งมีมาตรฐานในการคุ้มครองพันธุ์พืชสูงเกินกว่าที่เกษตรกรรายย่อยส่วนใหญ่ในประเทศจะได้ประโยชน์ โดยอาจให้นำ UPOV Convention 1978 มาใช้แทนก่อน
- อนุญาตให้สามารถใช้สิ่งบ่งชี้ทางภูมิศาสตร์โดยสุจริตได้ โดยไม่ขัดกับกฎหมายเครื่องหมายการค้า ทั้งนี้โดยคำนึงว่า มีสิ่งบ่งชี้ทางภูมิศาสตร์จำนวนมากที่ถูกใช้มานานก่อนมีการใช้กฎหมายเครื่องหมายการค้า
- ไม่ควรขยายเวลาการคุ้มครองของงานที่มีลิขสิทธิ์และสิทธิบัตรให้นานเกินกว่าที่เป็นอยู่ในปัจจุบัน
- นำหลักการ fair use มาใช้กับการคุ้มครองมาตรการทางเทคนิค และให้การคุ้มครองข้อมูลที่ใช้ในการบริหารสิทธิแทนเงื่อนไขการใช้ที่มีลักษณะจำกัดมากในข้อตกลง
- ไม่ควรขยายการคุ้มครองสิทธิบัตรให้ครอบคลุมถึงสิ่งมีชีวิตเกินไปกว่าความคุ้มครองตามความตกลง TRIPs ขององค์การการค้าโลก
- ตัดเงื่อนไขที่จำกัดการเข้าสู่ตลาดยาหรือสารเคมีด้านการเกษตรของผู้ประกอบการรายใหม่เช่น การขยายเวลาการคุ้มครอง การห้ามประกอบการ หรือการห้ามเข้าถึงข้อมูลการตลาดต่าง ๆ

12. การลงทุน

ประเทศไทยมีความตกลงด้านการลงทุนกับสหรัฐภายใต้อนุสัญญาที่เรียกว่า Treaty of Amity and Economic Relations ตั้งแต่ปี พ.ศ. 2509 ความตกลงดังกล่าวให้สิทธิแก่นักลงทุนและบริษัทของสหรัฐในการลงทุนและดำเนินธุรกิจในประเทศไทยในระดับที่เท่าเทียมกับนักลงทุนไทยทุกประการยกเว้นในเรื่องของวิชาและใบอนุญาตการทำงาน การครอบครองที่ดินและอสังหาริมทรัพย์ซึ่งจะต้องเป็นไปตามกฎระเบียบที่ใช้กับชาวต่างชาติทั่วไป ความตกลงดังกล่าวครอบคลุมธุรกิจทุกสาขา ยกเว้น 7 สาขา คือ บริการวิชาชีพ การขนส่ง การสื่อสาร การเงินและการธนาคารที่มีการรับฝากเงิน การใช้ประโยชน์จากที่ดินและทรัพยากรธรรมชาติ และการค้าผลผลิตทางการเกษตรภายในประเทศ อย่างไรก็ตามความตกลงดังกล่าวขัดกับหลักการปฏิบัติเยี่ยงชาติที่ได้รับความอนุเคราะห์ยิ่ง (MFN) ขององค์การการค้าโลก และจะต้องยกเลิกไปในเดือนมกราคม พ.ศ. 2548

ข้อตกลงด้านการลงทุนในความตกลงการค้าเสรีไทย-สหรัฐจะมีผลทดแทนความตกลงดังกล่าวได้อย่างไรก็ตาม ความตกลงการค้าเสรีจะมีความยืดหยุ่นมากกว่า Treaty of Amity โดยยินยอมให้ประเทศคู่สัญญาสามารถกำหนดสาขาธุรกิจที่ต้องการยกเว้นได้ค่อนข้างมาก ดังจะเห็นได้จากการที่สิงคโปร์ได้ขอยกเว้นบริการทุกสาขาที่รัฐวิสาหกิจเป็นผู้ให้บริการ นอกจากนี้ข้อตกลงด้านการลงทุนยังไม่บังคับใช้กับมาตรการต่างๆ ของรัฐในด้านสิ่งแวดล้อม และการปกครองท้องถิ่น³

³ ในกรณีของสหรัฐอเมริกา การปกครองส่วนท้องถิ่นหมายถึงการปกครองในระดับที่ต่ำกว่ามลรัฐ

สาระสำคัญของข้อตกลงด้านการลงทุนคือการให้การรับรองสิทธิของนักลงทุนของประเทศคู่สัญญาซึ่งได้แก่ การได้รับการคุ้มครองและการปฏิบัติที่เป็นธรรมจากรัฐของอีกฝ่ายหนึ่ง และสิทธิในการเป็นเจ้าของและประกอบธุรกิจในประเทศคู่สัญญาที่เท่าเทียมกับนักลงทุนในประเทศ ทั้งสองประเด็นนี้มีอยู่ใน Treaty of Amity แต่มีรายละเอียดที่แตกต่างกันหลายประการคือ

- คำจำกัดความของ "การลงทุนที่ได้รับการคุ้มครอง" (covered investment) ในความตกลงการค้าเสรีจะกว้างกว่าใน Treaty of Amity มาก โดย Treaty of Amity ไม่ได้คุ้มครอง "การลงทุน" แต่ให้การคุ้มครองนักลงทุนและบริษัทสหรัฐเท่านั้น ส่วนความตกลงการค้าเสรีนั้นให้การคุ้มครองแก่ "การลงทุน" ซึ่งรวมถึงการลงทุนในหุ้น พันธบัตร ตราสารหนี้ เงินกู้ ตราสารทางการเงิน สัญญาซื้อขายล่วงหน้า สิทธิในการซื้อขายหลักทรัพย์ ตราสารอนุพันธ์ ทรัพย์สินทางปัญญา โบนัสประกอบการประกอบธุรกิจ และกรรมสิทธิในสินทรัพย์อื่นๆ ซึ่งมีขอบเขตที่กว้างมาก หากการลงทุนเหล่านี้ได้รับผลกระทบจากการที่รัฐบาลไทยไม่ปฏิบัติตามข้อตกลงด้านการลงทุน นักลงทุนซึ่งได้รับความเสียหายก็จะสามารถเรียกร้องค่าเสียหายจากรัฐบาลไทยได้โดยใช้กระบวนการระงับข้อพิพาทที่กำหนดไว้
- ความตกลงการค้าเสรีห้ามมิให้รัฐกำหนดเงื่อนไขในการลงทุนบางประเภท เช่น เงื่อนไขว่าด้วยการถ่ายทอดเทคโนโลยีในการอนุญาตให้ลงทุน ซึ่งหมายความว่าสำนักงานคณะกรรมการส่งเสริมการลงทุนจะไม่สามารถกำหนดให้บริษัทสหรัฐที่ลงทุนในประเทศไทยต้องถ่ายทอดเทคโนโลยีให้แก่ผู้ประกอบการไทย ซึ่งขัดกับนโยบายใหม่ของสำนักงานฯ ซึ่งปรับเปลี่ยนไปสู่การเน้นที่ "คุณภาพ" โดยเฉพาะการถ่ายทอดเทคโนโลยี มากกว่า "ปริมาณ" ของการลงทุน
- ความตกลงการค้าเสรีจะมีกลไกการระงับข้อพิพาทระหว่างเอกชนกับรัฐ ซึ่งหมายความว่านักลงทุนเอกชนซึ่งได้รับความเสียหายจากการที่รัฐบาลของอีกฝ่ายหนึ่งไม่ปฏิบัติตามข้อตกลงด้านการลงทุนจะสามารถนำข้อพิพาทเข้าสู่กระบวนการอนุญาโตตุลาการระหว่างประเทศเช่น ในเวทีของ UNCITRAL หรือ ICSID โดยจะสามารถเรียกร้องค่าเสียหายได้ ข้อตกลงด้านการลงทุนในความตกลงการค้าเสรีจึงมีนัยทางกฎหมายแตกต่างไปจากของ Treaty of Amity ซึ่งไม่มีกลไกที่ให้นักลงทุนเอกชนเรียกร้องค่าเสียหายจากรัฐผ่านกระบวนการอนุญาโตตุลาการ

ประเด็นที่กล่าวมาข้างต้นล้วนเป็นประเด็นที่มีความอ่อนไหวสูง ซึ่งรัฐบาลไทยควรให้ความสำคัญเป็นพิเศษในการเจรจา โดยควรมีแนวทางดังต่อไปนี้

1. จำกัดขอบเขตของ "การลงทุนที่ได้รับการคุ้มครอง" ให้เหมาะสม โดยพิจารณาถึงขีดความสามารถของประเทศไทยในการกำกับดูแลการไหลเวียนของเงินลงทุนระยะสั้นที่มีความผันผวนสูง

2. สร้างความชัดเจนว่า "การปฏิบัติที่เป็นธรรมและเท่าเทียมและการคุ้มครองอย่างเต็มที่" (fair and equal treatment and full protection and security) มีหลักในการพิจารณาความป็นธรรมและความเท่าเทียมอย่างไร ประสบการณ์ใน NAFTA ชี้ว่า ข้อความดังกล่าวเปิดช่องให้เกิดข้อพิพาทมากมาย ซึ่งไม่สามารถคาดคะเนผลการตัดสินของอนุญาโตตุลาการได้โดยง่าย
3. สร้างความชัดเจนว่า การห้ามมิให้รัฐใช้ "มาตรการที่เทียบเท่าการริบทรัพย์สิน" (measures equivalent to expropriation) ไม่ว่า "โดยทางตรงหรือทางอ้อม" มีความหมายอย่างไร และกินความถึงการออกกฎระเบียบภายในประเทศที่อาจมีผลกระทบในด้านลบต่อการลงทุนของสหรัฐหรือไม่
4. สวอนสิทธิในด้านการคุ้มครองการลงทุน เพื่อให้รัฐบาลไทยสามารถมีมาตรการป้องกันและแก้ไขในกรณีที่มีปัญหาด้านความมั่นคง ความปลอดภัยของสาธารณะ สาธารณสุขและผลกระทบอื่นๆ ต่อสังคมในวงกว้างได้
5. พิจารณาว่าการห้ามตั้งเงื่อนไขในการถ่ายเทเทคโนโลยีมีความเหมาะสมต่อแนวทางการส่งเสริมการลงทุน และพัฒนาเศรษฐกิจของไทยโดยรวมหรือไม่

13. สิ่งแวดล้อม

ความตกลงด้านสิ่งแวดล้อมเน้นให้ประเทศคู่สัญญาดำเนินการจัดการคุณภาพสิ่งแวดล้อมตามมาตรฐานให้เป็นไปตามแนวทางการพัฒนาที่ยั่งยืน ประเด็นสำคัญที่จะมีผลต่อประเทศไทยคือ การที่ประเทศคู่สัญญาสามารถเรียกร้องให้อีกฝ่ายหนึ่งต้องดำเนินการทางกฎหมายต่อผู้ฝ่าฝืนกฎระเบียบด้านสิ่งแวดล้อม นอกจากนี้ ประเทศคู่สัญญายังสามารถเรียกร้องให้มีการเปิดเผยข้อมูลต่างๆ ให้โปร่งใส ซึ่งอาจส่งผลกระทบต่อหน่วยงานราชการไทยที่ยังไม่ได้ปรับวิธีการดำเนินงาน

14. สรุป

สหรัฐเป็นตลาดส่งออกที่สำคัญของไทย อย่างไรก็ตามสินค้าไทยมีส่วนแบ่งตลาดในสหรัฐลดลงอย่างต่อเนื่อง การทำความตกลงการค้าเสรีกับสหรัฐจะช่วยเพิ่มการส่งออกของสินค้าไทยไปยังสหรัฐ และกระตุ้นการขยายตัวทางเศรษฐกิจของประเทศไทย เนื่องจากทั้งสองประเทศมีสินค้าส่วนใหญ่ที่หนุนเสริมกัน อย่างไรก็ตามประโยชน์จากการทำความตกลงการค้าเสรีจะไม่เกิดขึ้นโดยอัตโนมัติ เช่น ผู้ประกอบการในอุตสาหกรรมยานยนต์และชิ้นส่วน หรือผู้ประกอบการในอุตสาหกรรมสิ่งทอที่ต้องการส่งออกไปยังสหรัฐจะต้องปรับลักษณะสินค้าของตนให้สอดคล้องกับความต้องการของผู้บริโภคในตลาดดังกล่าว ลดต้นทุนการผลิต ปรับปรุงคุณภาพสินค้า และลดเวลาการส่งมอบสินค้า ในขณะที่ผู้ผลิตสินค้าเกษตรจะสามารถส่งออกสินค้าเกษตรไปยังสหรัฐได้ก็ต่อเมื่อสามารถผลิตสินค้าที่มีคุณภาพและความปลอดภัยสูง และรัฐบาลไทยสามารถเจรจาให้สหรัฐยกเลิกอุปสรรคทางการค้าที่ไม่ใช่ภาษีศุลกากรต่างๆ ได้สำเร็จ ในขณะเดียวกัน ความตกลงการค้าเสรีไทย-สหรัฐอาจทำให้ผู้ผลิตสินค้าในประเทศในบาง

รายการได้รับแรงกดดันจากสินค้านำเข้าจากสหรัฐ เช่น ในกรณีสินค้าเกษตร คาดว่าสินค้าไทย เช่น ถั่วเหลือง ข้าวโพด และผลิตภัณฑ์นมจะได้รับผลกระทบในด้านลบจากการแข่งขันกับสินค้าที่นำเข้าจากสหรัฐ

นอกจากนี้ ประเทศไทยยังน่าจะได้รับประโยชน์จากการลงทุนทางตรงระหว่างประเทศที่มากขึ้น จากการทำความเข้าใจการค้าเสรีกับสหรัฐ ซึ่งจะมีผลดีในการจ้างงาน การขยายตัวของเศรษฐกิจ และช่วยให้ระบบเศรษฐกิจของไทยสามารถจัดสรรทรัพยากรได้อย่างมีประสิทธิภาพมากขึ้น อย่างไรก็ตาม ไทยจะต้องระวังการลงทุนระยะสั้นที่มีลักษณะเก็งกำไร และให้ความสนใจเป็นพิเศษต่อการเจรจาในเรื่องประเภทของการลงทุนที่ได้รับการคุ้มครอง ความยืดหยุ่นในการกำหนดนโยบายภายในประเทศ และกลไกในการระงับข้อพิพาท ซึ่งล้วนเป็นประเด็นที่มีความอ่อนไหวสูง

ในส่วนของการค้าบริการ ประเทศไทยไม่น่าจะได้รับประโยชน์จากการส่งออกบริการไปยังสหรัฐ ที่เพิ่มขึ้นมากนัก แต่อาจได้รับประโยชน์จากการลงทุนของสหรัฐในประเทศไทยและการแข่งขันที่เพิ่มขึ้นในบางบริการ อย่างไรก็ตาม การได้รับประโยชน์จากสาขาบริการจะมีความยากลำบากมากกว่าการได้รับประโยชน์จากการค้าสินค้า เนื่องจาก ไทยจะต้องปรับปรุงกฎระเบียบในประเทศให้มีมาตรฐานสูงขึ้น สร้างกลไกในการรับมือกับการผูกขาดที่อาจเกิดขึ้น นอกจากนี้ แม้ว่าการเปิดเสรีการค้าบริการจะช่วยให้ผู้บริโภคและธุรกิจในประเทศได้รับประโยชน์จากบริการที่หลากหลายขึ้นและมีต้นทุนต่ำลง ผู้ประกอบการในสาขาบริการในประเทศไทยก็จะต้องเผชิญกับแรงกดดันในการแข่งขันที่เพิ่มขึ้น

ความตกลงการค้าเสรีไทย-สหรัฐยังเกี่ยวข้องกับประเด็นที่มีความอ่อนไหวสูงอีกหลายประเด็น เช่น การคุ้มครองทรัพย์สินทางปัญญา โดยความตกลงดังกล่าวจะทำให้ไทยต้องปรับมาตรฐานการคุ้มครองทรัพย์สินทางปัญญาให้ใกล้เคียงกับมาตรฐานของสหรัฐ ซึ่งจะทำให้ไทยขาดความยืดหยุ่นในการกำหนดนโยบายในการพัฒนาประเทศ และมีต้นทุนทางเศรษฐกิจและสังคมที่เพิ่มขึ้นจากการให้สิทธิผูกขาดในการคุ้มครองทรัพย์สินทางปัญญา

นอกจากนี้ ควรระวังด้วยว่า การให้สิทธิพิเศษแก่สหรัฐเพียงประเทศเดียวในระดับที่สูงกว่าประเทศอื่นมาก นอกจากอาจก่อให้เกิดความเสี่ยงในการผูกขาดโดยผู้ประกอบการสหรัฐ ในกรณีที่ผู้ประกอบการในประเทศไม่มีความเข้มแข็งแล้ว ยังอาจทำให้ประเทศไทยมีความยากลำบากในการเจรจาการค้าระหว่างประเทศกับคู่ค้ารายอื่นๆ ในอนาคต

การเตรียมการในการเจรจาของฝ่ายไทยให้มีความพร้อมเป็นสิ่งที่มีความสำคัญมาก เนื่องจากประเด็นที่เกี่ยวข้องกับการเจรจาล้วนเป็นประเด็นที่มีความซับซ้อนสูงและส่งผลกระทบในวงกว้าง รัฐบาลไทยควรจัดคณะเจรจาที่ประกอบด้วยเจ้าหน้าที่ซึ่งมีความเชี่ยวชาญในแต่ละประเด็น สนับสนุนทางวิชาการที่เข้มแข็ง และสร้างกระบวนการในการกำหนดท่าทีในการเจรจาที่เปิดส่วนร่วมให้ผู้มีส่วนได้เสียต่างๆ ในสังคมทั้งภาคธุรกิจ ผู้ใช้แรงงาน เกษตรกร ผู้บริโภค องค์กรพัฒนาเอกชนและภาคประชาชน สามารถให้ข้อคิดเห็นและข้อเสนอแนะได้อย่างกว้างขวาง และเน้นประโยชน์ที่ประเทศไทยจะได้รับจากความตกลงมากกว่าการมุ่งหวังให้เกิดความตกลงเท่านั้น

Executive Summary

At the 10th APEC Leaders Meeting in Los Cabos, Mexico, President George W. Bush announced to ASEAN Leaders a new US trade initiative with ASEAN - the Enterprise for ASEAN Initiative (EAI). Under the EAI the US and each member of ASEAN will jointly determine if and when they are ready to launch a Free Trade Agreement (FTA) negotiation. Potential ASEAN partners must already have concluded a Trade and Investment Framework Agreement (TIFA) with the US. The EAI also states that the bilateral FTA with each ASEAN country will be based on the model of the Singapore-US FTA. In the case of Thailand, a TIFA has already been concluded with the US, and the possibility of initiating the FTA negotiation is being explored.

Currently, around 20 % of Thai goods export goes to the US market, and this represents the highest share of Thailand's exports. However, Thai export has been experiencing a declining share in the US market. On the other hand, some countries, notably China and Mexico, have seen their shares growing rapidly in the past decade. The proposed FTA can help Thailand by reducing tariff and non-tariff barriers between the Thailand and the US.

With respect to trade in goods, an FTA between Thailand and the US should be expected to generate gains to both countries. Like other North-South trades, Thailand and the US have trade structures that are complementary. From the Thai perspective, the bilateral Thailand-US FTA should produce some positive net benefits to Thailand as it struggles to revive its share in its most important export market.

A previous study shows that the FTA between Thailand and the US would increase the export and import of Thailand about 3.4 and 4.7 percent, respectively. Agricultural products, processed food, textile and automobile are examples of the sectors that are likely to benefit from the FTA. Using the TDRI CGE model, we estimated that the FTA would generate a real GDP growth of 1.34 percent, once the agreement is implemented.

However, the increase in export in many sectors will not be automatic. To capture potential benefits in the automobile sector, for example, Thailand-based assemblers and suppliers may need to reorient their product lines to match the consumer demand in the US market. They also need to improve their product quality, reduce costs and improve delivery time. First-tier suppliers need also to develop design capability. Similarly, for agricultural liberalization to bring tangible benefits, Thai and US negotiator need to cooperate with each other to reduce existing non-tariff barriers, e.g., quota, subsidy, administrative measures, sanitary and phytosanitary standards, etc. This may involve dealing with complicated technical aspects in each area and hence will take a long time. Finally, rules of origin need to be carefully designed to facilitate efficient preferential treatments.

In addition to export, potential benefits to Thailand are likely to arise from more investment, intensified competition in service sectors and improvement in regulatory regimes. For example, more investment inflow into Thailand should enable the country to grow more rapidly since FDI has always been one of its key growth engines.

However, potential benefits in these areas are harder to be realized than those related to export of goods. This is because institutional capacities in many areas would need to be developed. This is likely to take a long time. In addition, the proposed FTA, which contains many provisions related to domestic laws and regulations, also poses sensitive problems for Thailand in a number of areas, notably service, investment, government procurement and intellectual property protection.

Care should be taken that the scope of foreign investment covered in the FTA and the extent of the protection guaranteed are well defined and suitable to the local environment. For example, investments that are short term and speculative in nature may not be desirable. In the negotiation, it is also important to make clear where the boundary of the protection ends so that there will not be excessive disputes that will be costly to settle.

The service sector can also gain from greater competition. For example, liberalization in the telecommunication market would help Thailand to bring its telecommunication prices down to be in line with other Asian countries. But the balance between free and fair trade must be ensured, in particular in service markets where there are only few large players in the market. On this matter, liberalization must be complemented by a strong discipline imposed on large multinational companies and cooperation between competition authorities. On this note, a more transparent and effective implementation of the domestic competition law should help to promote the cause.

In terms of intellectual property rights, Thailand should negotiate to prolong the timeframe for implementing obligations in the FTA for at least ten years to ensure that the IPR system facilitates, rather than hinders, its development goals. In particular, the copyright law should allow Thailand to extend its basic and higher education coverage by allowing access to educational materials and information technology. The patent law should facilitate access to medicine for poor people while the plant variety protection law should not impose undue costs to local farmers and plant breeders.

It is also of utmost importance that the agreement does not infringe on the sovereign rights of the Thai government to implement regulatory rules or measures that are in the public interest, be it cultural, developmental, or social.

In conclusion, an FTA between Thailand and the U.S. has the potential to increase trade and investment between the two countries and generate net benefits for Thailand. Some of the more sensitive areas will need careful negotiations to achieve a coverage and sequencing that is appropriate to the institutional context of the country. And given the comprehensive nature of the FTA, many complicated issues will need to be negotiated. Because of this, it is essential that the Thai side is fully prepared for the negotiation process. A capable negotiation team must be assembled. Due to limited domestic expertise and negotiation resources, a structure that allows governmental agencies under various ministries to work together as a negotiation team is a pre-requisite. Sufficient resource must be provided to support the negotiation process. In addition, it is essential that all stakeholders need to be brought into the process, particularly the private sector, academicians, as well as the non-government and the people sector. With full cooperation from all sides, a satisfactory outcome should result from the negotiation, and Thailand will be in a good position to fully benefit from the resulting FTA.

Thailand-U.S. Free Trade Agreement

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Chapter 1

Introduction

1.1 Background

On October 26, 2002 at the 10th APEC Leaders Meeting in Los Cabos, Mexico, President George W. Bush announced to ASEAN Leaders a new U.S. trade initiative with ASEAN - the Enterprise for ASEAN Initiative (EAI). The EAI offers “the prospect of bilateral free trade agreements (FTAs) between the United States and ASEAN countries that are committed to economic reforms and openness.”¹ It is expected that the EAI will lead to a network of bilateral FTAs that will increase trade and investment between the U.S. and ASEAN countries, and contribute to the attainment of the APEC Bogor goals for achieving free and open trade and investment in the Asia Pacific region.

Under the EAI the U.S. and each member of ASEAN will jointly determine if and when they are ready to launch an FTA negotiation, but the potential ASEAN partner must already have concluded a Trade and Investment Framework Agreement (TIFA) with the U.S. The EAI also states that the bilateral FTA with each ASEAN country will be based on the model of the Singapore-U.S. FTA. The latter is a comprehensive economic cooperation agreement that in addition to trade liberalization and tariff elimination, covers issues such as services trade, including professional services, financial services, telecommunications, competition policy, intellectual property rights, investment, as well as environment and labor standards. Many of these issues are sensitive and controversial in the other ASEAN countries, including Thailand.

In the case of Thailand, a TIFA has already been concluded with the U.S., and the possibility of initiating the FTA negotiation is being explored. In order for business groups and other stakeholders in Thailand to be prepared for the possible initiation of FTA discussions with the U.S., a study is proposed to assess the likely impacts of the Thailand-U.S. FTA on Thailand as well as on various specific interest groups. This will enable all groups to become familiar with issues that are likely to arise during the FTA negotiations and to be in positions to make informed recommendations to the government about appropriate negotiating positions and effective ways forward on various issues.

1.2 Objectives of the Study

The objective of this research is to study the potential impacts on Thailand of a Thailand-U.S. FTA along the model of the Singapore-U.S. FTA in order for various stakeholder groups to be more informed of the issues involved and be in a better position to recommend strategic options and effective ways forward.

¹ Quoted from White House Press Release “Fact Sheet: Enterprise for ASEAN Initiative” October 26, 2002.

1.3 Methodology

The methodology will involve quantitative analyses of the likely economic impacts of a Thailand-U.S. FTA by using TDRI's CGE model, as well as qualitative analyses based on results from participatory brainstorming sessions involving various stakeholder groups.

As the Enterprise for ASEAN Initiative explicitly states that a bilateral FTA between the U.S. and an ASEAN member country will be along the model of the Singapore-U.S. FTA, this study will assume that the issues to be negotiated over in a Thailand-U.S. FTA will resemble those in the recently concluded Singapore-U.S. FTA. The issues covered by the Singapore-U.S. FTA were wide-ranging. These covered such areas as:²

Goods Trade: Elimination of bilateral duties, including agricultural products.

Services Trade: Ensures core obligations of national treatment and Most-Favored Nation status. Includes improved market access opportunities in the area of professional services (including legal, architectural and engineering) and express delivery.

Financial Services: New market access in the banking and security sectors, including access to ATM networks. Increased market access in the insurance sector.

Telecommunications and E-Commerce: Market access commitments, and competition safeguards to protect against discriminatory and anti-competitive behavior by incumbent suppliers in areas such as interconnection, co-location, access to rights of way and resale. Commitments to the non-discriminatory treatment of digital products and the permanent duty-free status of products delivered electronically.

Competition Policy: Commitments by Singapore to develop competition law and regulatory regime. Also commitments that government enterprises will operate commercially with no discrimination against U.S. goods and services and will not engage in anti-competitive behaviors.

Intellectual Property: Strong intellectual property protections, including additional protection standards relevant to the digital environment, as well as protection for bio-inventions, and an agreement to limit the use of compulsory licenses.

Labor and Environmental Standards: Agreement on high legal standards of environmental and labor protections and enforcement. Agreed obligations backed up by the dispute settlement mechanism.

Investment: Non-discrimination, minimum standards of treatment, protection of investment and investment-related dispute settlement

Dispute Settlement: Dispute settlement procedures have high standards of openness and transparency including open public hearings, public access to information, and ability of interested parties to submit opinions. Enforcement mechanisms include monetary penalties to enforce commercial, labor and environmental obligations of the agreement.

² More details including the full FTA document can be found at the website of the Office of the U.S. Trade Representative at <http://www.ustr.gov>.

From the above list, it can be seen that the Singapore-U.S. agreement covers a very broad range of issues. Many of the above issues such as services, telecommunications, intellectual property, or labor and environmental standards issues, are considered sensitive and controversial in the Thai context. It is therefore necessary to carry out some analyses of these issues taking into account the Thai economic, social and legal environment. The aim is to involve a broad range of stakeholders to try to map out the way ahead for these issues and also develop strategic options for Thailand in the FTA negotiation if one was started.

The main areas of activities in the project are as follows:-

1. For trade in goods, some quantification of the possible economic benefits has already been carried out by the Institute for International Economics (IIE) using gravity models and GTAP computable general equilibrium (CGE) models. For this study, these results will be cross-checked using TDRI's detailed CGE model of the Thai economy.³ This will give additional information on the range of likely economic benefits from the elimination of trade barriers as a result of the Thailand-U.S. FTA at the level of the economy as a whole.
2. To supplement the aggregate analysis of the CGE model, broad impacts on four important sectors will be analyzed. These sectors are agriculture, automotive, telecommunications and finance and banking. The analyses for these sectors will indicate the key issues that are likely to be sensitive for each sector and likely impacts of the FTA at a relatively broad level.⁴
3. For other areas included as part of the FTA negotiations, the research team will provide an overall review of the issues in the current Thai context; including potential current status of the issue, importance in the Thai context, areas of controversies, including social issues and other frictions, potential impact on trade and investment and possible strategic directions for Thailand in each of the area.
4. The overall review of the various issues identified above were used as input into 7 brainstorming process involving relevant stakeholders for each particular area. The topics of focus for various brainstorming sessions are: intellectual property rights, investment, trade in services, financial services, telecommunications, agriculture and automotives. The output from this process is a strategic assessment of the way forward for Thailand on these issues, implications of domestic economic reforms, necessary adjustments that should be undertaken by various stakeholder groups, and also the strategic options that may be recommended to the government for the negotiation stage.

³ The model contains 79 sectors of production.

⁴ A detailed quantitative assessment for each sector is beyond the scope of this study given the time and resource constraints.

1.4 Structure of the Report

The report is organized in 10 chapters. Chapter 2 provides a background of the Thailand-U.S. FTA in the context of ongoing regional and bilateral trade agreements. Chapter 3 discusses the trade patterns between Thailand and the U.S. Chapter 4 estimates the macroeconomic impacts of Thailand-U.S. FTA. Chapter 5-9 focus on sectoral impacts of the FTA on agriculture and automobile, services, telecommunications and financial services. Chapter 10-13 discuss various trade-related issues, i.e., competition policy, intellectual property rights, investment and environment. Chapter 14 concludes the report.

Chapter 2

Thailand-U.S. FTA in the Context of Regional Trade Agreements

2.1 Overviews

Thus far, there have been 259 regional trade agreements reported to the WTO. Among the agreements, approximately 30 involve the Asia-Pacific countries. As of May 2003, 184 regional trade agreements (RTAs) notified to the WTO have been put implemented (Table 2.1). Among these, 126 agreements are free trade agreements (FTAs) and 13 agreements are customs unions under the GATT Art. XXIV.⁵ Only 19 agreements are under the Enabling Clause (the agreement between developing countries)⁶. Since the majority of the FTAs are under the GATT Art. XXIV, this suggests that the implemented FTAs involve developed countries. The remaining 26 agreements are service agreements under the GATS Art. V⁷ involving developed countries such as the European Community (EC), the U.S., Japan, Singapore, Canada, Australia and New Zealand.

Table 2.1 Summary of implemented trade agreements notified to the GATT/WTO

	Accessions	New RTAs	Total
Under GATT Art. XXIV (FTA)	4	122	126
Under GATT Art. XXIV (CU)	4	9	13
Enabling Clause	0	19	19
Under GATS Art. V (Service Agreement)	1	25	26
Total	9	175	184

Source: WTO

Table 2.2 categorizes implemented RTAs by region: America, Europe, Asia, Australia/New Zealand and Africa, before and after 1990. The number of RTAs has increased drastically after 1990 both within and across regions. There are as many as 82 RTAs among European countries after 1990, compared to only 16 prior to 1990. In contrast to other regions, the majority of RTAs involving Asian countries are cross-regional. After 1990, 34 out of 38 RTAs are cross regional, compared to only 4 within the region. Developed and developing Asian countries are looking for partners from other regions. Two out of the four RTAs within Asia are free trade agreement and service agreement between Japan and Singapore. It appears that regional economic cooperation among Asian economies was kept to the minimum until recent development of several bilateral agreements. The U.S., on the other hand, appears to strengthen relationships within the continent as well as extending to other regions. The U.S., Chile, Mexico and Canada are the major participants in this region. At least 5 of the 10 RTAs relate to the U.S. either as a NAFTA member or a bilateral trade partner. With this trend moving upward, an increasing number of RTAs across regions are expected, especially for America-Asia as well as Europe-Asia RTAs.

⁵ The Article XXIV of GATT allows for the deviation from the GATT/WTO guiding principle of non-discrimination for the formation and operation of customs unions and free-trade areas covering trade in goods.

⁶ The Enabling Clause allows for preferential trade agreement in goods between developing countries.

⁷ The Article V of GATS allows for regional trade agreement of trade in services for both developed and developing countries.

Table 2.2 Summary of RTAs already implemented by region

Regions	America	Europe	Asia	Australia / New Zealand	Africa
America					
Before 1990	1	-	1	-	-
After 1990	10	4	3	-	-
Europe					
Before 1990	-	16	3	-	2
After 1990	4	82	29	-	3
Asia					
Before 1990	1	3	1	-	-
After 1990	3	29	4	2	-
Australia/New Zealand					
Before 1990	-	-	-	3	-
After 1990	-	-	2	1	-
Africa					
Before 1990	-	2	-	-	-
After 1990	-	3	-	-	1

2.1.1 Common Features

In general, the main focus of a free-trade agreement is to eliminate tariff and non-tariff barriers (NTBs) in order to enhance market access between trading partners. Tariff barrier and non-tariff barrier reductions on goods are considered priorities for the trade negotiation, especially for the agreement between developed and developing countries. Several modalities have been adopted such as an early harvest mechanism, a sensitive list or even an exclusion list, and a “positive list” or “negative list” approach.

The “positive list” approach are usually found in FTAs between developing countries and most of the time there are sensitive list and exclusion list attached. The ASEAN Free Trade Area (AFTA) is an example of the “positive list” approach. Many agricultural products and some industrial items were put on the sensitive list, where tariff rates are reduced at a slower pace. Recent RTAs, especially those involving developing countries, emphasize more on the “negative list” approach with few exceptions allowed. The North America Free Trade Area (NAFTA), consisting of both developed as well as developing country namely the U.S., Canada, and Mexico, the U.S.-Chile and the U.S.-Singapore FTAs, are good example of the “negative list” approach. Under these agreements, most of the products become duty-free either immediately or within 3-4 years and the remaining tariffs are to be phased out within a specified timeframe. An early harvest mechanism is often used in the initial stage in order to persuade further development into a FTA. Thailand and China agreed to tariff reductions on fruits and vegetables as an early harvest to initiate a FTA negotiation between the two countries.

The complication of the modality depends on the tariff structure of the negotiating partners. This seems to be more of political issues than economic ones. In addition, a timeframe in which the tariffs are phasing out needs to be determined. Usually, a timeframe is set for the tariff to be eliminated within 10 to 15 years. Under the U.S.-Chile FTA, the Chilean government committed to reduce 75% of its tariffs on farm products to zero within

4 years and all remaining duties will be phased out over a 12 year period. The products include pork and pork products beef and beef products, soybeans and soybean meal, durum wheat, feed grains, potatoes, and processed food products, pasta, distilled spirits and breakfast cereal.

The reduction of non-tariff barriers, such as quotas, export subsidies, and domestic subsidies, is a crucial feature in many FTA negotiations, not only for the agreement between developed and developing economies but also between developed countries. Export subsidies and domestic supports are the most common features beside quotas in a FTA negotiation. The Brazilian inconsistent auto regime, which allowed auto manufactures to enjoy reduction on tariff if sufficient quantities of parts and vehicles were exported and meet local content targets, was terminated according to an agreement signed in March 1998 by the U.S. and the Brazilian government. Moreover, the government of Brazil also committed to eliminate other trade and investment distorting measures in automobile regimes and not to extend the measures to its MERCOSUR partners. Phasing out the Chile's price-band system, where import duties of the same product can vary according to price levels, under the U.S.-Chile FTA is another example of NTB reduction. The reduction of NTBs becomes more complicated when it is linked to the specific sectors or issues. For example, sanitary/phytosanitary (SPS) standards such as meat grading system, dairy, poultry and meat processing plant approvals were raised in the U.S.-Chile FTA. Most developing countries export agriculture products to developed countries. The use of SPS standards as such can be considered as NTBs.

Investment is always a key issue of a FTA between developed and developing countries. In order to create a level playing field in investment, it is crucial to ensure fair regulations for both domestic and foreign investors. The principles of non-discrimination and most favored nation (MFN) are used as guidelines for the negotiation. The stumbling block is usually on the developing country side as some sectors are enjoying the privileges and want to protect themselves from foreign competitors. Common features in the negotiation between the developed and developing countries include ownership requirements, conditions to establish subsidiaries or joint ventures, transparent legal framework for foreign investors, and equal treatments for domestic and foreign investor (also among the foreign investors in terms of investment promotion). As a result, modifications of regulations or reforms in investment-related issues are frequently found in the agreements of the committed developing economies.

Investment agreements between developed nations take on different perspectives and the major consideration is the equal investment opportunities for each partner country. The negotiation is emphasized more on sectors of interest of both parties (most of the time, the service sectors included) and the protection for their investors. Thus, the agreements on investment can be very different for FTAs between developed and developing economies and those between developed economies.

2.1.2 New Features

Trade in services has recently played a significant role in the FTA negotiations. Liberalization in financial services, telecommunication services, and information technology and digital products are only a few examples mentioned in recent FTA negotiations. Developed countries are looking for a greater market access in the service

sectors where they have the comparative advantages. The agreement usually requires certain degrees of commitment to create a level playing field for domestic and foreign providers in providing services.

The recent trade negotiations at the bilateral, regional, or multilateral level add many new features into consideration, particularly for the agreement between developed nations. These include trade-related issues such as services, investment, transparency in rules and regulations, trade facilitation, etc. For example, trade agreements of the U.S. and EC with other countries (developed or developing countries) have emphasized issues such as rules and regulations, intellectual property right, liberalization of the service sectors, sanitary/phytosanitary standards, rules of origin, competition policy, government procurement, labor and environmental provision, and customs procedures.

The Rules of Origin (ROO) issue has gained increasing interest as countries moving toward more bilateral free-trade agreements. In order to carry on the agreement, the privileges from the preferential trade agreement need to be directed, specifically to the parties involved. This will lead to a complication in custom procedures, particularly when different rules of origin are used under several agreements. Consequently, it is getting more difficult to achieve efficient and transparent customs procedures. The agreement on an appropriate ROO is thus crucial for FTA negotiations.

2.2 U.S.'s Trade Agreements

2.2.1 Participants:

The U.S. has participated in both regional and bilateral trade agreements. The North American Free Trade Area (NAFTA) and the Asian-Pacific Economic Cooperation (APEC) are examples of two RTAs in which the U.S. is a member. The U.S. is also interested in forming the Free Trade of Americas (FTAA), under negotiation among 34 economies in North America, Central America and South America. In addition to the U.S.-Jordan and U.S.-Israel FTAs, the U.S.-Chile and U.S. -Singapore FTAs are also recently concluded. Moreover, five other economies: Australia, Morocco, Egypt, a five-nation bloc in Central America, and a five-nation group in Southern Africa, are under the FTA negotiation process with the U.S. Also, there are a few countries in the process of lobbying for FTA negotiations with the U.S. In the past, the U.S. trade policy seemed to emphasize more on multilateral trade agreement driven by the WTO. However, recent development indicates that the U.S. has started to consider regional as well as bilateral FTAs with its strategic partners, politically or economically. The completion of the U.S.-Chile and the U.S.-Singapore FTAs are good examples. Figure 2.1 summarizes the U.S. trade agreements.

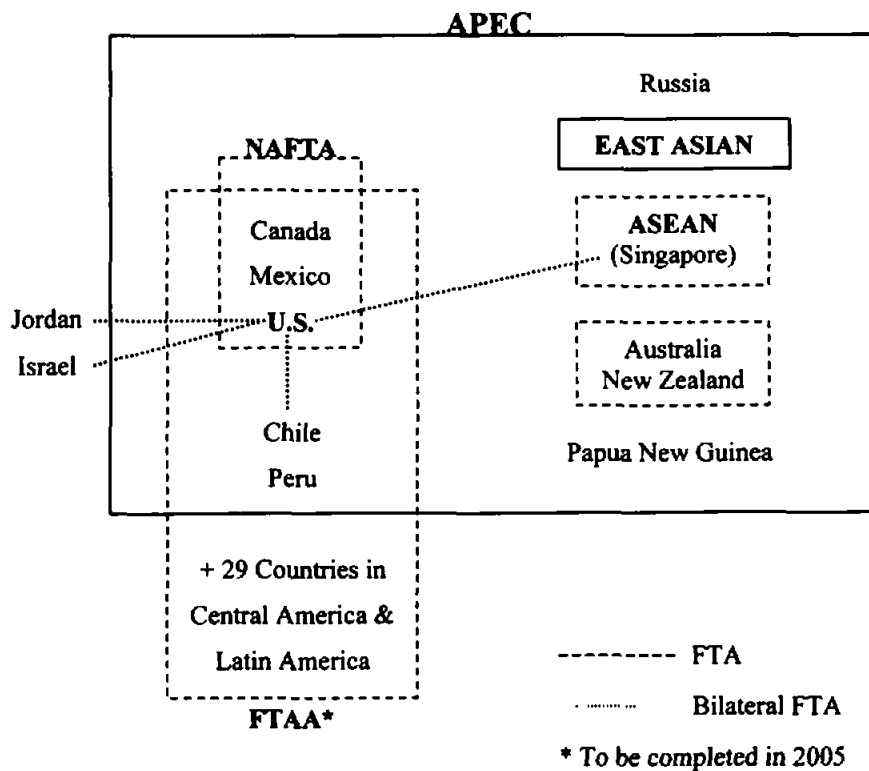


Figure 2.1 The U.S. Trade Agreements

In fact, since 1984, the U.S. has involved in the bilateral agreements with 72 economies, both developed and developing. Out of these, 37 bilateral investment treaties were completed. In addition, there are agreements on specific issues that the U.S. has participated in.

Multilateral Agreements

1. Multilateral Agreements on Trade in Goods

- Agreement on Agriculture
- Agreement on the Application of Sanitary and Phytosanitary Measures
- Agreement on Textiles and Clothing
- Agreement on Technical Barriers to Trade
- Agreement on Trade-Related Investment Measures
- Agreement on Pre-shipment Inspection
- Agreement on Rules of Origin
- Agreement on Import Licensing Procedures
- Agreement on Subsidies and Countervailing Measures
- Agreement on Safeguards, Information Technology Agreement (ITA)

2. General Agreement on Trade in Services

- Basic Telecommunications Services Agreement
- Financial Services Agreement

3. Agreement on Trade-related Aspects of Intellectual Property Rights

4. Plurilateral Trade Agreements
 - Agreement on Trade in Civil Aircraft
 - Agreement on Government Procurement
5. International Tropical Timber Agreement
6. North American Free Trade Agreement
7. Joint Statement Concerning Semiconductors by the European Commission and the Governments of the United States, Japan, and Korea
8. Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for conformity Assessment of Telecommunication Agreement
9. Agreement on Mutual Acceptance of Oenological Practices

Bilateral Agreements

See details in Appendix 1.

2.2.2 Common Features

FTAs involving the U.S. and its partners at the regional and bilateral level consider a reduction of tariffs on trade in goods a primary issue. The underlining principle is to create greater market access for the trade partners. Tariffs on agricultural products and the timeframe to which the remaining tariffs phasing out are the differences in the negotiation with developed and developing countries. In most cases, more generous conditions were given to developing economies. Chile was given 4 years to eliminate all of its tariffs on trade in consumer and industrial products and 4-12 years for agricultural products while Singapore guarantees zero tariffs immediately on all U.S. products. Elimination of NTBs was also discussed in the U.S.-Chile FTA, i.e., elimination of export subsidies, implementation of agricultural safeguard provision, and resolving important sanitary and phytosanitary issues. See Appendix 2 for a comparison between the U.S.-Chile FTA and the U.S.-Singapore FTA.

2.2.3 Features of Interest

Liberalization of trade in services is of the U.S.'s interest, especially the liberalization of financial services (banking, insurance, securities and related services), telecommunications, and express delivery services. The emphasis is on gaining market access and ensuring regulatory fairness. In this aspect, local authorities still maintain regulatory duties despite some conditions for transparency purposes such as consulting with interested parties before issuing regulations, providing advance notice and comment periods for proposed rules, and publishing all regulations. Based on the non-discriminatory principle, the U.S. seeks to improve its access to telecommunication services through an open and competitive telecommunication markets. A broader coverage in the service sectors is found in the agreements with developed economies. Deeper liberalization in service sectors under the U.S.-Singapore FTA compared to that of the U.S.-Chile FTA indicates that there are some degrees of differences in the bilateral free-trade agreement between the U.S. and developed and developing countries. Express delivery service is another sector the U.S. is eager to improve its market access. With a commitment to include expansive

definitions of the integrated nature of express services, and affirm existing competitive opportunities, the U.S. will be in a better position to compete in the domestic markets.

Intellectual property right (IPR) is another major consideration for the U.S. when negotiating an FTA with developed or developing countries. A main concern of developing nations is to appropriately enforce intellectual property right protection. Under the U.S.-Chile FTA, the Chilean government has promised a high level of IPR protection, including protections of copyrights, patents, trademarks, and trade secrets. Piracy and counterfeiting of U.S. intellectual property have raised serious concerns in several developing countries. In the case of Mexico, the U.S. often claims that enforcement against piracy has declined dramatically and only a small percentage of arrests have resulted in court decision. The U.S. also complained about a lack of effective action to enforce IPR by the government of Paraguay and wanted it to improve its protections through passing new copyright and trademark laws and strengthening its enforcement efforts.

The U.S. also uses the GSP benefits to bargain for stronger IPR protection. In 1997, 50% of Argentina's GSP benefits were withdrawn when its intellectual property rights regime was viewed as failing to meet the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Afterwards, Argentina agreed to amend its patent law to provide stronger protection and ensure that preliminary injunctions would be available in courts. High level of piracy and counterfeiting and the lack of effective enforcement of copyright and trademark in Brazil are also of the U.S. concern. Failure to offer adequate protection to copyrighted materials especially sound recordings might result in Brazil's GSP benefits removal.

Furthermore, in pharmaceutical and agrochemical industries, health-related intellectual property rights and the confidentiality of data submitted for marketing approval are of concerns for the U.S.. It was claimed that Turkey provided neither patent protection nor adequate data exclusivity for pharmaceutical products, which are both the requirements under TRIPs. Canada were also accused of infringing rights of patent holders by allowing the entry of generic medicines into the marketplace due to its inadequate data protection and the lack of effective administration and judicial procedures. Thus, when a trading partner is a developed economy, broader coverage including confidential data protections and issues related to pharmaceutical products and generic products are usually considered.

Key issues in investment agreements are investment protection and guarantee for the equal treatments between domestic and foreign investors. The U.S.-Chile and the U.S.-Singapore FTAs provide a secured and predictable legal framework for U.S. investors. In order to protect its investors, the U.S. requires that the open and transparent procedures for settling investment disputes be established in both countries. The U.S. is also interested in government procurement, trade facilitation, customs procedures, etc. Efficient and transparent in the procurement processes and customs operations are often main issues when negotiating with developing economies. Furthermore, competition policy, professional service, labor and environmental provisions, and dispute settlement are issues included in most of FTAs between the U.S. and its partners.

2.3 Thailand's Trade Agreements

2.3.1 Participants

Since 2001, Thailand has been aggressively pursuing bilateral trade agreements with various countries across regional trade blocs. Recently, it has successfully signed a bilateral agreement with Bahrain and moved onward to other agreements with its major trading partners such as China and the U.S. Thus far, Thailand has engaged in at least fifteen bilateral trade agreements and, among those, five of them are expected to finalize shortly. Aside from the bilateral framework, Thailand has also actively participated in both regional and sub-regional economic cooperation i.e., GMS. Figure 2.2 and Table 2.3 summarize Thailand's trade agreements.

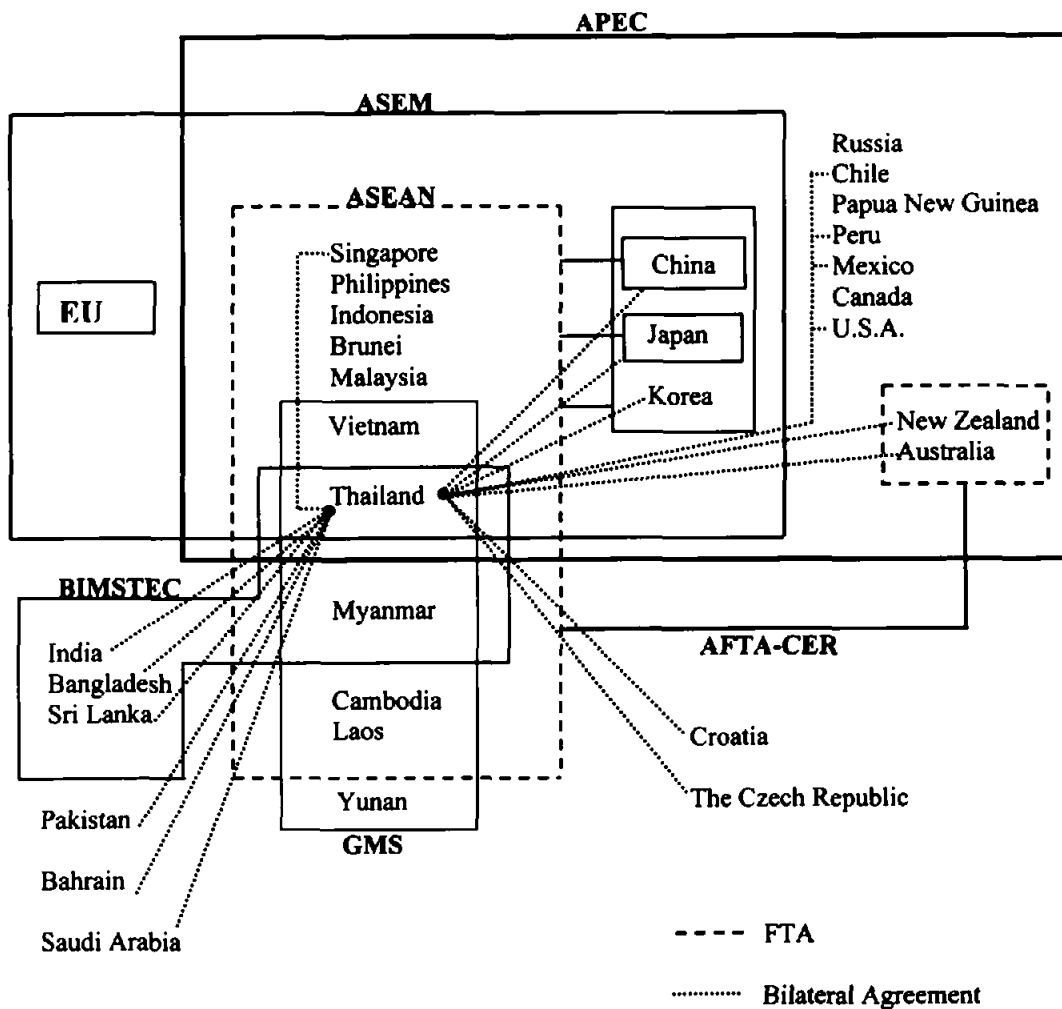


Figure 2.2 Thailand's Trade Agreements

Table 2.3 Thailand's Trade Agreements

Regional Trade Agreement	Type of cooperation
APEC	Economic cooperation
ASEM	Economic cooperation
AFTA	Free trade area
AFTA-CER	Closer economic partnership
ASEAN-CHINA	Free trade area
ASEAN plus one	Comprehensive economic partnership
ASEAN plus three	Free trade area
BIMST-EC	Economic cooperation
GMS	Economic cooperation
IMT-GT	Economic cooperation
Bilateral Trade Agreement	
Australia	Closer economic partnership (FTA plus)
Bahrain	Free trade agreement
China	Free trade agreement
Japan	Closer economic partnership
India	Free trade agreement
United States of America	Trade and investment framework agreement
Prospect Bilateral Trade Agreement	
Bangladesh	
Chile	
Croatia	
Mexico	
New Zealand	
Pakistan	
Peru	
Republic of Korea	
Saudi Arabia	
Singapore	
South Africa	
Sri Lanka	
The Czech Republic	

2.3.2 Issues of Specific Interests to Thailand

Most of the bilateral agreements Thailand engaged in aim at reducing trade barriers that Thailand and each of its trading partners encounter. The issues covered in each agreement may differ from one another according to the interests of both parties. The core interests of Thailand with respect to some of its trading partners are:

- Australia: Non-tariff trade barriers: Quarantine regime and anti-dumping system
- Bahrain: Gateway to Gulf Cooperation Council (GCC) countries
- China: Tariff barriers on agriculture products
- Japan: Trade barriers and economic cooperation
- India: Increase trade volumes and services. Gateway to other South Asian countries.

Features of the selected bilateral trade agreements are summarized in Table 2.4. From the Table, it can be seen that Thailand's negotiation issues with developed countries, i.e. Australia, emphasize on tariff and NTB reduction in return for service and investment liberalizations. Relaxation of Thailand's restrictions on services and investment sectors are the core interests of developed country, compared with tariff reduction scheme of developing country. Special treatment of foreign investors and intellectual property right also emerge as key issues in the negotiations.

Table 2.4 Main Features of Thailand's Bilateral Agreements

Trade Partners	Features
Australia	<p>Goals:</p> <ul style="list-style-type: none"> - To eliminate tariff and non-tariff barriers in trade in goods and liberalization of trade in services. - The negotiation is expected to complete in mid 2004. <p>Early harvest scheme: Both parties agree upon implementing early harvest program on seven areas:</p> <ul style="list-style-type: none"> - cooperation on educational services - cooperation and capacity-building with regard to competition policy - cooperation on sustainable tourism development - negotiations of provisions on investment promotion and protection - consultations on sanitary and phytosanitary (SPS) issues - mutual recognition arrangements (MRAs) - promotion of e-commerce. <p>Trade in goods: The tariff reduction is now under negotiation:</p> <ul style="list-style-type: none"> - Thailand's proposal of tariff elimination on approximately 77% of the importing goods (53% of tariff lines) from the date entry into force of the FTA and phasing down the tariff to zero by 2010 (except for sensitive items). - Australia's initial offer of immediate tariff elimination of 90% of tariff lines. <p>Services and Investment:</p> <ul style="list-style-type: none"> - Australia has requested the following issues: <ul style="list-style-type: none"> o the degree of transparency and predictability of the Thai service and investment regime o entrenching the most-favored-nation (MFN) treatment for Australian investors o market access and national treatment (relaxation of foreign equity restriction and working permit regime) o promotion and facilitation of investment. - Thailand's core interest is on the issue of temporary entry of personnel. <p>Other issues: Several issues are also tabled, for example; dispute settlement, intellectual property rights, industrial standard and Thai procurement regime.</p>
Bahrain	<p>Goals:</p> <ul style="list-style-type: none"> - Free trade area in goods and services, and investment. - Promotions of economic cooperation. <p>Trade in goods:</p> <ul style="list-style-type: none"> - under early harvest scheme, tariffs on 626 items of goods are reduced to zero (419 items) and to 3% (207 items). - on the exclusion list (approximately 5,000 items), the modality of tariff reduction structure is <ul style="list-style-type: none"> o fast track: the tariff of about 40% of the items will be eliminated by 2005 o normal track: the tariff another 40% of the items will be eliminated by 2007 o the tariff of the remaining of 20% items will be eliminated by 2010. - Rule of origin: goods must be wholly obtained or contain at least 40% local content. <p>Services and Investment:</p> <ul style="list-style-type: none"> - Bahrain's interests: financial services, transportation and telecommunication and information technology. - Thailand's interests: education, healthcare service, construction, and tourism and recreational services.

Trade Partners	Features
	<p>Other issues:</p> <ul style="list-style-type: none"> - enhancing aviation cooperation and - promoting tourism by offering visa on arrival
China	<p>Goals:</p> <ul style="list-style-type: none"> - Free trade area in good, services and investment. - The FTA is expected to entry into force by 2010 <p>Early harvest scheme: Thailand-China early harvest program is under the ASEAN-China framework (ASEAN-China will start lowering tariff in 2004). Two main issues in the program are:</p> <ul style="list-style-type: none"> - elimination of tariffs on all fruit and vegetable products subject HS Chapter 07 and 08 (116 items) - rules of origin which is based on wholly-obtained principle. <p>Other issues:</p> <ul style="list-style-type: none"> - both countries agree upon pushing ASEAN-China FTA - FTA and Mekong Basin developments.
India	<p>Goals:</p> <ul style="list-style-type: none"> - Free trade agreement - To increase trade volume, investment, and economic cooperation. <p>Early Harvest Scheme:</p> <ul style="list-style-type: none"> - elimination of tariffs on 123 items of goods in food product, chemical product, jewelry, automobile, machinery and electronic. - Thailand has proposed ASEAN-China framework (absolute number) for tariff reduction modality. However, India prefers the margin of preference (MOP) scheme. - aim to eliminate tariff by 2010. <p>Other Issues: India and Thailand have also considered various aspects of cooperation, such as:</p> <ul style="list-style-type: none"> - cooperation in mutual legal assistance in criminal matters - defense cooperation - cooperation in science and technology
Japan	<p>Goal:</p> <ul style="list-style-type: none"> - comprehensive economic partnership - free trade agreement on trade in goods and services, and investment <p>Issues of Interest: Currently, the working group on Japan-Thailand Economic Partnership (JTEP) is preparing on the opening for the negotiation on several issues, for example;</p> <ul style="list-style-type: none"> o movement of natural persons o agriculture, forestry and fisheries cooperation o rules of origin and customs procedures o competition policy o tourism, trade and investment promotion o financial services cooperation o education and human resources development o small and medium enterprises o intellectual property rights o paperless trade, information and communications technology o science and technology o government procurement o dispute settlement

Chapter 3

Thailand-U.S. Trade Patterns and Trends

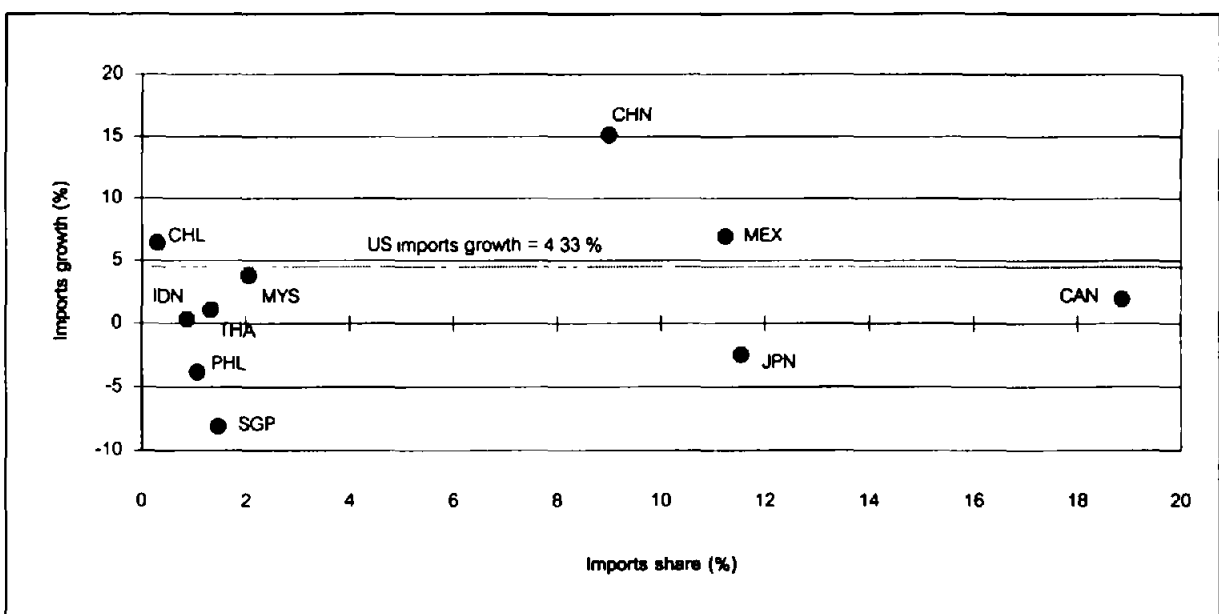
The U.S. is one of the world's main importers with merchandise imports worth around 1,164 billion dollars in 2002, up 4.33% annually from 1999. As a result, the U.S. is a major export destination of most countries including Thailand. Around 20% of Thai goods export goes to the U.S. market, and this represents the highest share of Thailand's exports. On the other hand, on the import side, Thailand imports from the U.S. only accounts for around 0.75% of total U.S. export. Therefore, an FTA between Thailand and the U.S. should be expected to have a larger impact for Thailand than for the U.S. The objective of this chapter is to present background information on the patterns and trends of the trade between Thailand and the U.S. This will also help to identify sectors that are likely to be affected by the FTA.

In the next section, the growth of the market shares of Thai exports in the U.S. will be compared to those of other countries. These will be indicators of the competitiveness of Thailand's exporting industries in the U.S. market. Section 3.2 investigates the trade complementarities between the two countries. As another way to measure possible gains from the FTA, margin of preferences are estimated in the Section 3.3. Section 3.4 briefly touches upon the effects of FTA on local producers, and the final section concludes.

3.1 Thailand's Export to the U.S.: A Constant Market Share (CMS) Analysis.

As a first cut, the performance of Thai goods is analyzed in terms of market shares in comparison with selected countries. The results are plotted in the Figure 3.1, where import shares in the U.S. market are on the horizontal axis and the vertical axis represents the growth of U.S. merchandise imports from a particular country.

Figure 3.1: Selected U.S. Imports Share and Growth by Country, average 1999-2002.



Source: data from USITC, calculated by TDRI.

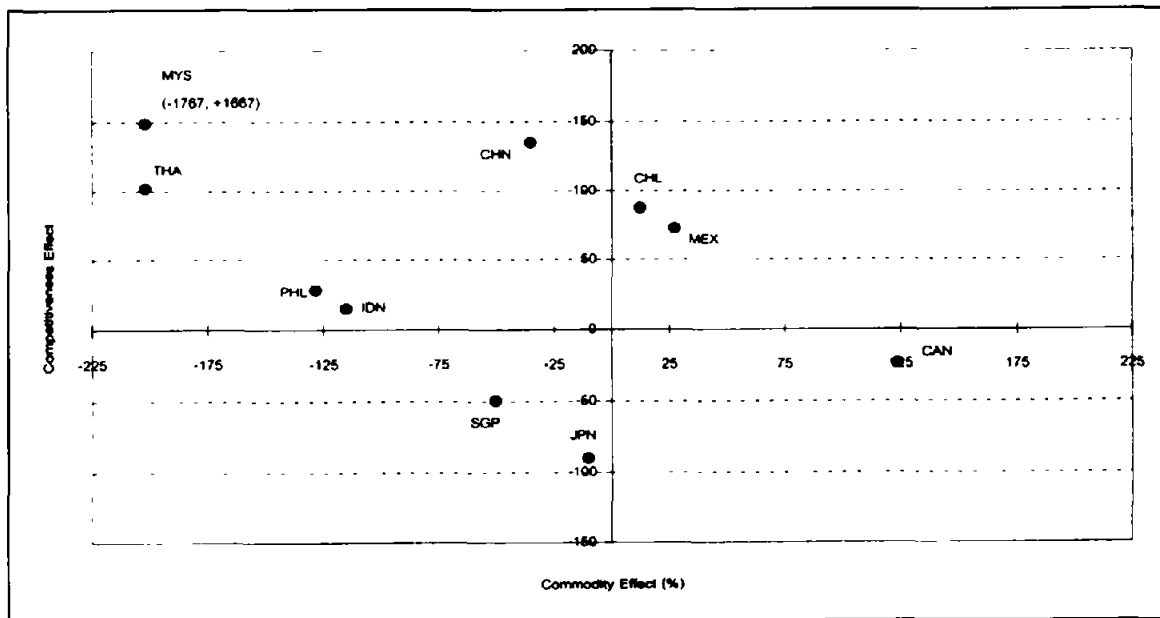
Between 1999 -2002, total U.S. imports grow by 4.33% annually (shown by the dotted line in Figure 3.1). Thai products, like those of other ASEAN members, are found to have growth rates below the dotted line. This means that even though the exports from these countries are increasing but their market shares in the U.S. are declining. In particular, Thai exports to the U.S. grew very little during this period and Thai market share has been declining. This disappointing performance is the reverse to that of China, whose export share in the U.S. market has been increasing rapidly. Therefore, given the relatively similar export structure of Thailand and China, it could be generally concluded that Thai goods have been losing market share to the relatively cheaper products from China. These results are based on the so-call "Constant Market Share (CMS)"⁸ analysis.

The CMS analysis can decompose the performance of Thai's export to the U.S. market as depending on two effects: 1) the Commodity Effect and 2) the Competitiveness Effect. The first effect indicates whether the commodities imported from a country grow more or less than the growth of total imports. If they grew by more than total imports, then the country is exporting items with high demand growth in the U.S. market. The second effect indicates whether, in each sector, products from a country are gaining market shares. If so, then this indicates that the country's products are competitive. This is measured by the difference between the import growth of a particular product from a country compared to the total growth of import of that product.

The aggregated CMS of goods from selected countries are shown in Figure 3.2, and the CMS of Thai products are presented in the Figure 3.3. The horizontal axis shows the commodity effect while the vertical axis indicates the competitiveness effect. In these figures, the most preferred position is in the north-east quadrant and the least preferred position is in the south-west quadrant.

Figure 3.2 shows that Thai products are generally competitive in the U.S. market. However, most of them are products with low growth (negative commodity effects). As a result, Thailand's overall market share is shrinking. Note that products from other ASEAN countries and China also have lower demand growths than the total demand growth. However, China's competitiveness effect is so huge that the net effect still produces a sizable growth in the U.S. market, as earlier shown in figure 3.1. This leads to the belief that Thai goods are losing market shares to highly competitive Chinese products. However, it is also due to the fact that most of the products imported from Thailand are in the south-west quadrant. This is shown in Figure 3.3.

⁸ See Ichikawa (1997) for more details.

Figure 3.2: Commodity Effect and Competitiveness Effect in the U.S. Market, 2001.

Source: data from NBER, calculated by TDRI.

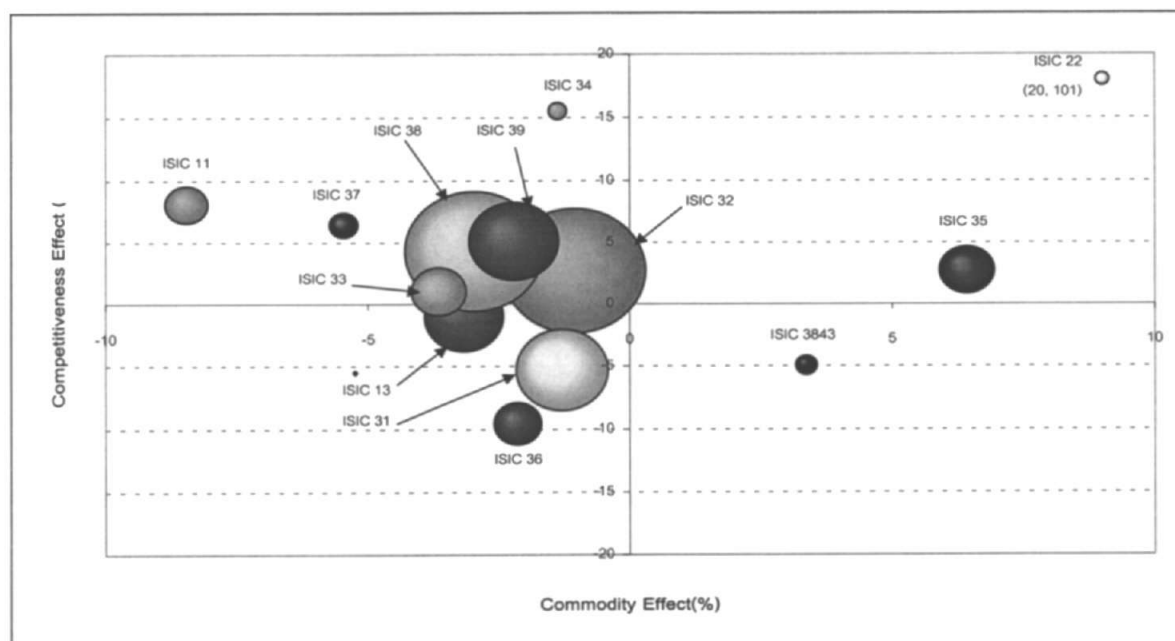
Figure 3.3 gives a more detailed confirmation that while most Thai products are competitive, the demand growths for them are considerably below the average rates of growth of U.S. imports for each product, especially for those items in “ISIC 13: Fishing”, “ISIC 31: Manufacture of Food, Beverages and Tobacco”, and “ISIC 36: Manufacture of Non-Metallic Mineral Products, except Products of Petroleum and Coal”. Products with possible expansion are those in “ISIC 22: Crude Petroleum and Natural Gas Production”, and “ISIC 35 Manufacture of Chemicals and Chemical, Petroleum, Coal, Rubber and Plastic Products”.⁹

In summary, the relatively poor performance of Thai products in the U.S. market is partly due to relatively low demand growths of these products in the U.S. market.¹⁰ Therefore, there are two possible ways to increase the export performance of Thai products in the U.S. market. Firstly, one can try to boost the demand for various products that are important for Thailand. This may not be so easy. Secondly, one can try to increase the degree of competitiveness of these items. On this the proposed FTA can help by reducing tariff and non-tariff barriers between the two countries. The next section therefore analyzes the trade structure between Thailand and the U.S. in order to see the degree of complementarities and the potential for the FTA to boost trades between the two countries.

⁹ Note that agriculture is in ISIC 11 Agriculture and Hunting, ISIC 12 Forestry and logging (too small to be noticed in figure 3), ISIC 13 Fishing, and ISIC 31 Manufacture of Food, Beverages and Tobacco, and automotive is in ISIC 3843 Manufacture of motor vehicles. Both agriculture and automotive sectors are separately analyzed.

¹⁰ U.S. imports grew rapidly in ISIC 22 and ISIC 35 and each command almost 10% of total weight while most of other are shrinking. This is one reason that most of imports by ISIC were shrinking.

Figure 3.3: Commodity Effect and Competitiveness Effect of Thai Goods in the U.S. Market in 2001: by ISIC



Note: Size of each ball represents relative values of Thai goods imported by the U.S. in 2 digit ISIC.
Source: data from NBER, calculated by TDRI.

ISIC 11	Agriculture and Hunting
ISIC 13	Fishing
ISIC 22	Crude Petroleum and Natural Gas Production
ISIC 31	Manufacture of Food, Beverages and Tobacco
ISIC 32	Textile, Wearing Apparel and Leather Industries
ISIC 33	Manufacture of Wood and Wood Products, Including Furniture
ISIC 34	Manufacture of Paper and Paper Products, Printing and Publishing
ISIC 35	Manufacture of Chemicals and Chemical, Petroleum, Coal, Rubber and Plastic Products
ISIC 36	Manufacture of Non-Metallic Mineral Products, except Products of Petroleum and Coal
ISIC 37	Basic Metal Industries
ISIC 38	Manufacture of Fabricated Metal Products, Machinery and Equipment
ISIC 384	Manufacture of transport equipment
ISIC 39	Other Manufacturing Industries

3.2 Comparison of Trade Structure between Thailand and U.S.

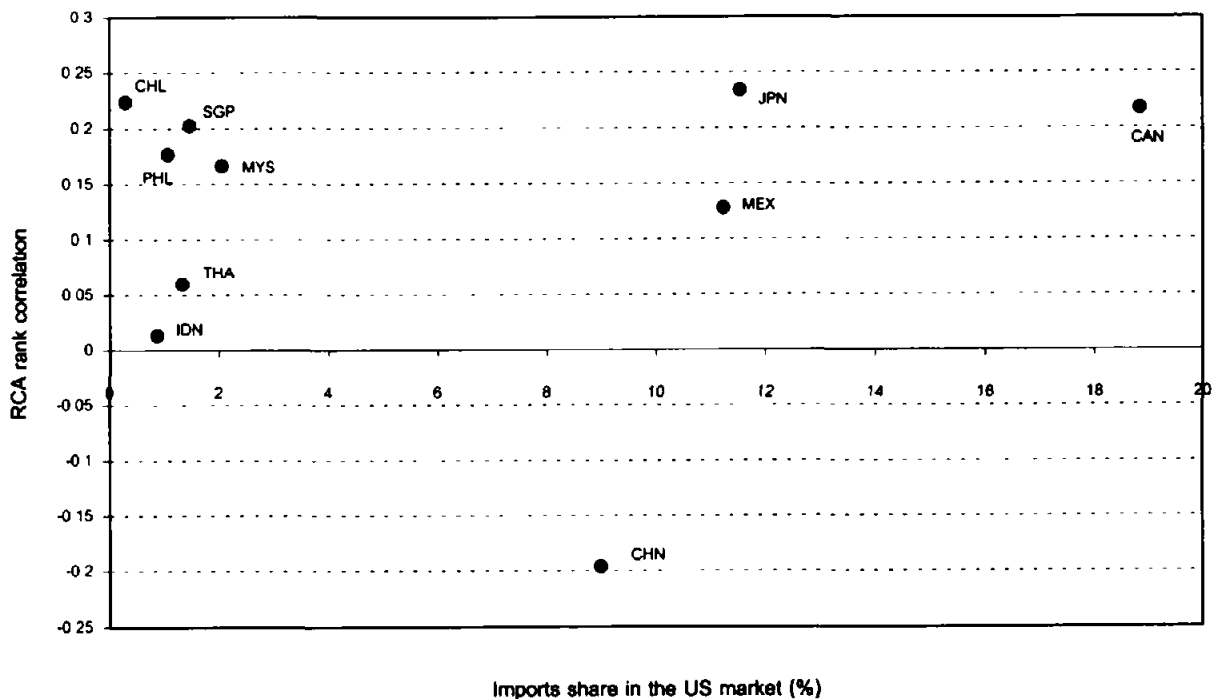
Is the bilateral trade between Thailand and the U.S. complementary? This can be examined by looking at the rank correlation of revealed comparative advantages (RCA) of the two countries. Conceptually, RCA compares export share of a good from a country to the world and often used as a proxy of countries' competitiveness. An RCA rank correlation with positive value implies a similarity of trade structure between the two countries. In the case of positive rank correlation, trade creation as a result of an FTA is unlikely to be large. On the other hand, with a negative value of RCA rank correlation, the

trade structures are complimentary and an FTA should lead to trade creation between the two countries.

Figure 3.4 below shows the computation of RCA indices based on 6-digit Harmonized System (HS) products, which basically covers about 4,967 items for each country. The rank correlation of RCA between some selected countries and the U.S. are shown in the Figure, with the vertical axis representing the value of the rank correlation and the horizontal axis representing the import shares of those countries in the U.S. market. Therefore, regarding to the positions in the figure, the most preferred position is located in the lower far right, where the exported items of the particular country has high competitiveness in U.S. market and is also complementary with the U.S. trade structure.

The figure shows that Thailand has a relatively low positive RCA rank correlation with the U.S. The RCA rank correlation is positive, which implies that the trade between Thailand and the U.S. is slightly substitutable. However, as the value is low (only about 6 percent), there should still be some trade creation between the two countries as result of an FTA between them. To gain more insight into how the countries are likely to benefit from an FTA, the next section will look at the likely margin of preference from the FTA.

Figure 3.4: RCA Rank Correlation between U.S. and Selected Countries, 2000



Source: Calculated by TDRI. Data are corrected from the PC-TAS, United Nations.

3.3 Margin of Preference

The FTA should enhance the trade flows between Thailand and the U.S. if there is a resulting high margin of preference, or high tariff reduction as an outcome of the FTA. In this section, the reductions of tariff schedules are calculated based on the 2b schedule of

U.S.-Singapore FTA and Thailand's Common Effective Preferential Tariff (CEPT) of the Asian Free Trade Area (AFTA). The tariff rates that the U.S. imposes on Thai goods, are based on the calculated duties divided by customs value, following the methodology of (Feenstra, Romalis, and Schott, 2002). On the other side, the tariff schedule applied for the U.S. imported items to Thailand are based on tariff rates provided by AFTA by applying to the unit price data collected from Feenstra, Romalis, and Schott (2002).¹¹ The results are tabulated in the Table 3.1.

Table 3.1: Effective Tariff Rate, U.S.–Thailand Bilateral Trade 2001

Description	# of products in HTS10	Customs value (\$1,000,000)	Calculated duty (\$1,000,000)	Effective tariff rate (%)
1. U.S. imports from Thailand	5,593	14,729	514	3.49
2. Applying U.S.– Singapore FTA framework 2b schedule				
- Stage A	3,023	5,075	397	7.81
- All other stages	2,244	8,207	96	1.17
3. After apply 2b schedule	5,593	14,729	21	0.14
4. U.S. exports to Thailand	4,318	5,716	463	8.39
5. Applying AFTA CEPT				
- Product under CEPT	2,845	3,496	226	6.47
- After apply CEPT	4,318	5,716	237	4.14

Source: Trade data from NBER; Tariff rates from USS FTA, U.S.-ASEAN Business Council, and Thailand's Customs Department; Calculated by TDRI.

From Table 3.1, there are two main conclusions that we can draw. First, the U.S.-Singapore FTA 2b schedule covers most of the items that the U.S. currently imports from Thailand. Products in the Stage A, whereby zero tariff apply immediately, contain 3,023 items or 54 percent, and products in the All other Stages cover 5,267 items (3,023 + 2,244) or 94 percent of total items imported. In contrast, the CEPT covers 2,845 items or 66 percent of items that Thailand imports from the U.S. Second, the margin of preference is relatively high, about 7.81 percent, in products covered by the 2b schedule of stage A. It means the bilateral FTA between Thailand and U.S. is expected to generate a high and immediate impact on a number of covered items. Eventually, the effective rate is only 0.14 percent. Comparing to the CEPT scheme, the immediate impact is found to be lower, 6.47 percent, and the final rate is found to be higher, 4.14 percent, but those generate a wider margin of preference, 4.25 percent (8.39–4.14) than those of 2b schedule, 3.35 percent (3.49–0.14).

Since the most likely benefit should fall to competitive products, one may want to know how these products get boosted from the tariff reduction. The same analysis is done on the selected products that have RCA greater than one and increasing over recent periods. The results are in the Table 3.2 below:

¹¹Note that this is just a rough estimation as the actual collected duties and customs value are not available in disaggregated.

Table 3.2: Effective Tariff Rate, U.S. – Thailand Bilateral Trade 2001 of Products with RCA Greater than one and Increasing

Description	# of products in HTS10	Customs value (\$1,000,000)	Calculated duty (\$1,000,000)	Effective tariff rate (%)
1. U.S. imports from Thailand	1,211	4,782	213	4.46
2. Applying U.S.– Singapore FTA framework 2b schedule				
- Stage A	671	2,017	170	8.41
- All other stages	488	2,369	27	1.12
3. After apply 2b schedule	1,211	4,782	17	0.36
4. U.S. exports to Thailand	1,418	1,567	189	12.05
5. Applying AFTA CEPT				
- Product under CEPT	955	1,014	96	9.51
- After apply CEPT	1,418	1,567	92	5.89

Source: Trade data from NBER; Tariff rates from U.S.-Singapore FTA, U.S.-ASEAN Business Council, and Thailand's Customs Department; Calculated by TDRI.

Table 3.2 reveals that both schedules cover the so-called competitive products by the same range. It is 1,157 items for 2b schedule or 20 percent of total imported items, and 955 items for CEPT schedule or 22 percent of the total. Because all margin of preference are higher than those in Table 3.1, the expected impacts would be even stronger for competitive products.¹² Therefore, tariff reductions would be expected to help increase the advantage of Thai goods in the U.S. market and vice versa. The effect on the end selling price depends on how the tariff reduction is going to pass-through to the domestic price level of both countries. A price reduction, if happens, is believed to affect a number of third party producers as well as domestic producers in Thailand and U.S. This is discussed in the next section.

3.4 Losers?

Given that products covered in Table 3.2 are competitive, they are likely to be in even better positions as a result of the tariff reduction. Therefore, they may have some impacts on domestic producers. Table 3.3 looks in more detail at the products in Table 3.2 that are likely to get tariff reductions, item 2 and 5. There are some evidences that Thai agriculture products might compete squarely with imported products. As it turns out in Table 3.3, the current trade volume is rather low in "ISIC 111–130: Agriculture, Forestry, and Fishing". Moreover, margins of preference (not shown) are about 0.5 percent, 0.2 percent, and 0.0 percent respectively. Even for the item with high trade volume, those in "ISIC 311-2 Food Manufacturing", the effective tariff rate is about 0.9 percent. Therefore, the tariff reduction as a result of the FTA may not change the trade volume much if the margins of preference are very low.

¹² There is one point worth mentioning. A negotiation may take time from the fact that the CEPT scheme is not able to bring the tariff down close to what the 2b schedule rate does. However, if margin of preference were considered, the CEPT tariff would do the job.

Table 3.3: Imports in 2001 of Competitive Products Appearing in U.S.-Singapore FTA 2b Schedule and Thailand CEPT (\$ million)

ISIC	Description	U.S. imports from Thailand under USS FTA 2b schedule	U.S. exports to Thailand under AFTA CEPT
111	Agriculture and livestock production	24	10
121	Forestry	0	7
130	Fishing	23	1
290	Other Mining	0	4
311-2	Food manufacturing	774	90
321	Manufacture of textiles	154	7
322	Manufacture of wearing apparel, except footwear	814	0
323	Manufacture of leather and products of leather,	197	1
324	Manufacture of footwear, except vulcanized	143	0
331	Manufacture of wood and wood and cork products, except furniture	3	14
332	Manufacture of furniture and fixtures, except primarily of metal	157	1
341	Manufacture of paper and paper products	4	20
342	Printing, publishing and allied industries	7	8
351	Manufacture of industrial chemicals	124	101
352	Manufacture of other chemical products	19	47
354	Manufacture of miscellaneous products of petroleum and coal	0	14
355	Manufacture of rubber products	52	0
356	Manufacture of plastic products not elsewhere classified	8	24
361	Manufacture of pottery, china and earthenware	81	0
362	Manufacture of glass and glass products	6	124
369	Manufacture of other non-metallic mineral products	213	1
371	Iron and steel basic industries	16	1
372	Non-ferrous metal basic industries	14	41
381	Manufacture of fabricated metal products	10	22
382	Manufacture of machinery except electrical	459	262
383	Manufacture of electrical machinery apparatus	849	129
384	Manufacture of transport equipment	9	8
385	Manufacture of professional and scientific	75	69
390	Other manufacturing industries	150	7
TOTAL		4,386	1,014

Source: Trade data from NBER; Tariff rates from USS FTA, U.S.-ASEAN Business Council, and Thailand's Customs Department; Calculated by TDRI.

On the other hand, items in "ISIC 382 Manufacture of machinery except electrical" have the highest trade volume. Of the total in ISIC 382, about 19 percent of those items are located in "ISIC 3821 Manufacture of engines and turbines", 30 percent in "ISIC 3824 Manufacture of special industrial machinery and equipment except metal and wood working machinery", and 46 percent in "ISIC 3829 Machinery and equipment except electrical not elsewhere classified". Nevertheless, these products seem to have few, if any, local Thai producers. In addition, there are some items that U.S. has been importing from Thailand under the ISIC 382 with different categories. Those are, for example, items in "ISIC 3825 Manufacture of office, computing and accounting machinery" counted about 95 percent of the Thailand imports under the ISIC 385 items.

In conclusion, those Thailand's 1,157 items locating in the 2b schedule, which have the RCA index greater than one and increasing over recent periods, should have slight effects on the U.S. domestic producers. At the same time, Thai domestic producers should

not be too much affected by those of 955 U.S. products in the CEPT scheme that also have the RCA greater than one and increasing

3.5 Conclusion

With respect to trade in goods, an FTA between the U.S. and Thailand should be expected to generate gains, more than losses to both countries. Like other general North-South trading, U.S. and Thailand have trade structures complementary to each other. The benefits of the FTA will be generated from reductions in tariff and other barriers to trade, especially for items that are already fairly competitive in the world market. From the Thai perspective, the bilateral Thailand-U.S. FTA should produce some positive net benefits to Thailand as it struggles to revive its share in its most important export market.

Chapter 4

Macroeconomic Impacts for Thailand from Reduced Barriers to Trade

The main objective of this chapter is to examine, and quantify where possible, the macroeconomic impacts of the Thailand-U.S. FTA. By nature, the macroeconomic impacts of a FTA tend to be widespread, and more complicated than a typical single economy impact analysis. One of the best candidate tools to analyze the FTA impacts is the multi-country computable general equilibrium model GTAP (Global Trade Analysis Project) world model (see Hertel, 1997). The GTAP model is based on several computable general equilibrium models (CGE) built for each country under the study, with added links between countries, which can be altered with the commences of an FTA.

Recently, the Institute of International Economics (IIE) has released a study of the impacts of U.S.-ASEAN FTAs (De Rosa, 2003). The De Rosa study not only uses the GTAP model to study the economic impacts of the FTAs, but also compares the results with the econometric estimates of bilateral trade flows using the concept of gravity models of trade. Although the two models produce stark differences in terms of the magnitude of trade creation from the FTAs, they confirm that in most cases the FTAs would benefit all the countries involved.

In this study, we construct a single-country CGE model for Thailand and evaluate the macroeconomic impacts on Thai economy if the Thailand-U.S. FTA is adopted in the proposed context. The main purpose is to compare our result with De Rosa's study.

We will briefly review the results of the De Rosa's gravity model and then compare the results the De Rosa's GTAP and our TDRI CGE model.

4.1 Results from the Gravity Model

The key important feature of the gravity model in De Rosa (2003) is its ability to study the removal of both tariff and non-tariff barriers (NTBs) between the United States and the ASEAN countries. However, the weakness of this model, as pointed out by De Rosa (2003), is its inability to account for trade diversions that are usually consequential to the FTAs, and which would offset the benefit of trade creation. Hence, the impact of FTAs under the gravity model should be used as upper bound estimates of the true impacts.

According to the gravity model, the prospective Thailand-U.S. FTA would increase trade volume between Thailand and the United States by 118 percent in both ways (see Table 4.1). So, in terms of trade creation, both Thailand's exporter and U.S.'s exporter will benefit equally. The benefits to Thai exporters would be greater if the United States achieves FTAs with every ASEAN countries simultaneously, since the intra-ASEAN trades will also increase, by exactly the same 118 percentage point.

While the gravity model may predict the upper bound estimates of trade increases among the counterparts of the FTAs, it fails to measure the net impact on economic growth. Since imports would expand as a result of FTAs, the domestic producers of importable goods are facing more competition from abroad and will reduce their production scale, or leave the businesses. This will have negative impacts on economic growth, and will offset

the positive impact of increase exports. To evaluate more accurately on the economic welfare of FTAs, a computable general equilibrium model should be employed.

4.2 Results from the GTAP and TDRI CGE model

The GTAP model is a publicly available CGE model of world trade and production. It comprises 66 countries and regions and 57 commodity groups, uses 1997 data. Notably, the model assumes that producers in each country produce and export products that are differentiated from similar goods produced in other countries (Armington assumption). The basic model does not incorporate dynamic effects, economies of scale, or imperfect competitive conditions, including the real exchange rate necessary to maintain balance of payments equilibrium for each country in the model.

For the application to the U.S.-ASEAN FTAs, De Rosa (2003) assumes that, for each trade agreement simulations, tariffs on bilateral trade between the United States and the trade partners were reduced to zero. Non-tariff barriers are calculated their tariff-equivalence and then also reduced to zero. However, the GTAP model cannot be used to study the impacts of liberalization of trade in services, border measures and domestic policy restricting international trade in services. Hence, these measures are not modeled.

The CGE model developed by TDRI for this study is a single-country CGE. By construction, it is less appropriate than the GTAP model in studying the macroeconomic impact of Thailand-U.S. FTA, since it does not contain the U.S. economy. However, since the TDRI CGE model is constructed based on more recent (2000) and perhaps more accurate data, it can serve the purpose of cross checking the results with the GTAP model.

The TDRI CGE model consists of 79 commodities (goods and services). The international trade block of the model is separated into the imports from and exports to the United States and the rest of the world. Free trade agreement means the tariff rates on all imports from the U.S. set to zero. On the export side, the TDRI CGE model is calibrated until the export growth to the U.S. matches the same percentage growth obtained with the GTAP model. No NTBs are treated in this model.

Table 4.1 compares the results from the gravity model, the GTAP and the TDRI CGE model.

In general, the impacts on trade of the CGE model (the GTAP and the TDRI CGE model) are much more modest in comparison with the gravity model results. This confirms that the gravity model results should be taken as upper bounds. However, there are also some differences between the results from the GTAP and the TDRI CGE model, in spite of the fact that the TDRI CGE model assumes the same percentage growth of total Thai exports (3.46%) as the GTAP model. A key difference is in the impacts on Thailand's imports from the United States. The GTAP model suggests a 4.68 percentage increase in Thailand's imports, while the same number from TDRI CGE model is merely 1.82 percents. This is possibly due to the fact that the TDRI CGE model does not attempt to quantify, and reduce to zero, the NTBs exercised in Thailand. With less-than-full-fledged trade liberalization in the TDRI CGE model, some Thai domestic producers can still enjoy the protection from those NTBs.

Table 4.1 Economic Impacts on Thai Economy of the Thailand-U.S. FTA

(% Change)	Gravity Model ¹		GTAP Model ¹		TDRI CGE ²
	Bilateral FTA	FTA+Intra ASEAN ³	Bilateral	UTL ⁴	
Export			3.46	9.7	3.46
Export to U.S.	118	118			5.41
Export to ASEAN-4 ⁵	0	118			
Export to ROW					2.91
Import			4.68	15.63	1.82
Import from U.S.	118	118			4.99
Import from ASEAN-4 ⁵	0	118			
Import from ROW					1.37
Real GDP					1.34
Agriculture					2.25
Industry					1.70
Services					0.85
Nominal GDP			0.72	-5.34	2.71
Tariff Revenue (\$Mill change)			1,531	-7,918	-226

Source: 1 Summarized from De Rosa (2003), "U.S. Free Trade Agreements with ASEAN," Institute for International Economics, (Draft) April 14, 2003.

2 Simulation results of TDRI CGE Model

Note: 3 Intra-ASEAN means forming a U.S.-ASEAN free trade agreements where trade within the ASEAN are also free.

4 UTL denotes unilateral trade liberalization on a nondiscriminatory basis.

5 ASEAN-4 includes Indonesia, Malaysia, Philippines and Singapore.

Because imports are leakage from the economy, the smaller increase of Thailand's imports in the TDRI CGE model is thus responsible for the greater economic welfare, measured here in term of economic growth alone, to Thailand under the TDRI CGE model. Specifically, the nominal economic growth for Thailand is 0.72% and 2.71% under the two models. The TDRI CGE model also calculates the impacts on the real economic growth and its components. The overall economic growth in real term is 1.34%. The agricultural sector clearly benefit more than proportionately (2.25%), followed by the industry and the service sectors (1.70% and 0.85%). The real economic growth is lower than the nominal economic growth in spite of the lowering of import tariffs, is most likely due to the increased export demand (3.46%), which pushes up the general price.

The GTAP model produces an interesting result under the assumptions of the unilateral trade liberalization. With this assumption Thailand stands to lose, the nominal economic growth reduced by as much as 5.34 percent. According to De Rosa (2003), this is because of the negative term of trade effect.

The other difference between the GTAP and the TDRI CGE model is the impacts of the Thailand-U.S. FTA on the tariff revenue of Thai government; the former model predicts a gain of \$1,531 million in 1997 value and the latter predicts a loss of \$226 million in 2000 value. The revenue loss under the TDRI CGE model arise from its prediction that increase in Thailand's imports are mostly from the United States, for which the tariff rates are set to zero. The De Rosa report does not disaggregate Thailand's imports by origin, but it is

presumed here that the Thai government may raise its tariff revenue from imports from the other parts of the world.

One of the main issues of free trade agreements is how they affects the well being of the residents of the trade partners. When restricted to the economic consideration, one could look at the FTA impacts on returns to factor of production. Table 4.2 shows the impacts of Thailand-U.S. FTA on the returns to four types of production inputs in Thailand. Under the GTAP model, the bilateral FTA raise returns on all inputs except the natural resources. Land return increase by the most, 0.21% from its base value before the FTA. Only returns to labor input is available from the TDRI CGE model (the return to capitals are fixed exogenously and land and natural resources are not modeled explicitly). The labor return in TDRI CGE model is considerably higher than in the GTAP model, due mainly to the higher economic growth, and the fact that capital returns are not changed.

Table 4.2 Factor Return Impacts for Thailand of Thailand-U.S. FTA

(% Change)	GTAP Model ¹		TDRI CGE ²
	Bilateral	UTL	
Land	0.21	-2.56	
Capital	0.02	0.24	
Labor			2.89
Unskilled Labor	0.02	0.23	
Skilled Labor	0.03	0.30	
Natural resources	-0.17	2.43	

Source: 1 Summarized from De Rosa, Dean A. (2003), "U.S. Free Trade Agreements with ASEAN," Institute for International Economics, (Draft) April 14, 2003.
2 Simulation results of TDRI CGE Model.

In summary, the TDRI CGE model does not contradict with the results given in by the GTAP bilateral FTA study. However, the models reviewed so far share one common shortcoming; the results are largely comparative static comparison of the situations before and after the FTA takes place. There is no explicit time dimension to these results, namely, how long it would take for the impacts to be fully realized. In general, one would expect the full impacts when all the adjustments needed toward the changed environment (lower tariff rates and abolishment of NTBs) are completed. Adjustment to the new tariff rates should not take too long, as most businesses are already constantly altering their sales following price changes. On the other hand, reduction or abolishment of non-tariff measures, depending on the nature of the measures in question, can take variable timeframe to reach full impacts.

4.3 General Discussion

Choosing the Results from Different Models

Except for the case of unilateral trade liberalization where the negative term of trade effect is strong, all the studies presented in this chapter reveal that Thailand would gain from the Thailand-U.S. FTA as far as the macroeconomic improvement is concerned.

However, the positive impacts exhibit a wide range of possibility, depending on both the modeling technique and, perhaps more importantly, the underlying assumptions.

If the Thailand-U.S. FTA takes the form similar to the U.S.-Singapore FTA, the GTAP bilateral model seems to produce the most plausible results on the gain from the FTA. The model is by construction capable of incorporating both the trade creation and trade diversion resulting from the FTA. Moreover, the GTAP bilateral model also reduces the non-tariff barriers.

The results from the TDRI CGE model can be used as an alternative outcome if the negotiation between Thailand and the United States leads to a free trade agreement that allows protection on some of the sensitive products or sensitive areas on Thailand side. If that is the case, then Thailand would stand to gain more from the FTA in comparison with the results from the GTAP bilateral model. Of course, if the United States also demands maintaining some of the restriction in return for the remaining protection of Thai imports, then the gain for Thailand under the TDRI CGE model would be reduced (along with the exports to the United States).

Long-term Economic Impacts of the FTA

Notice that, except for the gravity model, the impacts of the Thailand-U.S. FTA are not very great. Even with the TDRI CGE model the real economic expansion following the FTA is merely 1.34 percent. If the impacts take three years to fully realize, the additional growth rate from the FTA is less than half a percentage point annually. There seems to be no cause then for rushing the negotiation process.

However, perhaps the more important impacts of the FTA are its influence on the long-term economic performance of the counterparts. Each FTA comes with greater competition and more open economy, the benefits of which are often better measured in a dynamic rather than static study. Positive dynamic effects include the economy of scale, contestable markets, and productivity enhancement arising from the adoption of new technology and stimulation of innovations.

The long-term impacts of the FTA may also be realized through direct investments. Export-originated foreign investment may potentially further increase economic growth. Modernization of the services economy and diffusion of higher levels of technology, know-how, and labor and management skills are essential for Thai economy to move ahead and escape the demise of competition from lower-wage emerging market countries such as China, Vietnam and Laos.

Of course, the long-term benefits can be realized only if the transition is smooth and acceptable to most parties involved. Several issues in the sensitive areas must be dealt with carefully. Moreover, there are some elements in the U.S.-Singapore FTA template that may not be best of the interest of Thai people. These are the subjects of the subsequent chapters of this report. As is often said, a freer trade is desirable only if when accompanied by a fairer trade.

Chapter 5

Thailand-U.S. FTA on Agricultural Products

5.1 Introduction

The failure of the Cancun Ministerial Conference, once again, indicates how difficult it is for the multilateral negotiations to reach any preliminary agreements on agriculture--one of the most sensitive sectors in trade negotiation. Although many trade experts believe that, sooner or later, some kind of agreement on agriculture will be reached, the delay would have some negative impacts on the world agricultural trade and the economic welfare of farmers in many developing countries.

The inclusion of agricultural liberalization in the Thailand-U.S. FTA will be a small step in promoting freer trade in agriculture. However, its impacts may not be small, given the fact that both countries are two of the world major food exporters, with the U.S. having huge comparative advantage in temperate agriculture, and Thailand having comparative advantage in tropical products. Yet, trade between the two parties have been restricted by both tariffs and non-tariff measures (NTMs).

The objectives of this chapter are threefold. First, it will identify trade barriers and issues raised by both countries. Secondly, it attempts to quantify the economic gains from the prospective FTA. Finally, the chapter will draw some implications about necessary trade and domestic policy reforms for the Thai government, and identify the key issues of negotiation for the Thai trade negotiators.

Section 5.2 is a discussion of the importance of agricultural trade between Thailand and the U.S. Trade barriers, which include tariffs, non-tariff barriers and other administrative protection measures, are identified in Section 5.3. The economic impacts of the elimination of agricultural tariffs and NTMs are analyzed in Section 5.4. Finally, policy implications and key issues for the Thai trade negotiators are discussed.

5.2 The Importance of Agricultural Trade between Thailand and the U.S.

Thailand and the U.S. are important trading partners in agricultural products. The U.S. has been the second largest market for Thai agricultural exports and the largest supplier of Thailand's agricultural imports (Figure 5.1). At the same time, the U.S. is the largest suppliers of agricultural products for Thailand, accounting for 14-15 percent of Thai imports of agricultural products. However, Thailand is not the major market for the U.S. agricultural exports, accounting for less than one percent of the U.S. exports. Thailand is the 22nd largest market for the U.S. agriculture. But Thailand is the fourth largest supplier of the U.S. agricultural imports (Figure 5.2).

Figure 5.1 Percentage Share of Agricultural Product Export and Import of Thailand in 1998 and 2002

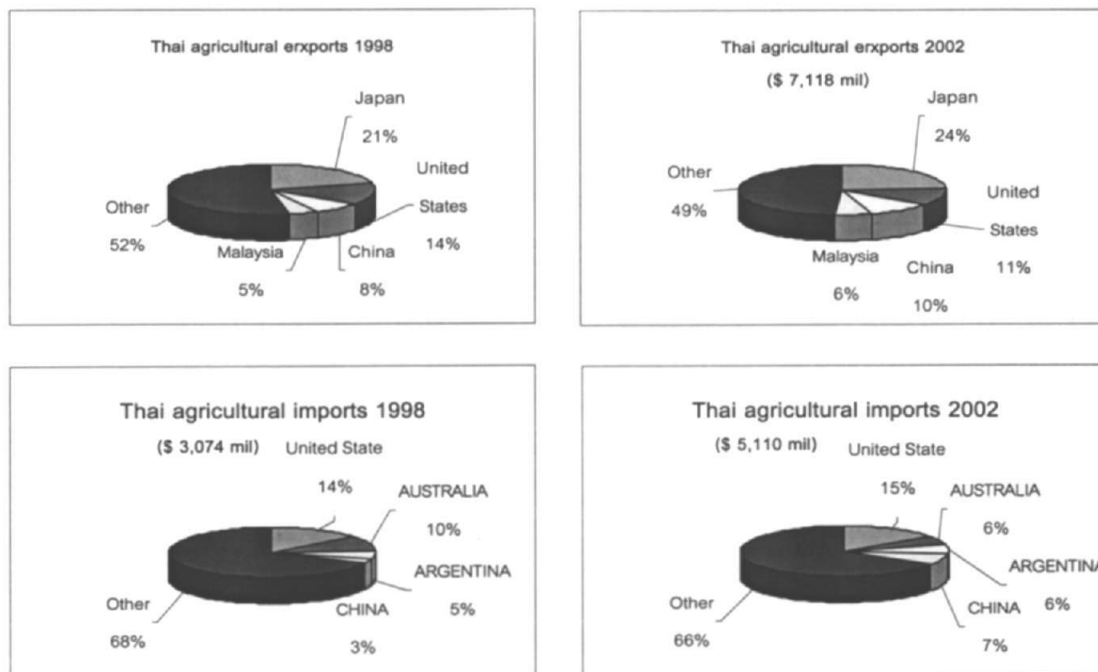
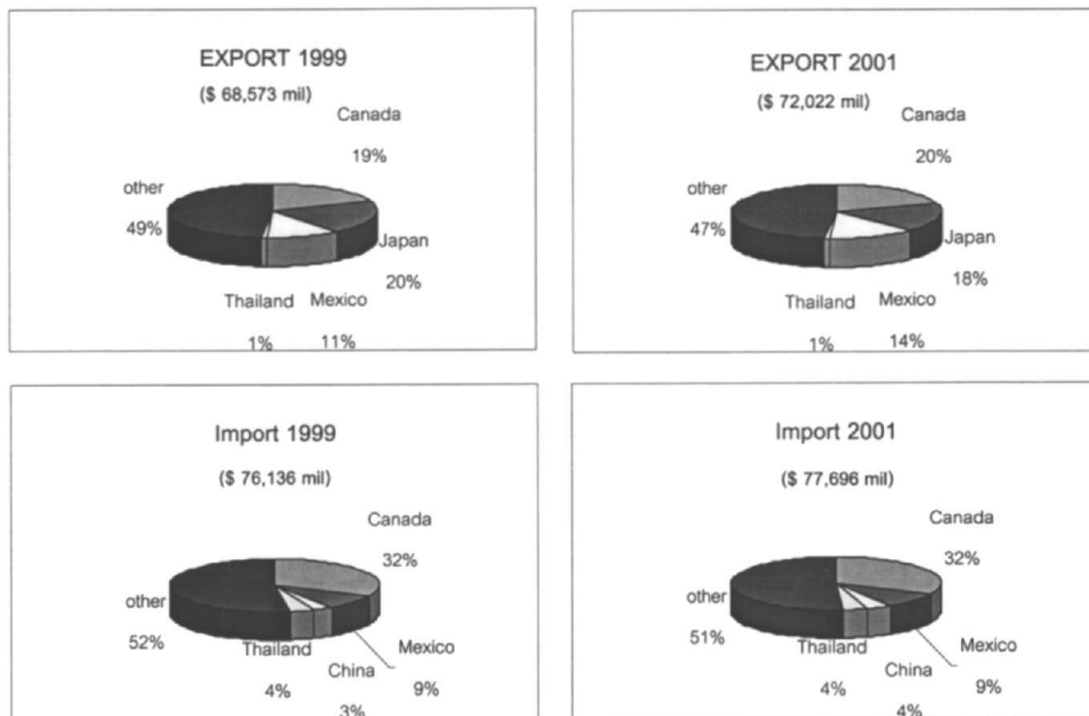


Figure 5.2 Percentage Share of Agricultural Product Export and Import of the U.S. in 1999 and 2001



The analysis of trade pattern also reveals that Thailand is dependent upon trade with the U.S. than the other way round. Table 5.1 indicates that the share of Thai agricultural imports from the U.S. is about 14-15 % while the share of Thai exports to the U.S. is slightly lower, i.e., 12-17%. However, the share of U.S. export to Thailand is very small (about 0.6-0.8%) comparing to the share of U.S. import from Thailand (3.7-4%).

Table 5.1 Value and Percentage Share of Agricultural Exports and Imports, 1998-2002

Rank	Country Destination	Percentage Share of Thai Agriculture export					Growth rate	Rank	Country Origin	Percentage Share of Thai Agriculture import					Growth rate
		1998	1999	2000	2001	2002				1998	1999	2000	2001	2002	
		1	Japan	21.01	22.18	21.93				22.19	24.19	2.90	1	United State	
2	United States	13.91	13.29	16.68	14.42	11.44	-3.02	2	AUSTRALIA	10.14	9.79	9.47	10.08	6.16	10.37
3	China	7.66	6.32	7.75	8.13	9.66	7.26	3	ARGENTINA	4.61	5.47	5.94	8.82	6.08	31.20
4	Malaysia	4.54	4.07	4.74	5.29	5.77	7.51	4	CHINA	3.47	6.09	8.61	6.43	7.24	32.86
5	Hong Kong	4.42	5.04	5.13	4.9	4.38	-0.36	5	INDONESIA	6.09	4.81	4.42	4.54	5.64	1.21
6	Singapore	4.88	4.7	4.58	3.57	3.16	-11.35	6	TAIWAN	4.99	3.97	3.16	4.43	3.42	5.01
7	Sour Korea	1.93	2.18	2.63	3.1	3.14	13.41	7	NEW ZEALAND	4.47	3.76	3.58	3.81	2.71	5.59
8	Tiwan	3	3.31	3.03	3.01	3.09	-0.24	8	INDIA	5.29	3.61	4.47	3.79	2.46	3.07
9	Nigeria	2.08	2.57	2.16	3.72	2.72	9.15	9	JAPAN	5.60	4.23	3.55	3.35	7.75	-6.30
10	Netherland	4.44	5.52	4.19	4.31	2.71	-12.22	10	UNITED Kingdom	2.04	2.82	3.11	2.61	2.67	19.26
11	Other	32.14	30.82	27.18	27.35	29.72	-2.68	11	Other	38.96	41.03	38.47	37.66	40.91	18.64
Total Export Value		7,111	7,012	7,337	7,056	7,118	0.08	Total Import Value		3,074	3,139	3,491	3,862	5,110	10.87

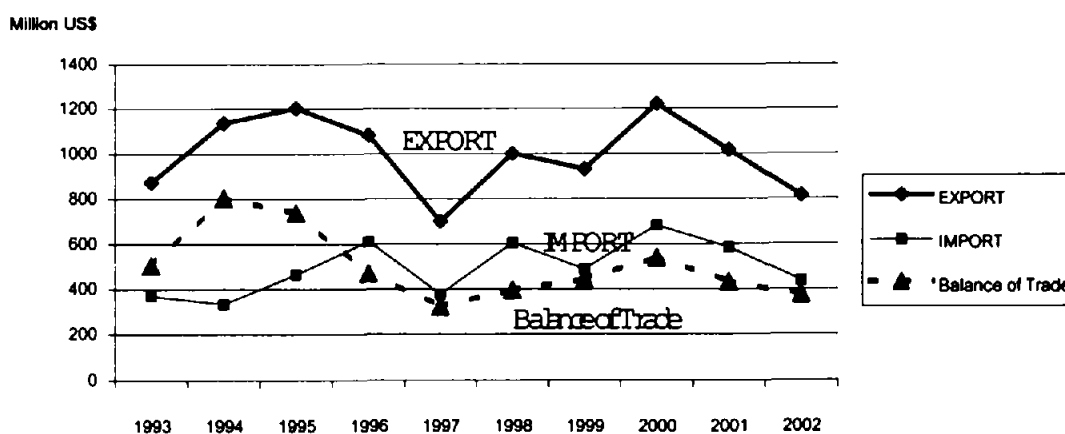
Source: Ministry of Commerce.

While Thailand has become a more important U.S. trading partner, the U.S. has become less important for Thailand. The U.S. agricultural exports to Thailand, experienced very high growth in the 1999–2001, resulting in an increased share of U.S. total agricultural exports. Despite the low growth rate of U.S. agricultural imports from Thailand in the same period, its share in the U.S. total agricultural imports still increased albeit slightly (see Table 5.2). However, the value of Thai exports to the U.S. declined by 3 percent per year during 1998 and 2002. The share of export to the U.S. in Thailand's total agricultural exports and the import from the U.S. as the share of total Thai imports also declined slightly in the 1998–2002 period. This implies that Thailand has been diversifying its agricultural exports and imports away from the U.S. market.

Despite the slightly increased share of Thai products in the U.S. agricultural imports, Thailand has not been able to maintain the share in its major exports in the U.S. market, particularly in the seafood, shrimp, rice, fruit and vegetable markets (see Table 5.3a). The notable exception is rubber. Most of the U.S. major exports to Thailand have also experienced the smaller share in Thai market, except cotton (Table 5.3b).

Total value of Thai agricultural trade between Thailand and the U.S. has shown a fluctuating pattern with no clear positive trend (Figure 5.3). While Thai exports to the U.S. increased in the 1998–2000 period, they suffered a decline after year 2000, reflecting the decline in the world agricultural prices. The same pattern of imports from the U.S. is also confirmed in Figure 2.3. Among the top 30 exports at 6-digit HS code, half experienced higher value and the other half declined (Table 5.4). For the top 30 imports of Thailand, 19 products enjoyed increased value (Table 5.5).

Figure 5.3 Export, Import and Balance of Trade between Thailand and the U.S.



Source: Department of Trade Negotiation Year

Table S.2 Value and Percentage of U.S.A. Agricultural Products Export and Import by Majors Countries of Ddestination, 1999-2001

Rank	Country	% Share of U.S.A. agricultural product export		Growth rate	Rank	Country	% Share of U.S.A. agricultural product import		Growth rate
		1999	2000				1999	2000	
1	Canada	19.42	19.49	19.67	1	Canada	31.81	30.87	31.97
2	Japan	20.1	19.87	17.72	2	Mexico	8.91	9.13	9.19
3	Mexico	11.44	12.72	13.7	3	China	3.17	3.62	3.88
4	Korea, South	3.71	3.56	3.66	4	Thailand	3.7	4.11	3.8
5	Taiwan	2.93	2.86	2.79	5	France	3.44	3.25	3.16
6	China	1.37	2.48	2.64	6	Italy	2.6	2.78	2.75
7	Netherlands	2.58	2.31	2.16	7	Brazil	3.08	2.68	2.57
8	United Kingdom	2.32	2.14	2.16	8	Chile	2.28	2.49	2.57
9	Germany	2.09	2.03	2.1	9	Japan	3.01	2.96	2.51
10	Hong Kong	2.07	2.03	1.88	10	Australia	1.77	2.09	2.35
22	Thailand	0.63	0.73	0.81	11	Indonesia	2.64	2.53	2.25
	other	31.29	29.73	30.6		other	33.59	33.49	33.00
Total Export Value (Millions US\$)		100.00	100.00	100.00	2.45	Total import (Millions US\$)	100.00	100.00	100.00
									1.01

Source : World Trade Atlas, 2001

Table 5.3a Export and Import Value and Percentage Share of Agricultural Products between U.S.A. and Thailand, 1999-2001

HS2	Commodity	U.S.A. exports to Thailand		% share of U.S.A. exported product		Growth rate (%)		U.S.A. imports from Thailand		% share of U.S.A. imported product		Growth rate (%)			
		1999	2000	2001	1999	2000	2001	1999	2000	2001	1999		2000	2001	
1	Live animals	4,030,077	4,536,355	4,536,355	5.92	0.61	0.52	0.51	30,360	112,848	112,848	65.65	0.00	0.01	0.00
2	Meat and edible meat offal	2,313,049	2,500,570	2,500,570	3.90	0.04	0.04	0.04	-	-	-	-	-	-	-
3	Fish, crustaceans, molluscs, aquatic invertebrates nes	5,526,152	22,987,608	22,987,608	71.27	0.86	0.86	0.81	855,634,688	896,894,976	896,894,976	2.35	11.13	10.44	10.77
4	Dairy products, eggs, honey, edible animal product nes	11,323,390	9,980,842	9,980,842	-6.31	1.69	1.23	1.20	1,073,777	2,168,445	2,168,445	35.14	0.10	0.19	0.18
5	Products of animal origin, nes	2,794,455	4,862,018	4,862,018	27.69	0.77	1.11	0.83	26,618,960	25,065,788	25,065,788	-3.01	5.40	4.34	4.56
6	Live trees, plants, bulbs, roots, cut flowers, etc	18,331	3,726	3,726	-79.66	0.01	0.00	0.00	6,198,950	10,228,838	10,228,838	25.04	0.48	0.75	0.76
7	Edible vegetables and certain roots and tubers	870,672	1,169,007	1,169,007	14.73	0.05	0.06	0.06	3,716,622	5,938,147	5,938,147	23.43	0.13	0.20	0.18
8	Edible fruit, nuts, peel of citrus fruit, melons	10,470,336	11,378,943	11,378,943	4.16	0.29	0.29	0.28	23,577,652	23,224,352	23,224,352	-0.75	0.50	0.49	0.50
9	Coffee, tea, mate and spices	1,078,880	953,993	953,993	-6.15	0.26	0.24	0.26	18,199,218	18,875,544	18,875,544	1.82	0.52	0.56	0.82
10	Cereals	44,978,376	57,692,300	57,692,300	12.45	0.44	0.59	0.60	139,157,344	129,871,552	129,871,552	-3.45	14.56	14.49	13.25
11	Milling products, malt, starches, inulin, wheat gluten	2,482,981	2,520,684	2,520,684	0.75	0.48	0.55	0.50	13,701,131	9,151,753	9,151,753	-20.18	4.72	2.70	2.77
12	Oil seed, oleagic fruits, grain, seed, fruit, etc, nes	138,701,472	131,461,872	131,461,872	-2.68	2.31	1.92	1.91	13,665,851	7,060,835	7,060,835	-33.02	1.55	0.78	0.88
13	Lac, gums, resins, vegetable saps and extracts nes	4,487,359	8,598,511	8,598,511	32.52	2.02	3.37	2.93	5,016,340	5,818,240	5,818,240	7.41	0.89	1.14	1.13
14	Vegetable plaiting materials, vegetable products nes	52,167	121,494	121,494	42.27	0.18	0.33	0.54	1,007,050	775,551	775,551	-13.06	1.80	1.29	1.03
15	Animal, vegetable fats and oils, cleavage products, etc	2,452,651	1,615,630	1,615,630	-20.87	0.12	0.11	0.11	722,029	753,546	753,546	2.14	0.05	0.05	0.06
16	Meat, fish and seafood food preparations nes	3,104,005	11,947,430	11,947,430	67.39	0.40	1.51	1.27	757,352,640	777,763,968	777,763,968	1.33	35.00	34.04	32.12
17	Sugars and sugar confectionery	6,743,871	4,631,240	4,631,240	-18.79	1.08	0.68	0.64	15,777,500	33,515,920	33,515,920	37.67	0.98	2.10	2.03
18	Cocoa and cocoa preparations	657,596	973,503	973,503	19.62	0.13	0.17	0.13	4,175,960	2,973,894	2,973,894	-16.97	0.26	0.20	0.18
19	Cereal, flour, starch, milk preparations and products	1,353,505	4,070,703	4,070,703	55.06	0.10	0.29	0.27	28,520,100	36,836,192	36,836,192	12.79	1.62	1.96	1.81
20	Vegetable, fruit, nut, etc food preparations	13,448,848	15,486,342	15,486,342	7.05	0.60	0.70	0.74	228,181,024	175,597,808	175,597,808	-13.10	7.78	5.96	6.05
21	Miscellaneous edible preparations	11,313,946	12,812,321	12,812,321	6.22	0.44	0.50	0.46	49,056,508	66,504,808	66,504,808	15.22	3.85	5.09	4.45
22	Beverages, spirits and vinegar	3,195,436	2,527,326	2,527,326	-11.73	0.19	0.15	0.14	15,472,742	18,795,740	18,795,740	9.73	0.19	0.21	0.20
23	Residues, wastes of food industry, animal fodder	72,509,976	94,572,360	94,572,360	13.28	2.20	2.56	2.30	21,851,454	24,147,122	24,147,122	4.99	3.54	3.66	3.80
24	Tobacco and manufactured tobacco substitutes	23,726,148	23,100,732	23,100,732	-1.34	0.46	0.44	0.57	19,158,766	26,980,268	26,980,268	17.12	1.53	2.31	2.09
40	Rubber and articles thereof	11,925,092	21,654,106	21,654,106	29.83	0.19	0.31	0.33	490,244,000	605,582,592	605,582,592	10.56	4.86	5.58	6.11
44	Wood and articles of wood, wood charcoal	25,241,604	25,164,140	25,164,140	-0.15	0.42	0.40	0.48	175,614,336	176,176,224	176,176,224	0.16	1.04	1.07	1.10
50	Silk	10,281	52,695	52,695	81.71	0.05	0.21	0.20	7,624,990	6,049,612	6,049,612	-11.57	2.73	1.98	2.47
52	Cotton	29,704,132	106,547,392	106,547,392	63.87	1.20	2.82	2.64	90,863,784	74,049,016	74,049,016	-10.23	4.20	3.34	3.91
		434,514,788	583,923,843	583,923,843	14.78	0.64	0.80	0.81	3,012,213,776	3,160,913,579	3,160,913,579	2.41	3.71	3.75	3.80

Source: United Nations, Statistic Division.

Table 5.3b Export and Import Value and Percentage Share of Agricultural Trade between Thailand and the U.S.A., 1999-2001

HS2	Commodity	Thai exports to U.S.A.			% share of Thai exported product			Growth rate (%)			Thai imports from U.S.A.			Growth rate (%)			% share of Thai imported product		
		1999	2000	2001	1999	2000	2001	1999	2000	2001	1999	2000	2001	1999	2000	2001	1999	2000	2001
		1	Live animals	109,323	21,982	21,982	0.09	0.07	0.09	-80.20	0.29	0.07	5,354,492	12,743	12,743	-302.04	14.11	0.07	0.06
2	Meat and edible meat offal	350,241	70,336	70,336	0.02	0.02	0.01	-80.27	0.08	0.02	1,401,425	675,283	675,283	-36.51	23.03	15.81	16.10		
3	Fish, crustaceans, molluscs, aquatic invertebrates nes	569,019,776	678,886,784	678,886,784	33.55	29.80	33.55	8.83	27.36	29.80	14,854,400	20,513,956	20,513,956	16.14	1.94	2.97	2.20		
4	Dairy products, eggs, honey, edible animal product nes	1,148,008	4,489,774	4,489,774	4.38	2.21	2.37	68.19	2.72	9.35	12,019,357	14,560,447	14,560,447	9.59	4.71	5.52	4.71		
5	Products of animal origin, nes	992,071	694,813	694,813	2.37	2.20	2.09	-17.81	3.42	2.21	7,608,410	29,495,244	29,495,244	67.75	33.75	81.84	63.08		
6	Live trees, plants, bulbs, roots, cut flowers etc	5,876,846	9,618,220	9,618,220	24.63	15.88	20.49	24.63	15.88	22.72	14,125	8,165	8,165	-27.40	0.54	0.46	0.42		
7	Edible vegetables and certain roots and tubers	6,114,155	6,658,612	6,658,612	4.27	2.20	1.75	4.27	1.37	2.20	1,061,804	675,680	675,680	-22.60	5.28	3.25	3.20		
8	Edible fruit, nuts, peel of citrus fruit, melons	12,570,403	10,825,960	10,825,960	7.47	4.23	5.28	-7.47	6.82	4.23	20,229,180	23,720,972	23,720,972	7.96	37.37	40.12	38.14		
9	Coffee, tea, mate and spices	15,816,253	9,858,317	9,858,317	22.67	14.80	22.67	-23.64	29.28	14.80	984,052	1,407,324	1,407,324	17.89	14.28	12.02	10.27		
10	Cereals	118,773,856	102,417,784	102,417,784	6.24	6.05	6.24	-7.41	6.05	6.23	60,328,908	58,196,568	58,196,568	-1.80	43.31	39.81	40.76		
11	Milling products, malt, starches, inulin, wheat gluten	12,481,383	10,081,285	10,081,285	5.26	4.81	5.26	-10.68	7.06	4.81	1,076,153	2,657,404	2,657,404	45.20	1.34	3.37	2.51		
12	Oil seed, oleagic fruits, grain, seed, fruit, etc, nes	12,532,843	5,310,503	5,310,503	11.28	11.28	11.42	-42.93	24.88	11.28	142,011,808	121,265,368	121,265,368	-7.90	59.08	35.88	37.23		
13	Lac, gums, resins, vegetable saps and extracts nes	4,820,421	2,502,210	2,502,210	16.49	11.19	13.60	-32.78	26.94	11.19	4,128,793	8,568,837	8,568,837	36.51	13.78	26.89	23.28		
14	Vegetable plating materials, vegetable products nes	569,476	749,378	749,378	0.62	0.88	0.62	13.73	12.81	16.49	1,314,655	262,516	262,516	-80.55	26.04	4.06	4.01		
15	Animal, vegetable fats and oils, cleavage products, etc	768,413	641,301	641,301	32.71	37.45	32.71	-9.04	1.04	0.88	2,389,582	2,066,538	2,066,538	-7.26	4.14	4.12	3.88		
16	Meat, fish and seafood food preparations nes	858,722,624	787,467,456	787,467,456	2.24	2.45	2.24	-4.33	37.45	32.72	117,336	716,654	716,654	90.48	1.27	2.92	3.33		
17	Sugars and sugar confectionery	10,756,893	17,855,196	17,855,196	18.89	20.42	19.35	25.34	1.76	2.45	1,852,880	2,226,469	2,226,469	9.18	12.06	12.16	10.04		
18	Cocoa and cocoa preparations	4,074,824	3,036,283	3,036,283	17.11	18.89	20.42	-14.71	18.89	20.42	1,562,230	2,314,611	2,314,611	19.66	5.19	6.91	7.32		
19	Cereal, flour, starch, milk preparations and products	13,005,480	18,311,000	18,311,000	10.04	10.74	10.04	17.11	8.13	10.74	3,267,342	3,175,827	3,175,827	-1.42	3.75	2.93	2.70		
20	Vegetable, fruit, nut, etc food preparations	192,540,224	189,947,232	189,947,232	29.20	30.21	29.20	-0.68	25.08	30.21	14,397,854	15,927,219	15,927,219	5.05	52.32	42.59	34.23		
21	Miscellaneous edible preparations	52,224,384	53,764,680	53,764,680	16.94	17.34	16.94	1.45	17.91	17.34	18,651,406	25,050,474	25,050,474	14.75	25.91	28.22	22.97		
22	Beverages, spirits and vinegar	5,461,292	5,462,159	5,462,159	4.02	4.53	4.02	0.01	4.74	4.53	2,064,875	3,128,924	3,128,924	20.78	2.47	2.91	2.92		
23	Residues, wastes of food industry, animal fodder	19,373,704	20,113,608	20,113,608	7.63	6.98	7.63	1.87	7.60	6.98	97,922,696	117,705,056	117,705,056	9.20	22.47	24.21	20.62		
24	Tobacco and manufactured tobacco substitutes	10,798,242	16,003,564	16,003,564	23.36	22.73	23.36	19.67	18.38	22.73	76,670,464	25,496,884	25,496,884	-55.05	67.72	21.01	22.67		
40	Rubber and articles thereof	398,806,880	500,452,896	500,452,896	20.31	19.17	20.31	11.35	19.33	19.17	37,727,260	42,086,720	42,086,720	5.47	9.32	8.50	8.34		
44	Wood and articles of wood, wood charcoal	142,356,464	141,020,112	141,020,112	24.56	23.70	24.56	-0.47	27.62	23.70	24,612,180	30,186,704	30,186,704	10.21	7.49	7.50	7.76		
50	Silk	7,259,870	6,334,500	6,334,500	25.14	20.85	25.14	-6.82	27.13	20.85	171,990	174,194	174,194	0.64	1.04	1.10	0.94		
52	Cotton	82,171,232	76,097,488	76,097,488	-	16.97	-	-9.52	21.54	16.97	38,710,812	104,682,568	104,682,568	49.74	6.08	13.75	14.23		
		2,559,497,580	2,670,518,257	2,602,597,946	18.96	19.27	18.96	0.83	19.40	19.27	592,508,468	656,961,350	656,961,350	5.16	14.87	14.74	13.49		

Source: United Nations, Statistic Division

Rank	HS6	Commodities	Export Value (Million US\$)				Tariff rates	
			1998	1999	2000	2001		2002
1	030623	Giant black tiger prawn, fresh or chilled	-	-	-	-	319.22	Free
2	400129	Block rubber	92.08	67.10	133.23	87.37	110.12	Free
3	100630	White non-glutinous of Thai Hom Mali rice 5-10%	-	-	-	7.39	64.12	1.4 c/kg.
4	400121	Rubber smoke sheets grade 3	48.14	45.96	45.52	34.90	46.72	Free
5	030623	Shrimp and prawn, other	502.30	518.50	731.50	612.90	36.72	Free
6	400121	Rubber smoke sheets grade 4	32.73	27.48	27.69	17.12	36.67	Free
7	100630	White non-glutinous rice 100%	120.50	108.78	113.70	85.92	25.82	1.4 c/kg.
8	030410	Fish Meat, fresh or chilled	17.78	23.22	23.53	22.22	17.26	Free
9	030629	Crustaceans, other	6.28	6.87	7.18	10.23	14.47	Free
10	030624	Crab, frozen or chilled	0.73	2.11	4.14	16.69	14.30	Free
11	240120	Tobacco, Burley type	12.74	10.01	14.99	14.96	13.97	\$5.48/kg.
12	400110	Rubber concentrated latex	32.94	17.24	14.17	15.52	13.88	Free
13	030741	Squid, fresh or chilled	6.34	7.76	8.90	7.84	12.02	Free
14	060310	Cut natural orchids	3.18	4.40	5.82	7.12	8.45	6.4%
15	100630	Glutinous rice 100%	9.62	7.25	6.93	6.31	6.86	1.4 c/kg.
16	030623	Giant freshwater prawn, fresh or chilled	-	-	-	-	6.16	Free
17	081190	Durian frozen	8.69	7.83	7.97	5.57	4.60	17%
18	030269	Fish, fresh or chilled	4.92	5.77	4.56	3.59	3.72	Free
19	110814	Manioc (cassava) strach	4.12	7.08	4.23	4.31	3.66	Free
20	130110	Seed Lac	3.24	4.29	6.39	1.74	3.02	Free
21	110620	Manioc (cassava) flour	4.04	1.85	2.21	2.15	2.78	Free
22	070310	Onions and shallots	0.01	0.03	0.39	1.80	2.35	1.3 c/kg.
23	081090	Other fruit, chilled fresh	0.20	1.12	1.62	1.50	2.34	Free
24	100630	White non-glutinous of Thai Hom Mali rice 5-10%	-	-	-	0.27	2.31	1.4 c/kg.
25	031099	Live fish	0.64	0.96	1.29	1.78	2.16	Free
26	090910	Seed for growing	4.07	4.49	5.43	2.27	1.84	Free
27	071080	Vegetables, other frozen	1.08	1.57	1.89	1.50	1.83	17.5%
28	071331	Mung beans	1.09	1.14	1.14	1.47	1.69	1.1 c/kg
29	091010	Ginger, saffron, turmeric, bay leaves	0.86	1.37	2.22	1.07	1.33	Free
30	081340	Tamarind	0.84	0.88	0.99	0.71	1.15	15.0%
Sub Total 30 items			919.15	885.06	1,177.63	976.20	781.54	
Total export Agriculture product			999.83	931.10	1,220.61	1,015.93	814.18	

Sources: 1) Ministry of Commerce.

2) Tariff rate is from www.ustr.gov

Table 5.5 Thailand's Top 30 Agricultural Imports from U.S.A., 1998-2002

HS	Product	Import value from the U.S.A. (Million US\$)					% of Thailand's imported product					Tariff rate	
		2002	2001	2000	1999	1998	2002	2001	2000	1999	1998	1998	%
120100	Soya beans, whether or not broken	169.37	119.23	169.64	140.09	103.59	52.14	42.74	58.70	66.79	59.38	6	
520100	Cotton, not carded or combed	147.07	101.45	76.40	34.30	83.56	31.80	21.07	16.17	8.72	18.79	-	
230400	Oil-cake and other solid residues	52.70	59.84	33.68	46.96	46.66	14.80	17.73	12.52	19.82	21.70	6	
100190	Wheat and meslin	66.02	56.24	45.99	56.99	45.44	44.09	42.74	43.78	47.79	37.50	1 B/kg.	
230990	Preparations of a kind used in animal feeding	31.98	28.12	31.67	29.28	18.40	36.60	34.25	38.53	36.88	30.24	10	
051191	Animal products not elsewhere specified or included	13.97	27.89	13.52	6.78	15.32	55.29	68.89	43.04	41.79	65.52	1	
210690	Food preparations not elsewhere specified or included	27.44	16.67	14.73	12.16	12.09	34.85	26.00	26.64	26.96	27.35	5	
080810	Apples, pears and quinces, fresh	11.77	16.60	14.17	14.67	14.41	29.46	37.27	33.98	37.07	48.36	10	
230110	Flours, meals and pellets, of meat or meat offal; greaves	12.92	13.56	10.33	8.94	8.40	84.39	83.17	51.89	57.36	49.64	1	
230310	Residues of starch manufacture and similar residues	8.54	12.08	14.80	9.58	7.52	71.58	73.06	77.20	86.02	85.32	10	
040410	Whey	6.98	7.36	7.82	6.94	3.47	28.93	31.14	44.18	48.98	31.00	30	
040210	Milk and cream, concentrated or containing added sugar or other sweetening matter	6.08	6.14	2.08	4.80	10.11	5.29	4.69	2.27	5.50	10.17	5	
200410	Potatoes	5.04	4.81	4.95	4.06	4.74	68.45	69.93	76.36	81.05	98.98	30	
130239	Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products	4.59	4.75	3.39	2.82	1.11	32.39	42.45	30.34	27.02	11.91	20	
030329	Fish, frozen, excluding fish fillets and other fish meat of heading 03.04	3.34	4.75	7.46	2.41	0.31	19.85	N.A.	N.A.	N.A.	N.A.	60	
230910	Dog or cat food, put up for retail sale	4.11	4.00	3.92	2.77	2.04	35.18	39.82	42.86	30.26	31.16	10	
080610	Grapes, fresh or dried	4.01	3.87	4.05	3.01	1.36	56.76	61.43	64.92	73.08	62.12	60	
030322	Atlantic salmon (Salmo salar) and Danube salmon (Hucho hucho)	0.57	3.69	0.05	N.A.	0.01	9.70	N.A.	N.A.	N.A.	N.A.	60	
030614	Crabs	1.15	3.10	4.85	4.64	5.62	4.59	9.86	17.87	29.28	55.29	60	
030341	Fish, frozen, excluding fish fillets and other fish meat of heading 03.04	-	3.06	1.49	N.A.	0.12	-	N.A.	N.A.	N.A.	N.A.	60	
200520	Potatoes powder	1.23	2.92	8.29	6.15	2.69	19.02	43.48	73.99	99.15	95.65	30	
210610	Protein concentrates and textured protein substances	1.95	2.86	3.57	2.66	3.98	40.79	70.56	74.35	69.66	69.66	30	
130213	Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products	2.01	2.27	0.58	0.37	0.43	68.80	99.02	73.33	41.60	76.08	20	
180631	Chocolate and other food preparations containing cocoa	2.53	1.98	1.28	1.09	0.11	21.77	25.60	23.67	23.45	4.32	10	
030343	Skipjack or stripe-bellied bonito	1.63	1.91	0.63	3.46	1.86	0.54	N.A.	N.A.	N.A.	N.A.	60	
200990	Fruit juices (including grape must) and vegetable juices	4.39	1.70	0.57	0.86	0.46	91.25	88.91	84.64	72.15	43.65	30	
210390	Sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard	2.69	1.66	1.52	0.90	1.11	15.43	12.90	12.07	8.79	12.10	30	
Total import value for Agr. Product		436.72	583.91	682.00	489.00	604.00	13.09	18.30	24.12	13.06	24.00		

Source: The Customs Department.

The major Thai exports to the U.S. market are processed seafood, frozen shrimp, rubber, rice, tapioca, fruits and vegetable while the important Thai imports from the U.S. are oil seeds, cotton, cereals (especially wheat), soybean oil and cake. Such pattern of trade reflects the differential resource endowments and climatic conditions.

As shown in Table 5.4, Thailand has enjoyed large agricultural trade balance (about \$500 million per year) with the U.S. But the net balance has shown a declining trend in the 1993-2002 period (Table 5.6).

Table 5.6 Thailand's Export, Import and Balance of Trade for Agricultural Products

(Unit: Million US\$)

Year	Export			Import			Balance of Trade	
	U.S.A.	World	% of U.S.A.	U.S.A.	World	% of U.S.A.	U.S.A.	World
1993	873	6,445	13.54	370	2,262	16.38	503	4,184
1994	1,137	7,755	14.67	334	2,489	13.42	803	5,266
1995	1,202	9,092	13.22	464	2,812	16.51	738	6,280
1996	1,081	8,916	12.13	612	1,602	38.21	469	7,315
1997	700	5,604	12.50	377	2,154	17.49	323	3,450
1998	1,000	7,202	13.88	604	2,517	24.00	396	4,685
1999	931	7,003	13.30	489	3,745	13.05	442	3,258
2000	1,221	7,337	16.64	682	2,828	24.11	539	4,509
2001	1,016	7,031	14.45	584	3,191	18.30	432	3,839
2002	814	7,124	11.43	437	3,336	13.09	377	3,787

Source: Ministry of Commerce.

5.3 Trade Barriers

The fact that the U.S. is one of the most important trading partners of Thailand while Thailand is not the most important market for the U.S. exports may be explained by a number of factors, including the structure of trade barriers in both countries. The bilateral trade agreements between the two countries offer opportunities for negotiations on those sensitive issues of trade barriers.

Tariffs

Thailand-U.S. agricultural trade is more restricted than the manufactured trade as both countries impose higher tariffs on agricultural products (Table 5.7).

Table 5.7 Average MFN Tariff Rates¹ by Sector, 2001

Sector	Average Thailand	Tariff rates
Agriculture ¹	16.1	2.6
Manufacture	15.9	3.9
All goods	16.5	4.0

Note: (1) Using the WTO definition of agriculture which does not include fishery and rubber.

Source: WTO.

Despite a series of tariff reforms since 1995 that resulted in a reduction of average applied tariffs (Poapongsakorn et al. 2002), the Thai most favored nation (MFN) applied tariffs are notoriously one of the highest rates in Asia. The Thai average MFN rate for agriculture is 23.6 percent comparing to 7.1 percent for the U.S. More than 43 percent of the Thai tariff lines for agricultural products have applied rates exceeding 20 percent, comparing to only 1.3 percent of the U.S. tariff lines (Table 5.8). The tariff peaks in Thailand are found in meat and dairy products, sugar, alcoholic, beverages, tobacco, fruits and vegetables. The Thai agricultural tariffs also have very high dispersion, ranging from 0 to 242 percent for out-of-quota tariff on raw silk. The third characteristics of the Thai tariffs is the positive tariff escalation since the average tariffs for raw materials and semi-finished products (43.5% and 48%, respectively) are higher than that for the fully processed final products in 2000.

Table 5.8 No. of Tariff Lines for Agricultural Imports in Thailand and the United State, classified by tariff rates, 2001

Rate of Duty	Thailand		U.S.A.	
	No. of Line	%	No. of Line	%
Specific rate	34	1.8	746	31.4
0%	77	4.1	601	25.3
1%-5%	180	9.5	326	13.7
6%-10%	247	13.1	438	18.4
11%-20%	530	28.1	233	9.8
21%-30%	401	21.3	20	0.8
31%-40%	188	10.0	1	0.0
41%-50%	141	7.5	-	-
more than 50%	87	4.6	12	0.5
Total	1,885	100.0	2,377	100.0
Average Tariff (28 chapters)	-	23.62%	-	7.14%
Average Tariff (WTO)	-	16.10%	-	2.60%

Note: Average rate is calculated from the advalorem rate.

Sources: 1) The Customs Department for Thai Tariff rate 2001.

2) www.ustr.gov for U.S.A. Tariff rate 2001.

The high tariffs may exaggerate the actual level of nominal protection in Thailand. First, a number of products with tariff peaks are major exports in which Thailand have a strong comparative advantage. They are rice, sugar and coffee, which have the out-of-quota tariff rates of 58, 104 and 100%, respectively. Second, the applied tariffs for a number of products are much lower than the bound rates, e.g., maize and soybean.

Despite having low average tariff rates, the U.S. tariff system still exhibits a moderate level of protection for a number of agricultural products. First, the average tariff rate on agricultural products is higher than the overall average (7.1 VS 4.0%). Secondly, there are still a few products with maximum tariff rates exceeding 100 percent, e.g., manufactured tobacco (350%) and oil seeds (163.8%) (see Table 5.9). A number of products that are Thailand's important exports still have moderate tariff rates, e.g., vegetables and fruits (with average tariff rates exceeding 10%), pineapples (29.8%), fish and fish products (26 percent), etc. Thirdly, the U.S. tariff system still contains as many as

746 tariff lines with specific tariff rates, comparing to 34 tariff lines for Thailand (Tables 5.8 and 5.9). The specific tariff rates are non-transparent tariffs because tariff rates will depend upon the value of the products, with low valued products being taxed more heavily than the higher valued products. Finally, in the WTO Agreement on Agriculture, the U.S. converted the non-tariff measures of 54 products into the tariff quotas, comparing to 23 products for Thailand (See Table 5.10). Some of these tariff-quota products are important Thai exports, e.g., sugar, starch, and tobacco products. As will be discussed below, the existing quota administration has severely restricted the access of those Thai exports. Similarly, Thailand also imposed tariff-rate quota (TRQ) on 23 products. A few items of those TRQ products are also the important U.S. exports, i.e., soybean and corn. However, due to high demand from the livestock industry, the applied tariffs are much lower than the bound rates and the actual quotas allowed by the Thai government also vastly exceed the committed quotas (Poapongsakorn, et al. 2002).

Non-tariff Barriers

Agricultural trade between U.S. and Thailand is widely affected by NTMs. Some sub-sectors are subject to higher incidence of NTMs, particularly meat, other animal products, sugar, fruits and vegetable products.

In accordance with the WTO agreement, the Thai government regulates imports and exports of 121 products, 26 of which are agricultural import regulations (out of 63 import measures), and 34 are agricultural products out of 54 export regulations (see Table 5.11). Interviews with the officials in the relating government agencies and with the private companies reveal that the enforcement is very lax as the Customs Department and responsible agencies do not have adequate resource and expertise.

The U.S. has higher frequency of NTMs to regulate agricultural imports than Thailand (see Table 5.12). The most popular regulations are the sanitary and phytosanitary standard measures (SPS) and prior notification before importing in accordance with the Bioterrorism Act, which applies to all food products that are subject to SPS measures.

The U.S. also has more varieties of NTMs than Thailand (Table 5.11). Moreover, some states, e.g., California, also impose additional NTMs on agricultural imports such as the standards on organic agricultural products. However, the U.S. government provides detailed information on their regulations such as the specific type of products subject to regulations (e.g. the specific HS category), the names of regulating agencies and the procedures. Although the regulating agencies in Thailand have already provided such detailed information for importers, it is surprising that there are still frequent complaints by the foreign companies about the complicated and non-transparent regulations in Thailand.

Table 5.9 Average Tariff Rate of Thailand and the United State, 2001

HS2	Products	Thailand			USA						
		Average MFN	Min	Max	No. of Line	No. of specific rate	Average MFN	Min	Max	No. of Line	No. of specific rate
01	Live animals	16.61	0	40	32	0	1.08	0	6.8	20	8
02	Meat and edible meat offal	45.13	36	60	63	0	6.06	0	26.4	54	45
03	Fish, crustaceans, molluscs, aquatic invertebrates nes	7.33	5	30	118	0	0.9	0	15	116	5
04	Dairy products, eggs, honey, edible animal product nes	23.58	0	42	41	0	12.38	0	25	125	123
05	Products of animal origin, nes	26.67	0	42	29	0	0.65	0	5.1	20	1
06	Live trees, plants, bulbs, roots, cut flowers etc	43.19	39	56	15	0	2.85	0	7	20	8
07	Edible vegetables and certain roots and tubers	47.19	39	60	61	0	9.02	0	29.8	78	88
08	Edible fruit, nuts, peel of citrus fruit, melons	40.17	10	55.8	67	0	5.33	0	29.8	55	63
09	Coffee, tea, mate and spices	36.53	27.9	60	40	0	0.7	0	6.4	40	7
10	Cereals	0	0	0	4	14	2.16	0	11.2	7	14
11	Milling products, malt, starches, inulin, wheat gluten	35.03	33	48	38	2	4.21	0	12.8	19	19
12	Oil seed, oleagic fruits, grain, seed, fruit, etc, nes	31.99	4.7	48	67	1	8.25	0	163.8	37	24
13	Lac, gums, resins, vegetable saps and extracts nes	17.04	10	27.9	25	1	0.66	0	3.8	14	1
14	Vegetable plaiting materials, vegetable products nes	23.23	0	32	12	0	1.08	0	4.4	11	2
15	Animal,vegetable fats and oils, cleavage products, etc	15.88	0	30	113	8	3.61	0	19.1	37	31
16	Meat, fish and seafood food preparations nes	25.11	20	30	45	0	4.21	0	35	81	8
17	Sugars and sugar confectionery	21.38	0	65	24	4	6.44	0	12.2	32	35
18	Cocoa and cocoa preparations	13.25	10	27.9	11	0	5.77	0	10	44	34
19	Cereal, flour, starch, milk preparations and products	28.38	5	34	26	0	9.02	0	17.5	52	18
20	Vegetable, fruit, nut, etc food preparations	30	30	30	90	0	11.07	0	131.8	106	75
21	Miscellaneous edible preparations	32.27	30	51	37	0	7.83	0	20	50	37
22	Beverages, spirits and vinegar	44.75	0	60	34	3	1.52	0	17.5	37	34
23	Residues, wastes of food industry, animal fodder	8.67	1	10	29	0	1.76	0	7.5	24	13
24	Tobacco and manufactured tobacco substitutes	60	60	60	19	0	90.74	0	350	27	28
40	Rubber and articles thereof	25.42	0	50	166	0	2.3	0	14	147	0
44	Wood and articles of wood, wood charcoal	12.11	0	20	113	0	1.98	0	10.7	144	2
50	Silk	13.79	5	30	13	0	1.47	0	4.7	13	0
52	Cotton	17.32	0	20	519	0	8.98	0	19.8	221	12

Source: Calculated from The Customs Department and USTR web site.

(unit : %)

Description of products	In-quota tariff rate (%)		Out-quota Tariff rate (%)											
	bound	applied 1-Jan-95	BASE	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	applied 1-Jan-95
1. Milk and cream, not concentrated,	20	20	46.0	45.5	45.0	44.5	44.0	43.5	43.0	42.5	42.0	41.5	41.0	45.5
1.1 Flavoured milk	20	20	93.0	92.1	91.2	90.3	89.4	88.5	87.6	86.7	85.8	84.9	84.0	92.1
2. Milk and cream, concentrated or containing added sugar other sweetening matters in powder, granules or other solid form or a fat content, by weight not exceeding 1.5%	20	5	240.0	237.6	235.2	232.8	230.4	228.0	225.6	223.2	220.8	218.4	216.0	237.6
3. Potatoes, fresh and chilled	27	0	139.0	137.6	136.2	134.8	133.4	132.0	130.6	129.2	127.8	126.4	125.0	137.6
4. Onions and shallots, fresh, chilled, dried, whole, cut	27	27	158.0	156.4	154.8	153.2	151.6	150.0	148.4	146.8	145.2	143.6	142.0	156.4
5. Garlic, fresh or chilled, whether or not in powder	27	27	63.0	62.4	61.8	61.2	60.6	60.0	59.4	58.8	58.2	57.6	57.0	62.4
6. Coconut, fresh and dried whether or not chilled or peeled including desiccated	20	20	60.0	59.4	58.8	58.2	57.6	57.0	56.4	55.8	55.2	54.6	54.0	59.4
7. Copra	20	20	40.0	39.6	39.2	38.8	38.4	38.0	37.6	37.2	36.8	36.4	36.0	39.6
8. Coffee, coffee husks and skins; coffee substitutes containing any portion of coffee	30	30	100.0	99.0	98.0	97.0	96.0	95.0	94.0	93.0	92.0	91.0	90.0	99.0
9. Tea	30	30	100.0	99.0	98.0	97.0	96.0	95.0	94.0	93.0	92.0	91.0	90.0	99.0
10. Pepper, dried, whether or not crushed or ground	27	27	57.0	56.4	55.8	55.2	54.6	54.0	53.4	52.8	52.2	51.6	51.0	56.4
11. Maize, for seed and other	20	7.5	81.0	80.2	79.4	78.6	77.8	77.0	76.2	75.4	74.6	73.8	73.0	80.2
12. Rice (including paddy, broken)	30	30	58.0	57.4	56.8	56.2	55.6	55.0	54.4	53.8	53.2	52.6	52.0	57.4
13. Soya bean, edible and inedible	20	5	89.0	88.1	87.2	86.3	85.4	84.5	83.6	82.7	81.8	80.9	80.0	88.1
14. Onion seeds	30	0	242.0	239.6	237.2	234.8	232.4	230.0	227.6	225.2	222.8	220.4	218.0	239.6
15. Soya bean oil and its fractions	20	20	162.0	160.4	158.8	157.2	155.6	154.0	152.4	150.8	149.2	147.6	146.0	160.4
16. Palm oil and its fractions	20	20	159.0	157.4	155.8	154.2	152.6	151.0	149.4	147.8	146.2	144.6	143.0	157.4
17. Coconut oil and its fractions	20	20	58.0	57.4	56.8	56.2	55.6	55.0	54.4	53.8	53.2	52.6	52.0	57.4
18. Cane or beet sugar and chemically pure sucrose in solid form	65	65	104.0	103.0	102.0	101.0	100.0	99.0	98.0	97.0	96.0	95.0	94.0	103.0
19. Instant coffee and other extracts	40	40	55.0	54.4	53.8	53.2	52.6	52.0	51.4	50.8	50.2	49.6	49.0	54.4
20. Soya bean cake	20	15	148.0	146.5	145.0	134.5	142.0	140.5	139.0	137.5	136.0	134.5	133.0	119.0
21. Unmanufactured tobacco; tobacco leaves	60	60	80.0	79.2	78.4	77.6	76.8	76.0	75.2	74.4	73.6	72.8	72.0	79.2
22. Raw silk	30	30	257.0	253.9	250.8	247.7	244.6	241.5	238.4	235.3	232.2	229.1	226.0	253.9
23. Lorigans, dried	30	30	59.0	58.4	57.8	57.2	56.6	56.0	55.4	54.8	54.2	53.6	53.0	58.4

Source: Ministry of Commerce Department of Business Economic.

Table 5.10 b) Tariff Quotas of United States

Rank	Commodities	In Quota		Out of Quota		
		Tariff rate	Quantities (tons)		Tariff rate	Tariff rate
			1995	2000		
1	Meat of bovine animals	4.4 cent/kg.	696,621	696,621	0-4.4 cent/kg.	0-4.4 cent/kg.
2	Milk and cream, chilled and fat > 6%	3.2 cent/Litre	5,727,940	6,694,840	3.2 cent/Litre	3.2 cent/Litre
3	(Mexico) Milk and cream, fat > 6%	n.a.	366,000	366,000	-	-
4	Butter, fat > 45%	12.3 cent/kg.	3,977	6,977	12.3 cent/kg.	12.3 cent/kg.
5	(Mexico) Fresh butter or sour cream, fat > 45%	n.a.	43	43	-	-
6	Milk powder	3.3 cent/kg.	1,261	5,261	3.3 cent/kg.	3.3 cent/kg.
7	(Mexico) Milk powder	n.a.	422	422	-	-
8	Milk powder (normal)	6.8 cent/kg.	371	3,321	6.8 cent/kg.	6.8 cent/kg.
9	Cream powder	13.7 cent/kg.	100	100	13.7 cent/kg.	13.7 cent/kg.
10	Food mixed with milk products	7.0-20.0%	1,905	4,105	17.5%+54.5 cent/kg.	14.9%+46.3 cent/kg.
11	dairy products	n.a.	733	733	-	-
12	Milk and cream, condensed or evaporated, the foregoing entered under subheadings	2.2 cent/kg.	2,857	6,857	2.2-3.9 cent/kg.	2.2-3.9 cent/kg.
13	Dried milk, dried cream or dried whey whether or not containing added sugar	3.3 cent/kg.	296	296	3.3 cent/kg.	3.3 cent/kg.
14	Butter substitutes containing over 45 percent by weight of butterfat,	10%	3,481	6,081	10.00%	10.00%
15	(Mexico) Butter	n.a.	5,550	5,550	10.00%	10.00%
16	Cheeses and substitutes for cheese	n.a.	41,435	45,703	10.0-20.0%	10.0-20.0%
17	Blue-mold cheese (except Stilton produced in the United Kingdom)	10.0-20.0%	2,553	2,911	10.0-20.0%	10.0-20.0%
18	Cheddar cheese and cheese and substitutes for cheese containing	10.0-16.0%	7,015	14,406	10.0-20.0%	10.0-20.0%
19	Cheese American	10.0-20.0%	3,439	3,523	10.0-20.0%	10.0-20.0%
20	Edam and Gouda cheeses and cheese and substitutes for cheese containing	10.0-15.0%	6,004	7,992	8.5-20.0%	8.5-20.0%
21	Italian-type cheeses, made from cow's milk	7.5-25.0%	9,023	12,558	8.5-20.0%	8.5-20.0%
22	Cheese made by Gruyere, Swiss	n.a.	7,538	7,855	8.5-20.0%	8.5-20.0%
23	Cheese, low fat (butter oil <= 0.5%)	n.a.	5,725	5,725	8.5-20.0%	8.5-20.0%
24	Swiss or Emmentaler cheese	n.a.	32,267	34,325	8.5-20.0%	8.5-20.0%
25	Green Olive	n.a.	4,400	4,400	-	-
26	Ground nut	6.6-9.35 cent/kg.	30,393	53,806	6.6-9.35 cent/kg.	6.6-9.35 cent/kg.
27	(Mexico) Ground nut	n.a.	3,377	3,377	-	-
28	Sugar, syrups and cane molasses	3.6606 cent/kg.	22,000	22,000	3.6606 cent/kg.	3.6606 cent/kg.
29	Ch. 17.4 (Mexico) articles with sugar < 65%	n.a.	1,500	1,500	-	-

(continued on page 48)

Table 5.10 b) Tariff Quotas of United States (conts)

Rank	Commodities	In Quota		Out of Quota		
		Tariff rate	Quantities (tons)		Tariff rate	Tariff rate
			1995	2000		
30	Ch. 17.6 articles with sugar < 10%	n.a.	64,709	64,709	6.00%	6.0%
31	Ch. 17.6 (Mexico) articles with sugar < 10%	n.a.	12,791	12,791	-	-
32	(Mexico) Syrups	n.a.	1,500	1,500	-	-
33	Cane sugar	1,406 cent/kg.	1,117,195	1,117,195	1,4606 cent/kg.	1,4606 cent/kg.
34	Cocoa powder, containing added sugar > 10%	n.a.	2,313	2,313	0-10.0%	0-10.0%
35	chocolate crumb, butter > 5.5%	n.a.	15,468	26,168	0-17.5%	0-17.5%
36	chocolate crumb, low fat > 5.5%	n.a.	2,123	2,123	0-7.0%	0-5.0%
37	Preparation for infant use with oligopolysaccharid	n.a.	100	100	17.50%	17.50%
38	Cereal flour	10.00%	5,398	5,398	10.00%	10.00%
39	Butter and gound nut pasta	6.6 cent/kg.	19,150	20,000	6.6 cent/kg.	0.0
40	Green olive with seed	n.a.	730	730	10.8 cent/kg.	5.4 cent/kg.
41	Stuffed green olive	n.a.	2,700	2,700	10.8 cent/kg.	5.4 cent/kg.
42	Green olive, other	n.a.	550	550	11 cent/kg.	5.5 cent/kg.
43	Green olive, in airtigt containers	n.a.	40,000	40,000	0.44 cent/kg.	0.0
44	mixed condiments or mixed seasonings	n.a.	689	689	7.50%	7.50%
45	Ice cream	n.a.	3,283,772	5,667,846	20.00%	20.00%
46	Animal feed, made from milk	n.a.	7,400	7,400	7.50%	7.50%
47	Tobacco	n.a.	111,450	112,950	25.4 cent - \$1.37/kg.	11.4-62 cent/kg.
48	(Mexico) Cotton	n.a.	10,000	10,000	-	-
49	Cotton, short fibre	n.a.	8,495	20,207	0.0	0.0
50	Cotton, coarse fabric	n.a.	900	1,400	4.4 cent/kg.	4.4 cent/kg.
51	Cotton, medium fibre	n.a.	5,200	11,500	4.4 cent/kg.	4.4 cent/kg.
52	Cotton, long fibre	n.a.	25,500	40,100	1.5 cent/kg.	1.5 cent/kg.
53	Cotton waste	Free	1,835	3,335	0.0	0.0
54	Cotton, not carded or combed	5.90%	1	3	5.0%	5.00%

Source: WTO, Background Paper no. G/AG/NG/S/7.

Table 5.11 Import and Export Regulatory Measures

Thailand	Number of products	
	All	Agricultural
Import measures	63	26
- license	41	21
- market orderly	8	2
- import surcharge	7	3
- prohibition	7	-
- sanitary & phytosanitary measures	-	90
- technical barriers (TBT)	190	-
Export measures	54	38
- export permits	39	31
- market or derly	10	7
- prohibition	5	-
Export & import measures	4	-
- control	1	-
- market or derly	1	-
- prohibition	2	-
Tariff quot as	-	23
USA		
- Advance notification	-	all kinds of food
- (Bioterrorism Act)		
- Sanitary & phytosanitary	27	25
- Tariff quota	-	54
- Production standards		8
- Environmental standards		4
- Import regulations	2	1
- Import measures by FDA	-	7
- Quantity restriction	2	1
- Import permits	-	1
- California Proposition 65	some chemical products and state regulations	
- Organic agricultural standards		some products and state regulations
- Rule of origin	2	1
- ADD	6	non-ag 6
- Labilling	2	non-ag 2
- Labor standards		non-ag 1
- Safesuards		non-ag 1
- Labor standards	1	-
- Safesuards	1	-
- Export control	1	-

Sources: (1) www.dft.moc.go.th
(2) Institute of Industrial Standards

For both countries, the products that are subject to relatively high frequency of NTMs are animal and animal products, vegetable products and food and beverages. In addition, the U.S. also has high frequency of NTMs on hide and leather products, while Thailand imposes high frequency of NTMs on oil and fat (see Table 5.12).

Table 5.12 Trade and Protection in the United States and Thailand, 2000

Country, HS Section		Frequency of Non-tariff Barriers (%)	
		U.S.A.	Thailand
United States			
I.	Animals and Animal Products	99.1	8.85
II.	Vegetable Products	52.0	40.01
III.	Fats and Oils	7.1	4.96
IV.	Foods, Beverages, and Tobacco	57.3	49.51
V.	Mineral Products	5.7	-
VI.	Chemical Products	24.8	-
VII.	Rubber and Plastics	10.5	-
VIII.	Hides and Leather	43.2	-
IX.	Wood and Wood Articles	28.2	-
X.	Pulp and Paper Products	0.0	-
XI.	Textiles and Apparel	35.1	-
XII.	Footwear and Accessories	5.2	-
XIII.	Stone and Ceramic Products	2.6	-
XIV.	Precious Stones and Metals	0.0	-
XV.	Base Metals and Products	8.8	-
XVI.	Machinery and Electrical Equipment	21.8	-
XVII.	Transport Vehicles and Equipment	46.8	-
XVIII.	Optical and Scientific Equipment	2.9	-
XIX.	Arms and Ammunition	100.0	-
XX.	Miscellaneous Manufactures	18.5	-
XXI.	Works fo Art	7.1	-
All Products		27.5	-

Source: UNCTAD, Trade Analysis and Information System (TRAINS), Version 8.0, Spring 2001.

Note: NTB data refer to 1999 for U.S.A., 2002 for Thailand.

A study of 260 NTM measures against Thai exports in 1999 found that 35 percent of the measures were SPS measures and 3 percent were TBT. The U.S. had the fifth largest number of SPS measures against Thai exports (8% of all measures), comparing to 17% by the EU, 14% by South Korea, 13% by ASEAN and 11% by Japan.

The U.S.-FDA web site provides the information on the incidence of import detention by the country of origin and causes of detention. Table 5.13 shows that in 2001 there were 1,340 cases of import detentions against Thai products. There were only ten countries whose products were subject to more detention than Thailand. And yet all those countries, except India, had higher percentage share of the U.S. imports than Thailand. In the first two months of 2002, Thailand ranked 8th in terms of number of detentions.

Detailed investigation shows that 66 percent of the products detained by the U.S.-FDA were agricultural and simple processing products, i.e., 11.75 percent were processed foods and 22 percent were manufactured products. It should be noted that the U.S.-FDA lists more than 100 causes of detentions, many of which are subject to highly subjective judgement of the officials.

There is one important non-tariff barrier affecting Thai sugar export to the U.S. The Thai sugar export to the U.S. has been severely limited by the tariff quota to only 1.3-1.4 percent of total quota (or 14,743 ton in the 2000/2001 crop year). The existing quota allocation by the U.S., which is determined by the political consideration, allows no chance for Thai sugar exporters to obtain more import quotas¹³.

Table 5.13 Frequency of Thai Agricultural Food Exports Subject to Detention by the US-FDA under the SPS and TBT Measures

Products	Mar. -Dec. 2001	
	Cases	% of total detentions from all countries
Agriculture	708	5.5
Grain and starch	116	24.1
Fruits and vegetables	211	3.5
Meat and dairy	3	0.3
Fishery and seafood products	281	9.5
Beverages	81	10.6
Others	16	1
Processes food products	126	5.5
Human food	123	6.2
Animal feeds	3	0.6

Source: USA-FDA, Import Detention report (website)

Administered Protection and Other Barriers

There are also other types of administered protection investigations and actions that affect agricultural trade, i.e., anti-dumping (AD) and subsidy and countervailing (CV) investigations (De Rosa 2003). According to the report by the World Trade Organization on the implementation of the Uruguay Round agreements on AD and CV, the U.S. initiated 4 AD and 2 CV investigations against Thailand, two of which involve agricultural products. One recent important threat against the Thai shrimp exporters is the AD investigations against 14 exporting countries (including Thailand) filed by the U.S. shrimp producers in 8 states. If the investigation results in AD action, Thai exporters will likely lose their market share to competitors from Latin America and Vietnam. The U.S. also unfairly prohibited import of certain shrimp and shrimp products on a ground that the catching method killed sea turtles. However, the WTO panel ruled that the U.S. action was inconsistent with the WTO agreements.

Imports of Thai chicken meat are also banned because Thailand is not free of New Castle disease, despite the fact that Thailand has been one of the major suppliers of frozen

¹³ See a letter by the Thai Sugar Associations to the Prime Minister on 7 December 2001.

chicken meat to Japan and EU, which are economies with the strictest SPS standards. Only chicken cooked at 72.2 degree or higher are allowed. The Thai business has attempted to obtain a permission to export frozen chicken to the U.S. The Thai Department of Livestock Development and some Thai chicken producers have contacted the U.S.-FDA and made inquiry about its import regulations and procedures to export chicken meat to the U.S. market. Although necessary documents were filed in October 2001, a follow-up inquiry in September 2002 found that more documents were needed. After the submission of complete set of documents in April 2003, the Food Safety and Inspection Service (FSIS) notified that it will take about a year to review the documents and if the review is satisfactory and the U.S. officials will be sent to inspect the Thai factories in 2004. After that it will take another 4-6 months to consider the information and result from factory inspection. Then there will be also a public hearing procedure that will take another two months before the actual import of chicken meat can resume. The above information on the attempt of Thai chicken producers is an evidence of protection taken by the U.S. agencies against some sensitive products.

Thai rice exporters also raise a concern about the U.S. rice export subsidy and domestic support, which will not only allow the American rice to have competitive edge over Thai rice in the world market, but will also enable U.S. rice to unfairly penetrate the Thai market.

The 2002 USTR report on foreign trade with Thailand provides an indication of the major issues of trade barriers seen by the United States and its business. First, high duties on agriculture and food products are the main impediments to U.S. exports of high value fresh and processed foods. Import duties on agricultural and processed food goods are as high as 55 percent, 40-60 percent for consumer ready food products, meats, fresh fruits and vegetables, and pulses. For example, dry peas, chickpeas, frozen French fries which face a tariff rate of 36 percent, and pears and cherries with a tariff of 60 percent. When import duties, excise tax and other surcharges are calculated, imported wines face a total tax of nearly 360 percent. In addition, there are import license fees for meat products, e.g., \$114 per ton on beef and pork. Secondly, phytosanitary standards for certain agricultural products may be applied arbitrarily. Thirdly, the standards, testing, labeling and certification permits required for the importation of all food and pharmaceutical products are costly and the permission process is complex and burdensome. Finally, although the Customs Department has recently streamlined the customs procedures and adopted the customs valuation method in accordance with the WTO agreements, international business community still regards Thai custom procedures to be complicated and inconsistently applied.

5.4 Impacts of FTA

Assessing the economic benefits of the bilateral FTA requires a quantitative model to analyze the impact of removing all trade barriers in both agricultural and non-agricultural trade. An appropriate method of assessing such impact is to use a computable general equilibrium model of world trade and economic activities. Since the assessment has been done elsewhere (De Rosa, 2003, and Chapter 4 of this report), this chapter will briefly summarize those results. In addition, it will attempt to measure the relationship between the agricultural trade of Thailand and the U.S. using the rank correlation of revealed comparative advantage indices (RCA).

Using a gravity model, De Rosa (2003) finds that the prospective U.S.-ASEAN FTA would add 15 percent (\$118 billion) to overall U.S. merchandise exports of which \$16 billion will be exports to Thailand, and 17 percent (\$208 billion) to overall U.S. merchandise imports of which \$37 billion will come from Thailand. No separate impact of agricultural trade liberalization is reported.

When a computable general equilibrium model is used, the results show a lower increase in total exports than the gravity model. Total exports would increase by between 1 percent (for Malaysia) and 5 percent (Philippines). For Thailand, exports would increase by 3.5% (or \$780 million). But for the U.S., the FTA with Thailand would result in the largest economic gain of \$824 million for the U.S. exports. The U.S. welfare gains are attributable to the increased terms of trade. It is also very interesting to find that the increases in ASEAN exports to the U.S. would particularly come from the expansion in certain agricultural crops and processed foods, textile and apparel and miscellaneous manufactures. The FTA would also particularly boost the U.S. exports of processed foods, forestry and fishery products and motor vehicles to Thailand.

Using the TDRI CGE model, Chapter 4 of this report finds that the bilateral FTA will boost Thai exports to the U.S. by 5.4 percent and Thai imports from the U.S. will also increase by 5 percent. The results on agricultural trade confirm our expectation that the FTA will boost agricultural trade and agricultural GDP more than manufactured goods (see Chapter 4). Thai agricultural exports to the U.S. will increase by 11.8 percent, comparing to 3.6 percent increase in its import from the U.S. The smaller change in Thai agricultural imports is because the TDRI CGE model does not contain information on the NTMs. Had they been included, the Thai agricultural imports from the U.S. will be larger. Results from Chapter 4 also show that the Thai farmers will obtain the largest gain in term of the percentage increase in agricultural GDP.

To tackle the data limitation in the TDRI CGE model, this chapter attempts to estimate the direct impact of FTA on agricultural trade, using the simple method of matching Thailand's exports with the U.S. imports. There are two channels of potential increase in Thailand-U.S. trade generated by the FTA. The first channel is that after the tariffs and NTMs between the two countries are eliminated, Thai exports of the products that have already been exported to the U.S. will increase because their prices will be reduced by the reduction in tariffs. Some of the Thai exports to other countries will also be diverted to the U.S. market. The U.S. exports to Thailand will also increase for the same reasons. To be conservative, the estimated gain will be derived for products that both countries have strong comparative advantage, i.e., RCA is greater than one. The price elasticity of demand is assumed to be two, i.e., a ten-percent decrease in price will lead to an increased export of 20%. The average price of Thai imports as assumed to reduce by 23.6 percent, and that of Thai export will decline by 7.1 percent as a result of tariff elimination. The estimated results in Table 5.14 shows that the FTA increases Thai exports to the U.S. by 15 percent. The U.S. export to Thailand would increase by about 37.5 percent.

The second channel of potential trade impact come from the expansion of trade in the products that Thailand has already exported to the rest of the world, but has not yet been shipped to the U.S. Tariff reductions in the U.S. will divert some of the Thai exports to the U.S. market. The estimation method for the second-channel benefits for Thailand is as follow:

- (a) We match the Thai exports with the U.S. import from the world and keep the lowest values and subtract them from the existing Thai exports to the U.S. The net value is the potential export increase from the second channel.
- (b) Only the values for Thai exports that have RCA exceeding one are counted as the potential gain.
- (c) The values in (b) is multiplied by 0.14 which is the product of percentage decline in prices (7%) and the price elasticity of demand for export (2).

The results shows that the U.S. exports of new products to Thailand will increase by 29.6 percent of existing U.S. exports to Thailand, while Thai exports to the U.S. will increase by 6.8% (Table 5.14).

Table 5.14 Rank Correlation of RCA of Agricultural Exports between Thailand and the U.S.A.

Commodities	RCA Rank Correlation U.S.A.				
	1996	1997	1998	1999	2000
All Agricultural Product	0.06**	-0.064**	0.02	0.05	-0.047*
Live animals	0.00	-0.05	0.02	0.00	0.00
Meat and edible meat offal	0.05	0.06	.	.	0.03
Fish, crustaceans, molluscs, aquatic invertebrates nes	0.04	0.08	.	.	0.05
Dairy products, eggs, honey, edible animal product nes	0.25	0.22	1.00*	0.50	0.21
Products of animal origin, nes	0.20	0.03	1.00	1.00	0.27
Live trees, plants, bulbs, roots, cut flowers etc	0.02	-0.26	-0.22	-0.21	-0.37
Edible vegetables and certain roots and tubers	0.01	-0.07	-0.06	-0.03	-0.09
Edible fruit, nuts, peel of citrus fruit, melons	-0.25	-0.25	-0.26	-0.362*	-0.348*
Coffee, tea, mate and spices	0.10	0.30	0.20	0.34	0.28
Cereals	0.12	0.20	0.23	0.46	0.19
Milling products, malt, starches, inulin, wheat gluten	-0.15	-0.02	.	.	0.00
Oil seed, oleagic fruits, grain, seed, fruit, etc, nes	0.25	0.12	0.26	0.29	-0.02
Lac, gums, resins, vegetable saps and extracts nes	-0.28	-0.10	-0.50	-0.50	-0.15
Vegetable plaiting materials, vegetable products nes	0.43	0.19	0.70	0.50	-0.632*
Animal,vegetable fats and oils, cleavage products, etc	0.03	-0.20	.	.	-0.06
Meat, fish and seafood food preparations nes	-0.20	-0.21	.	.	-0.25
Sugars and sugar confectionery	-0.37	-0.39	.	.	-0.39
Cocoa and cocoa preparations	0.51	0.21	.	.	0.31
Cereal, flour, starch, milk preparations and products	0.06	-0.11	.	.	0.09
Vegetable, fruit, nut, etc food preparations	0.06	-0.02	.	.	0.00
Miscellaneous edible preparations	0.14	0.20	.	.	0.16
Beverages, spirits and vinegar	0.464*	0.510*	.	.	0.556*
Residues, wastes of food industry, animal fodder	0.02	0.14	-1.00	-1.00	0.16
Tobacco and manufactured tobacco substitutes	0.07	0.02	1.00*	0.50	-0.03
Wood and articles of wood, wood charcoal	0.11	0.10	.	.	0.11

Sources: Calculated from PC-TAS, UN, 2002.

** Correlation is significant at the .01 level (2-tailed).

* Correlation is significant at the .05 level (2-tailed).

Table 5.15 Potential Increase in Trade

a) Potential Increase in Agricultural Exports from Thailand to U.S.A.: 6-digit HS classification

Country	Active World Import	Potential Trade Increase (channel I)		% increase for existing TRADE	Potential Trade (CH.II)	Potential Trade (channel II)		% increase from existing TRADE
		Potential already imported from TH	TH export with RCA>1			Potential Trade Value (TAX >0)	Potential Trade Value (Tax = 0)	
USA								
ITEMS	749	229	107	14.9%	510	156	156	
Value (1000\$)	3,932,514	416,039	62,104		501,167	203,668	28,513	6.8%

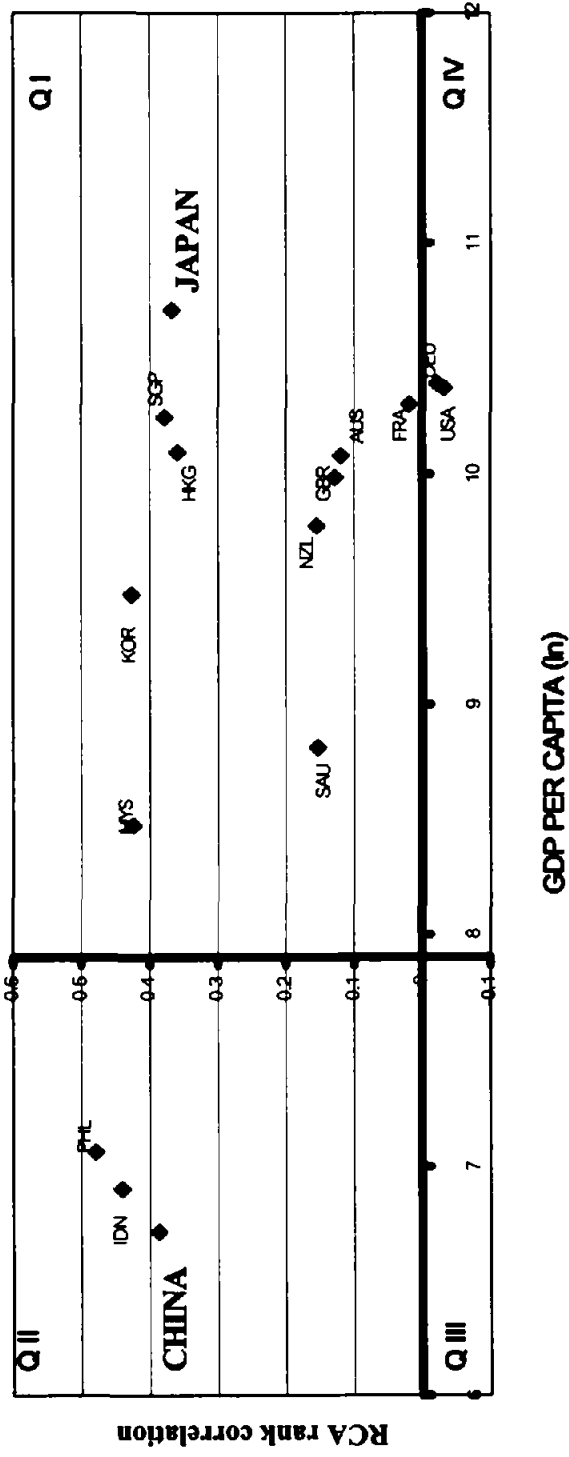
b) Potential Increase in Agricultural Exports from U.S.A. to Thailand: 6-digit HS classification

Country	Active World Import	Potential Trade Increase		% increase for existing TRADE	Potential Trade (CH.II)	Potential Trade (channel II)		% increase from existing TRADE
		Potential already imported from USA	USA export with RCA>1			Potential Trade Value (TAX >0)	Potential Trade Value (Tax = 0)	
THAILAND								
ITEMS	542	258	121	37.50%	538	203	203	
Value (1000\$)	903,985	224,396	43,076		505,707	144,382	66,416	29.6%

Source: Calculated from UN, *PC-TAS*, 2002.

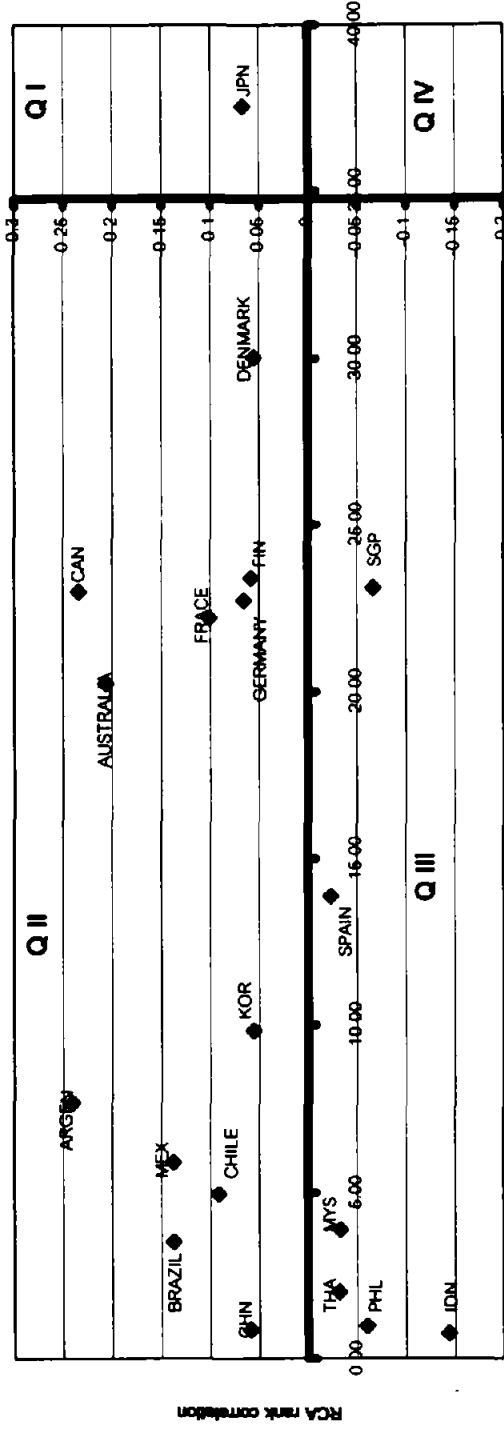
Note: See methods of estimates in the text.

Figure 5.4
 Rank Correlation of RCA in Agricultural Export of Thailand VS Other Countries, 2000



Source : Calculated from UN, PC-TAS, 2002

Figure 5.5
 Rank Correlation of RCA in Agricultural export of USA VS Other countries, 2000



GDP per capita (1,000 US\$)

Source : estimated from PC-TAS, 2002 and IMF statistics

To confirm the results, this study estimates the rank correlation coefficients between the RCA indices of agricultural exports of Thailand and the RCAs of other countries including the U.S. and Japan. Figure 4.1 compares the rank correlation coefficients of RCA with the per capita GDP, which is the proxy of cost of production. Using Thailand as a reference, Figure 4.1 divides countries into 4 quadrants. Countries that fall into the southeastern quadrant or the northeastern quadrant but with the low values of rank correlation are countries whose trade is complementary to Thailand. Since the U.S. falls in the Southeastern quadrant, Thailand-U.S. FTA would lead to more trade creation because trade between the two countries are complementary. Note that the Thailand-U.S. FTA may result in more trade creation than the Japan-Thailand FTA because trade between Japan and Thailand is mildly substitutable.

Figure 4.2 is similar to Figure 4.1, except that it calculates the rank correlation of the U.S.'s RCAs with those of its trading partners. One interesting result is that the FTA between the U.S. and ASEAN would result in more or less the same magnitude of increased trade in Thailand, Malaysia and Philippines. Since the U.S.-Indonesian trade exhibits a complementary structure, a bilateral FTA may generate more trade than the bilateral FTA with the other three ASEAN countries.

To identify the products that would be generated by the bilateral FTA, Table 5.14 shows the RCA rank correlation coefficients between Thai and the U.S. agricultural exports. The estimates show that the Thailand-U.S. exports of the following products are complementary (having negative rank correlations), live animals, live trees and plants, edible vegetables, fruits, oil seeds, lac, gums and vegetable saps, fats and oil, meat, fish and sea food preparations, sugar, tobacco, etc. There are also a number of products with very small positive rank correlation coefficients, which imply that Thailand and the U.S. are not direct competitors in those products. Finally, the overall coefficient of rank correlation for all agricultural products is also negative and significant, confirming that Thai agricultural products are complementary to those of the U.S.

5.5 Conclusion and Recommendations

The analysis here finds that Thailand and the U.S. would enjoy significant economic gains from the FTA that includes free trade in agriculture. Thailand's agricultural exports would increase by 5-22 percent of the existing trade with the U.S., while the U.S. exports would also increase by 4-67 percent. According to the TDRI's CGE model, the Thailand-U.S. FTA would yield significant welfare gain for the Thai agriculture (2.3 percent increase in GDP). It should also be emphasized that De Rosa finds that among the ASEAN countries, a U.S.-FTA with Thailand would yield the largest economic welfare gain for the U.S.

Thai farmers and businesses will benefit from improved access to the U.S. market when most, if not all, of the tariffs and NTMs are eliminated or phased out within a given time. The access will allow Thai farmers to increase exports of important Thai products such as rice, shrimp, frozen seafood, rubber, fruits and vegetables and sugar (if the U.S. quota is phased out at faster pace than the U.S.-Chilean FTA). The exports of ingredients for Thai food will also increase as they become cheaper and thus the Thai restaurants in the U.S. will enjoy more business. The Thai consumers will also enjoy cheaper high value U.S. food products, while the livestock and food processing industries will have access to

cheaper raw material, particularly the protein feeds and dairy products, and thus become more competitive.

However, many Thai farmers who grow import competing crops will have to switch to other crops or other economic activities. They may include those who grow soybean, corn, potatoes and peanuts. A number of high cost small livestock farms, particularly swine and cattle, may have to leave their business.

What are the implications for the Thai government and the Thai trade negotiators? One issue for domestic policy reform is to gradually phase out the trade-distorted domestic support programs, particularly the price-guarantee and paddy-pledging programs (see Poapongsakorn et al. 2002), and replace them by productivity-enhancing policies. The most critical productivity policy is to step up public research in agriculture that has been declining in the last decade. The investment in research has the rate of return as high as 30 percent per year. There are very few other public investments that can generate as high rate of return as investment in research. The second important policy is to establish property rights in water and the water management policy to tackle the increasing problem of water shortage. The third policy issue is to speed up the issuance of title deeds so that farmers have collateralizable assets. There is also a need for a restructuring program to allow the uncompetitive farmers to switch to other crops or to non-agricultural activities.

For the Thai trade negotiators, there are a number of issues that need to be seriously negotiated if the tangible economic benefits for the Thai farmers and business are to be realized. The negotiators should focus on five major issues i.e., import quotas, SPS measures, administrative protection and subsidy, and the modalities of tariff reduction for sensitive products. The first four issues are critical if the access to the U.S. market is to be substantially improved. The last issue is to establish a temporary safeguards that will allow some farmers to cope with the negative impacts of FTA.

The U.S. sugar tariff quota administration is politically determined and the political lobby in favor of maintaining the quota has always been very strong. Yet, the potential for Thai sugar exports is very promising if the tariff quota system can be phased out faster than the 12 year-time frame under the U.S.-Chilean FTA. In the short run when the TRQ remains, Thailand will have to negotiate for an increase in annual sugar quota. The same negotiation framework should be applied to other TRQ products, e.g., tobacco.

Thailand is the largest exporter of shrimp and seafood products and one of the important exporters of tropical fruits and vegetables in the U.S. market. In addition to the moderately high tariffs on fruits and vegetables (about 9-11 percent), these products have been subject to frequent SPS measures which result in large number of detentions. The Thai negotiators should negotiate for mutually acceptable sanitary and phyto-sanitary standards and transparent procedures of inspection that will help reduce subjectivities in SPS inspection. Such mutual recognition standards and procedures will be an improvement from the U.S.-Chilean FTA, which only contains an article establishing a Committee on Trade in Goods to address any non-tariff measures that are of concern to either party. The agreement should also contains a more concrete measures to streamline the administrative protection measures (AD and CV) so that they are not discriminately used as the disguised protection for the uncompetitive producers in both countries.

Another key issue that will affect the competitiveness of Thailand's major exports, particularly rice, are the domestic support and export subsidy. Although Thailand has also

provided cheap credit for Thai exporters, the U.S. has given extensive export subsidy for its agricultural products. In its new farm act, the U.S. has also substantially increased its domestic subsidy. The FTA, therefore, should contain a guideline on how both parties will eliminate the export subsidies. Similar to the U.S.-Chilean FTA, both countries should stop providing export subsidies to the products they trade with each other. Moreover, there should be a framework for both parties to strengthen the use of domestic support for products that both are trading with each other.

Finally, there should be an agreement on agricultural safeguards similar to Article 18 of the U.S.-Chilean FTA in which both parties agreed to provisions for a transitional tariff snap-back mechanism for specified sensitive products under certain conditions.

Chapter 6

Automotive Industry

6.1 Introduction

The automotive industry is one of the world's largest industries, employing 3-4 million workers in assembly-related jobs and another 9-10 million workers in the production of parts and component. The industry also has high forward and backward linkages and thus generates a considerable spillovers effect on the economy.

Thailand has successfully established itself as a major automobile production base in Asia. In 2001, the country produced about 460,000 automobiles, ranking it fifth in volume behind Japan, South Korea, China and Taiwan in Asia. The country ranks first in the number of establishments and employees in the automobile industry in Southeast Asia. With its large and expanding production clusters, Thailand is often referred to as the "Detroit of Asia."

This chapter examines the likely impact of the Thailand-U.S. FTA on the future development of the industries in Thailand. The paper focuses on three subsectors: automobile assembly, spare parts and components, and motorcycles.

6.2 Methodology and Analysis

The revealed comparative advantage (RCA) index is widely used to analyze a country's export performance in a particular sector.¹⁴ It indicates whether a country is in the process of extending the products in a sector to the world market. Table 6.1-6.3 compares the RCA indices of Thailand, the U.S., and other major automobile exporters in the automobile assembly industry, spare parts and motorcycle, respectively.

Table 6.1 indicates that Thailand's RCA index for commercial automobiles has gradually increased from 0.32 in 1996 to 1.97 in 2000. However, the RCA for passenger cars was still 0.16 in 2000. The RCA indices of the U.S. automobile industry have decreased slightly during the period 1996-2000.

The indices for spare parts in Thailand have increased significantly from 0.69 in 1996 to 0.87 in 2000. However, most indices are still less than 1.0, implying weak competitiveness in the global market. Items with the highest RCAs are electronic parts. In contrast, the U.S. has considerably higher RCAs for spare parts, with the values rising from 2.29 in 1996 to 2.47 in 2000. The RCAs for that country in this subsector are among highest in the world, second only to Japan.

Motorcycles are another products for which Thailand has lost its comparative advantage during past years, while China, owing to its low labor costs, is becoming prominent. However, Thailand is competitive in motorcycle parts, as reflected in the RCA of 3.47 in 2000. The FTA with the U.S. should help to boost the exports of motorcycle parts from Thailand to the U.S.

¹⁴ The Revealed Comparative Advantage (RCA) is computed as $RCA = (X_{IK}/\Sigma X_K)/X_{IW}/\Sigma X_W$ where X_{IK} is the value of sector I exports to country K, and X_{IW} is the total value of the global exports of sector I.

Table 6.1 RCA Indices of Automotive Assembly Industry

Country or Area /Products	1996	1997	1998	1999	2000
<u>Thailand</u>					
- Passenger cars	0.01	0.01	0.06	0.07	0.16
- Commercial cars	0.32	0.82	1.07	1.82	1.97
- All items	0.29	0.74	0.95	1.59	1.77
<u>USA</u>					
- Passenger cars	0.76	0.63	0.53	0.50	0.65
- Commercial cars	0.98	1.00	0.91	0.81	0.88
- All items	0.96	0.96	0.87	0.77	0.85
<u>EU</u>					
- Passenger cars	1.08	1.27	0.95	1.00	1.06
- Commercial cars	0.88	0.85	0.93	0.85	0.87
- All items	0.90	0.89	0.93	0.87	0.89
<u>Japan</u>					
- Passenger cars	1.64	1.74	1.86	3.10	2.92
- Commercial cars	2.13	2.03	1.93	1.54	1.40
- All items	2.08	2.00	1.92	1.74	1.57
<u>China</u>					
- Passenger cars	0.00	0.00	0.00	0.00	0.01
- Commercial cars	0.07	0.06	0.04	0.03	0.04
- All items	0.06	0.06	0.04	0.02	0.04
<u>Republic of Korea</u>					
- Passenger cars	1.95	2.37	5.74	4.82	3.88
- Commercial cars	0.95	0.88	0.82	0.70	0.68
- All items	1.04	1.03	1.39	1.24	1.04

Source: PC-TAS 2002, United Nations.

Table 6.2 RCA Indices of Spare Part Industry

Country or Area /Product	1996	1997	1998	1999	2000
Thailand					
- Plastics	0.64	0.58	0.58	0.61	0.65
- Tires and rubber	0.75	0.84	1.03	0.99	1.07
- Brakes and pads	0.48	0.47	0.47	0.73	0.57
- Glass	0.31	0.29	0.27	0.46	0.55
- Iron and steel	0.58	0.64	0.68	0.66	0.81
- Copper and alloys	0.79	0.94	0.95	1.14	1.18
- Aluminum	1.09	0.69	0.35	0.36	0.32
- Jaws and tools	0.21	0.3	0.44	0.37	0.38
- Metal	0.21	0.24	0.15	0.16	0.14
- Machinery	0.54	0.5	0.37	0.42	0.55
- Electronics	1.01	0.98	1.14	1.08	1.09
- Motor parts	0.1	0.13	0.19	0.25	0.32
- Photo and optical equipment	0.52	0.71	0.6	0.28	0.31
- Clocks and watches	0	0	0	0	0
- Motor seats	0.11	0.11	0.1	0.1	0.09
All items	0.69	0.69	0.71	0.75	0.87
U.S.A.					
- Plastics	1.33	1.34	1.4	1.6	1.74
- Tires and rubber	0.84	0.97	0.98	0.99	1.03
- Brakes and pads	1.04	0.99	0.83	1.03	1.16
- Glass	1.59	1.73	1.64	1.75	1.89
- Iron and steel	1.28	1.14	1.24	1.4	1.49
- Copper and alloys	1.23	1.1	0.92	0.94	1.05
- Aluminum	1.81	2.92	3.61	2.55	3.15
- Jaws and tools	1.27	1.29	1.33	1.41	1.54
- Metal	0.56	0.59	0.51	0.56	0.69
- Machinery	1.2	1.28	1.29	1.4	1.46
- Electronics	1.19	1.16	1.12	1.13	1.18
- Motor parts	1.81	1.88	1.83	1.82	1.81
- Photo and optical equipment	1.5	1.59	1.67	1.82	1.94
- Clocks and watches	0.14	0.25	0.7	2.04	1.67
- Motor seats	0.82	0.9	0.98	1.43	1.78
All items	2.29	2.39	2.33	2.41	2.47
EU					
- Plastics	1.31	1.27	1.27	1.13	1.08
- Tires and rubber	1.24	1.23	1.19	1.09	1.10
- Brakes and pads	1.26	1.22	1.27	1.09	1.03
- Glass	1.30	1.30	1.31	1.17	1.13
- Iron and steel	1.21	1.22	1.2	1.07	1.05
- Copper and alloys	1.47	1.44	1.45	1.31	1.37
- Aluminum	0.80	0.74	0.75	0.82	0.73
- Jaws and tools	1.29	1.24	1.24	1.13	1.16
- Metal	0.90	0.91	0.92	0.86	0.85
- Machinery	1.20	1.20	1.21	1.05	1.03
- Electronics	1.04	1.02	1.03	0.93	0.9
- Motor parts	1.15	1.14	1.18	1.06	1.08
- Photo and optical equipment	1.2	1.16	1.11	1	0.99
- Clocks and watches	1.61	0.9	1.08	0.97	0.99
- Motor seats	1.37	1.49	1.41	1.38	1.33
All items	1.79	1.78	1.8	1.62	1.61

(Continued on page 64)

Table 6.2 (Continued)

Country or Area/Product	1996	1997	1998	1999	2000
Japan					
- Plastics	0.59	0.62	0.6	0.67	0.71
- Tires and rubber	1.72	1.65	1.69	1.69	1.62
- Brakes and pads	1.47	1.54	1.64	1.74	1.82
- Glass	0.62	0.5	0.42	0.36	0.4
- Iron and steel	1.16	1.14	1	1.03	1.1
- Copper and alloys	0.71	0.69	0.7	0.74	0.89
- Aluminum	0.25	0.19	0.15	0.15	0.18
- Jaws and tools	0.87	0.76	0.63	0.66	0.63
- Metal	0.67	0.6	0.48	0.46	0.48
- Machinery	2.29	2.06	1.83	1.91	1.98
- Electronics	1.58	1.43	1.36	1.36	1.39
- Motor parts equipment	1.85	1.56	1.4	1.44	1.55
- Photos and Optical	1.79	1.72	1.59	1.44	1.69
- Clocks and watches	1.26	1.92	1.66	1.82	2.6
- Motor seats	0.22	0.19	0.07	0.07	0.24
All items	3.04	2.68	2.4	2.47	2.61
China					
- Plastics	2.58	2.6	2.29	1.96	1.89
- Tires and rubber	0.56	0.5	0.57	0.67	0.77
- Brakes and pads	0	0.05	0.05	0.04	0.04
- Glass	0.29	0.3	0.43	0.56	0.66
- Iron and steel	1.07	1.07	1.09	1.18	1.22
- Copper and alloys	0.67	0.79	1.05	0.84	0.62
- Aluminum	0.4	0.33	0.51	0.44	0.44
- Jaws and tools	4.11	3.71	3.66	4.12	3.99
- Metal	0.59	0.63	0.66	0.63	0.63
- Machinery	0.32	0.3	0.29	0.34	0.37
- Electronics	0.92	0.87	0.85	0.88	0.88
- Motor parts	0.11	0.11	0.12	0.17	0.19
- Photo and optical equipment	0.38	0.41	0.44	0.5	0.49
- Clocks and watches	0.26	1.18	0.44	0.43	0.91
- Motor seats	0.04	0.03	0.03	0.09	0.13
All items	0.78	0.76	0.75	0.78	0.81
Republic of Korea					
- Plastics	0.81	0.78	0.66	0.68	0.55
- Tires and rubber	2.23	2.02	2.09	1.89	1.69
- Brakes and pads	0.07	0.07	0.06	0.12	0.23
- Glass	0.04	0.03	0.08	0.07	0.07
- Iron and steel	0.49	0.49	0.5	0.46	0.46
- Copper and alloys	0.19	0.13	0.26	0.34	0.35
- Aluminum	0.47	0.29	0.43	0.59	0.38
- Jaws and tools	0.16	0.11	0.11	0.11	0.09
- Metal	0.16	0.18	0.17	0.18	0.17
- Machinery	0.15	0.16	0.19	0.2	0.23
- Electronics	0.62	0.58	0.52	0.45	0.5
- Motor parts	0.35	0.47	0.41	0.49	0.44
- Photo and optical equipment	0.15	0.15	0.17	0.18	0.22
- Clocks and watches	0	0	0	0	0
- Motor seats	0	1.06	0.04	0	0.04
All items	0.52	0.6	0.55	0.59	0.59

Source: PC-TAS 2002, United Nations.

Table 6.3 RCA Indices of Motorcycle Industry

Country or Area/Products	1996	1997	1998	1999	2000
Thailand					
- Motorcycle assembly	1.89	1.69	1.24	1.35	0.95
- Motorcycle parts	3.51	2.85	3.58	3.41	3.47
- All items	2.53	2.16	2.09	2.11	1.83
USA					
- Motorcycle assembly	0.59	0.56	0.48	0.34	0.36
- Motorcycle parts	0.51	0.52	0.58	0.53	0.51
- All items	0.56	0.55	0.52	0.41	0.41
EU					
- Motorcycle assembly	0.75	0.82	0.81	0.78	0.71
- Motorcycle parts	0.79	0.78	0.85	0.78	0.78
- All items	0.77	0.81	0.83	0.78	0.73
Japan					
- Motorcycle assembly	6.17	6.13	6.84	6.60	6.27
- Motorcycle parts	3.71	3.58	3.09	3.13	3.23
- All items	5.20	5.10	5.48	5.33	5.21
China					
- Motorcycle assembly	0.18	0.22	0.21	0.39	1.73
- Motorcycle parts	2.36	2.54	2.74	2.56	2.85
- All items	1.04	1.15	1.13	1.19	2.12
Republic of Korea					
- Motorcycle assembly	0.72	0.57	0.62	0.67	0.52
- Motorcycle parts	0.14	0.13	0.15	0.22	0.27
- All items	0.49	0.39	0.45	0.50	0.43

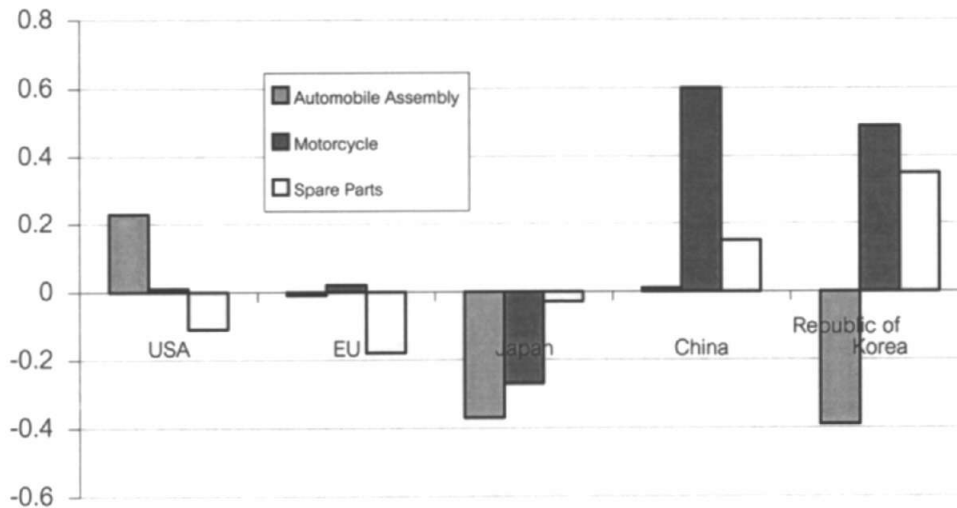
Source: PC-TAS 2002, United Nations.

To analyze the trade structure between countries, Spearman's rank correlations of RCA indices have also been computed. These correlation will provide us with rough information on the trade direction under the FTA. In particular, a negative correlation indicates that the FTA will be likely to bring about more trade owing the complementary trade structure and thus will be welfare-increasing. On the other hand, a positive correlation indicates that the FTA is likely to bring about more competition to local products as a result of a high degree of substitutability.

The analysis shows that, from the perspective of Thailand, the U.S. is a complementary trading partner in the spare parts market with a correlation value of -0.11 . The correlation for motorcycles is a small positive value of 0.01 , indicating that the two countries weakly compete with each other. The value for assembled cars is 0.23 , indicating a competing status (see Figure 6.1). From the analysis, it may be seen that Thailand strongly complements Japan in the three subsectors, but competes directly with China.

The analysis implies that the FTA between Thailand and the U.S. is likely to create additional trade in the automobile sectors, especially in the automobile spare parts markets. In particular, Thailand is likely to import more spare parts from the U.S. since the latter country has a higher comparative advantage, as shown in its higher RCAs. By contrast, Thailand has the potential to export motorcycle parts to the U.S. market if it adjusts its product lines to meet the demand in that market. The FTA should enable Thailand to gain a competitive edge in the U.S. market over China and South Korea.

Figure 6.1 Rank Correlations of the RCA Indices of Thailand and selected countries/areas



Source: Calculated by TDRI.

6.3 Assessment of Impacts

Direct benefits of the Thailand-U.S. FTA in the automotive sector are likely to arise from tariff reductions between the two countries. In particular, Thailand potentially will benefit from the increasing export of pickup trucks as a result of reductions in U.S. tariffs from the current MFN rate of 25 percentage to near zero percentage rates. Owing to the huge U.S. market size, absorbing around 1 million pickup trucks per year, a small increase in market share can bring significant benefits to Thailand. Moreover, Thailand should be able to export more motorcycles parts to the U.S. owing to the reduction of the current tariff rates of 10 and 20 percent, respectively, to around zero percent.

To capture these opportunities, however, Thailand-based producers need to develop new models of pickup trucks and motorcycles to meet the demand in the U.S. markets while complying with the high safety and environmental standards in the U.S. For example, pickup trucks in the U.S. are usually 1.5-ton models.

In addition to increased exports, Thailand is also likely to benefit from increasing investments from U.S. assemblers and parts suppliers. Another main benefit from the FTA is the technology transfer that accompanies foreign direct investment (FDI). The U.S. automotive industry is already engaged in the transfer of skills to Thai suppliers and this process is expected to increase after the FTA is implemented. However, technology transfer will not be automatic. Thailand will have to upgrade its innovation infrastructures and invest in highly skilled human resources to benefit fully from technology transfer.

From the U.S. perspective, the U.S. will benefit from Thailand's reduction of tariffs on passenger cars imported from that country; currently tariffs are as high as 60-80 percent.

Thailand's tariffs on commercial cars are also expected to drop significantly from 40-60 percent to almost zero percent.

6.4 Adjustment Needed

To reap benefits from access to the U.S. market and U.S. investment in Thailand, Thai suppliers must reach minimal international standards in three areas: quality, cost and delivery time (QCD).

In terms of product quality, a defect ratio of less than 100 parts per million (ppm) has long been the norm. Some assemblers such as General Motor have started to demand less than 20 ppm. While the requirement places no major difficulties for most first-tier suppliers, most Thai lower-tier suppliers are struggling with current defect rates of more than 1,000 ppm. In terms of system quality, direct and indirect suppliers are required to obtain QS 9000 and ISO 9000 certification, respectively. Most direct suppliers have long adopted quality management systems. They are thus well positioned to attain the ISO 9000 or QS 9000 standards. The situation is rather different for indirect suppliers since many of them appear unable to meet the standards.

The pressure to reduce cost is also intensifying. Many assemblers have set targets for their suppliers to reduce prices 20-30 percent within 2-3 years. For example, GM has adopted a cost reduction target of about 5 percent per year. While most direct suppliers manage to reach the cost reduction targets, problems still remain for many small indirect suppliers. In addition to suppliers' efforts, the government should accommodate by reforming the distorting tariff structure that imposes high costs on suppliers.

The shortening of product life cycles and the adoption of just-in-time (JIT) procurement by assemblers also result in a more frequent delivery time and lower volume per delivery for suppliers. To comply with the JIT system, suppliers also need to strengthen quality control measures, since one defective part can disrupt the whole production line of their customers.

For first-tier suppliers, design and test capabilities are increasingly required. Until recently, direct suppliers receive orders and the related blueprints from assemblers. All that suppliers had to do was produce parts according to the blueprints. Increasingly, however, they will be given only functional specifications, e.g., dimensions and physical properties, and they will be required to propose the design. The problem is that developing design and test capability requires huge investments in facilities and skills acquisition, which are still out of reach for most domestic first-tier suppliers.

Finally, suppliers will be required by their customers to adopt the use of information technology (IT), particularly the internet and electronic data interchange (EDI), in their supply chain management. The adoption of IT is aimed at achieving better interaction between assemblers and suppliers, shorter lead times, lower inventory and improvement in procurement, production and distribution. Again, the adoption of IT will involve a fixed-cost investment that requires large production volumes in order to be cost efficient.

6.5 Conclusion

From the Thai perspective, the U.S. and Thailand are strongly complementary in the spare parts industries and weakly complementary in the motorcycle market. As a result, the U.S.-Thailand FTA should benefit both countries owing to trade creation. In particular, Thai car assemblers and parts manufactureres should be able to expand their exports to the U.S. market owing to the reduction of trade barriers and other trade facilitation measures included under the FTA. Thailand is also likely to attract more investment from U.S. car makers because of its strong clusters. To capture all these potential benefits, however, Thailand-based assemblers and suppliers need to improve product quality, reduce costs and improve delivery time. First-tier suppliers also need to develop design capability. To this end, the government should support the private sector by setting up design and test facilities and investing more in the training of human resources.

References

- Thammavit Terdudomtham (1997). "The Automobile Industry in Thailand", *ASP-5 Sub-Program on Liberalization of Trade and Investment*, Thailand Development Research Institute.
- Office of Industries (2002) "Industry & Trade Summary: Motor Vehicles", *USITC Publication 3545*, U.S. International Trade Commission, United States.

Chapter 7

Cross Border Services Trade

7.1 Main features of the U.S.-Singapore Agreement

The key issue in cross-border trade in services in the U.S.-Singapore Agreement is to accord national treatment to the other Party's service suppliers involved in cross border services trade. The provisions in the FTA are comparable to those found in the Treaty of Amity. However, the FTA is more lenient in terms of exemptions. The Treaty exempts only 3 service sectors namely, communications, transportation and fiduciary functions and banking involving depository functions.¹⁵ The FTA, on the contrary, allows both parties to exempt (a) all existing measures that do not conform with the new obligations and (b) any measures applied to sector or sub-sectors listed in the exclusion list. In case of Singapore, all services provided by the government at the time of the agreement are exempted under list (b). The details on measures exempted under list (a) appear in table 6 at the end of this chapter. It should also be noted that, like investment, the agreement on cross-border services trade applies to only central and regional level of the government and not the local governments¹⁶.

While allowing for a relatively expansive set of exemptions, the FTA includes several provisions not found in the Treaty of Amity that concern two main issues: domestic regulation, corporatization and privatization of state enterprises. The provisions on domestic regulation aim at ensuring that domestic regulations are administered according to good governance principles and that these regulations themselves do not restrict competition in the market. Most of these provisions are the exact copy from the GATS. For example, article 8.3 of the FTA, which requires domestic licensing procedures be "*transparent, objective, not burdensome more than necessary and not in itself a restriction of supply of services*" are identical to Article VI of the GATS. Similarly, article 8.6 that prohibits parties from adopting measures that may limit the number of suppliers, the value of service transactions, the specific types of legal entity, etc., is also an exact replica of Article XVI of the GATS (see details of the legal text in Table 7.1). However, such obligations in the GATS are bound only when a member country makes a sector-specific market access commitment¹⁷. In the U.S.-Singapore FTA, they apply automatically.

The provisions on corporatization and privatization of state-owned enterprises are parts of article 8.8, which deals with non-conforming measures (exemptions). That is, the FTA allows a Party to exempt all service sectors where services are provided by a state enterprise at the time the agreement is made. However, once private competition is introduced and the state service is devolved, various disciplines apply to ensure market access and equal treatment for U.S. investors.

¹⁵ It should be noted that agreements on telecommunications and financial services appear in separate chapters from the cross border services trade in the U.S.-Singapore FTA agreement.

¹⁶ For the United States, regional level of government means a state of the United States, the District of Columbia and Puerto Rico. It is not yet determined which definition will apply in Thailand's case.

¹⁷ In other words, these regulatory disciplines become binding only on a sectoral basis when a member state makes a specific commitment to liberalize a particular service sector or sub-sector. If a member state does not make such a commitment in any service activity, these disciplines will not apply.

The first discipline is that once a state enterprise becomes corporatized and privatized, it does not carry with it privileges that will give rise to an unfair competitive edge over private competitors in the same market. The second is that U.S. investors' will have equal rights to acquire shares in the privatized enterprise. Article 8.8 stipulates that (a) corporatized SOEs shall not be granted any preferential treatment except the right to supply services, either as a designated monopoly or one of the limited number of suppliers; (b) U.S. investors will be granted national treatment in the purchase of the state enterprises' sales of equity share.

It should be noted that the requirement that corporatized enterprises shall not be provided with any preferential treatment may be inconsistent with the Corporatization Act 1999, which stipulates that all rights and privileges shall be maintained by the corporatized state enterprise. The Corporatization Committee may decide to limit or eliminate certain rights and privileges in order to ensure fair competition in the market, however. In most cases, the Committee would withdraw all regulatory power from a corporatized state enterprise in order to pave way for a full-fledged regulatory body. However, in most cases, certain privileges may remain as long as the enterprise is still considered a government enterprise -- i.e. as long as the Ministry of Finance continues to hold more than 50% of its equity share. These privileges include, for example, the use of Crown Property, loan guarantees by the government, subsidies, etc. The modified rights and privileges of a corporatized entity take the legal form of a Royal Decree.

The FTA also deals with transfer and payments. Article 8.10 stipulates that each party shall permit all transfers and payments relating to cross border supply of services to be made freely without delay into and out of its territory. This provision is similar to GATS Article XI: on Payments and Transfer, which states that "Except under the circumstances envisaged in Article XII, a Member shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments." Again, unlike the FTA provision, this particular obligation only applies on a sectoral basis in the GATS -- i.e., when the member country makes a commitment to open up a specific service sector. It does not apply automatically across the board for all services. But more importantly, the equivalent provision in the GATS contains a safeguard clause as in the text underlined. Article XII to which Article XI refers, allow restrictions on international transfer and payments in case the country develop serious balance of payments problem in the process of economic development or transition. Such a safeguard clause, however, is not available under the FTA.

7.2 Potential Costs and Benefits to Thailand

Concerning the potential impact of the agreement on the local business and economy, most businesspersons and officers from various government enterprises raise concerns about market concentration. For example, liberalization in the express delivery service, which was the focus of the U.S.-Singapore FTA, can bring greater competition that will lead to lower prices. However, if U.S. companies -- i.e., Federal Express or National Express -- are the only ones that are given national treatment privileges, then there would not be a level playing field for all large players in the market. For example, DHL, which is European, and TNT, which is Australian, will be placed at a disadvantage. This can easily lead to monopolization of the market. In the absence of an effective implementation of the domestic competition law, as will be discussed in Chapter 10, these multinational service

providers can easily abuse their dominance in the market by foreclosing competition or raise prices of services.

7.3 Assessment of the Adjustment Needed

From the above analysis and the results from the brainstorming sessions with business representatives, academics and officers from state enterprises, the following suggestions can be made concerning Thailand's position:

1. Thailand needs to ensure that its competition law is properly implemented to ensure an effective competition regime that can restrain anti-competitive practices that may be carried out by large U.S. multinationals (more details on this issue in Chapter 10).
2. In exchange for market access, Thailand should propose to have U.S. MNCs bound by UNCTAD's non-binding recommendations for the control of restrictive business practices known as the Multilaterally Agreed Equitable Principles and Rules for the Control of Restricted Business Practices (the Set) in exchange. We must ensure that services trade is not only free, but also fair.
3. Alternatively, in sectors where market concentration is anticipated, Thailand should offer the same market access to other WTO members to ensure more balanced competition in concentrated markets.
4. Thailand should embrace the good governance principles proposed in this chapter. A regulatory regime that is more transparent, objective, not overly burdensome and not a restriction to the supply of services, should benefit all businesses, Thai or U.S.
5. As for the proposed elimination of all privileges upon corporatization, we need to tread carefully. This is because many state enterprises -- even when corporatized and privatized -- still carry the burden of social services that can be costly. Also, a transition period may be required for a newly privatized enterprise to improve its efficiency in order to be able to compete at the same level with the private competitors, in particular, multinationals. Such a transition period should be negotiated.
6. On the issue of payments and transfer, Thailand should insist that the FTA contain a safeguard clause as in the GATS Article XI. The particular clause will allow the state to impose restrictions on international transfer and payments in case the country develops a serious balance of payments problem in the process of economic development or transition.
7. Both parties should make clear the extent to which the agreement applies to different levels of the government so that its coverage and implications can be properly assessed.

Table 7.1 Brief Summary of Agreement on Cross-border Services Trade

Obligations under the FTA	Existing Regime	Remarks
National Treatment and Most Favored Nation (MFN) Obligations		
<p><i>Article 8.4 - 8.5</i> require national and MFN treatments of U.S. service suppliers involved in cross border trade in services</p>	<p><i>Article IV of the Treaty of Amity</i></p> <p>Nationals and companies of either party shall be accorded the better of national treatment or MFN in conducting their business activities.</p> <ul style="list-style-type: none"> • Establishing/ acquiring interests in enterprises engaging in any businesses except transport, communications, fiduciary functions, banking involving depository functions, exploitation of land and natural resources and domestic trade of indigenous agricultural products. <p><i>Article V of the Treaty of Amity:</i></p> <p><u>Nationals and companies</u> of either party shall be accorded national treatment with respect to the leasing of immovable property (land and edifices) needed for the residence or conduct of commercial activities and purchasing and disposing of movable properties.</p> <p><i>Article VI of the Treaty of Amity</i></p> <p><u>Nationals and companies</u> of either party shall not be subjected to the payment of taxes, fees or charges of the other Party within the territories, or levy and collection thereof, more burdensome than those born by nationals of all third countries (MFN). In case of nationals and companies that reside within the territories of the other Party, national treatment shall be accorded.</p>	<p>Non-discriminatory obligations proposed under the FTA appears to be wider in scope than those spelled out in the Treaty of Amity since the former covers all activities while the latter specifies specific activities to which a Party's nationals/companies are entitled to non-discriminatory treatment (positive list).</p>
Domestic Regulations		
<p><i>Article 8.3 Domestic Regulations</i> requires that information regarding the authorization of the supply of a service be made readily available to applicants and that the licensing requirements and procedures are based on (a) objective and transparent criteria (b) not more burdensome than necessary to ensure quality of service and (c) in case of licensing, not in itself a restriction on the supply of services</p>	<p>Thailand has not made any commitment with respect to domestic regulations in the GATS, except for the telecom sector where Thailand is committed to adopt the WTO's Telecom Reference Paper in the Agreement of Basic Telecommunications concluded in February 1997. The reference paper spelled out broad regulatory principles of similar nature.</p>	<p>Article 8.3 of the FTA is identical to Article VI of the GATS, which deals with domestic regulations. However, such obligations in the GATS are triggered only when specific market access commitment -- i.e., a commitment to liberalize a particular service sector or sub-sector -- is made. That is, the requirements spelled out in the article do not apply automatically.</p>

(Continued on page 73)

Table 7.1 (Continued)

Obligations under the FTA	Existing Regime	Remarks
Market Access		
<p>Article 8.6 Market Access prohibits parties from adopting measures that (a) limit the quantity of suppliers in the market or require and economic needs test (b) limit the value of service transactions of assets (c) limit the number of service operations or the quantity of services supplied; (d) limit the total number of natural persons that may be employed in a sector or that a service supplier may employ that are directly related to the supply of the specific service and (e) require specific types of legal entity or joint venture through which a service supplier may supply a service</p>	<p>The Treaty of Amity does not have provisions guaranteeing market access. That is, the state is allowed to impose these restrictions as long as they do not discriminate between Thai and foreign companies.</p>	<p>Article 8.6 is imported from Article XVI of the <i>GATS</i>, which deals with market access. However, such obligations in the <i>GATS</i> are triggered only when a member country makes a sector-specific market access commitment.</p>
Non-conforming Measures (Exemptions/Exceptions)		
<p>Article 8.8 stipulates that exemption from the national treatment, MFN and market access obligations are allowed in case of (a) existing measures that do not conform with the new obligations under the FTA at both the central and regional level; these measures may be phased out in the future (b) any measures applied to sectors, sub-sectors or activities listed in the schedules to Annex 8-II (exclusion list).</p> <p>Sectors that are excluded in the Singapore-U.S. FTA are</p> <ul style="list-style-type: none"> • List (a) existing measures that are inconsistent with national treatment: sales of SOEs, engineering, architecture, land surveying services, legal services, patent agent services, real estate services (in Sentosa only), development and ownership of residential property, medical services, contact lens practitioners, postal services (excluding express delivery), power supply, transport services, etc. • List (b) services that are provided by the government at the time of the agreement: the government reserves the right to restrict the number of suppliers, imposing restrictions on the competition of senior management and board of directors, allow the SOE to be the only or among one of the limited number of service suppliers, requiring local presence and specifying the judicial form of the supplier. However, when devolution of state services involves sales of equity shares, U.S. investors will be granted national treatment. And once competition is allowed in the devolved service, it shall be permitted on a non-discriminatory basis and no preferential treatment will be provided to the newly corporatized enterprise except as mentioned earlier. 	<p>Sectors that are excluded in the Treaty of Amity are transport, communications, fiduciary functions, banking involving depository functions, exploitation of land and natural resources and domestic trade of indigenous agricultural products. Professional services are also excluded from the treaty.</p>	<ul style="list-style-type: none"> • The FTA allows for a relatively more expansive exceptions/exemptions from national treatment and MFN obligations since all non-conforming existing measures are exempted. • The requirement that "no preferential treatment" shall be granted to a corporatized state enterprise is in contradiction with the Corporatization Act 1999, which stipulates that all rights and privileges shall be maintained by the corporatized state enterprise. However, the Corporatization Committee may decide to limit or eliminate certain rights and privileges in order to ensure fair competition in the market. The modified rights and privileges of the corporatized entity must be in the form of a Royal Decree.

(Continued on page 74)

Table 7.1 (Continued)

Obligations under the FTA	Existing Regime	Remarks
Transfer and Payments		
<p><i>Article 8.10</i> stipulates that each party shall permit all transfers and payments relating to cross border supply of services to be made freely without delay into and out of its territory. Such transfers and payments include (a) salary payments, (b) funds taken abroad to consume services (c) profits, (d) interest royalty payments, management fees, licensing fees, technical assistance fees, etc, (e) payments made under contract, including loans agreement and (f) inflows of funds necessary to perform a service.</p>	<p><i>The Treaty of Amity</i> does not have any provision regarding transfer and payments.</p> <p>The Bank of Thailand administers foreign exchange controls on behalf of the Ministry of Finance according to the Exchange Control Act B.E. 2485. It may regulate the manner in which money is brought in or taken out of the country. However, there are no current restrictions on the repatriation of investment funds, dividends, profits as well as loans repayment.</p>	<p><i>GATS Article XI: Payments and Transfer</i> stipulates that "Except under the circumstances envisaged in Article XII, a Member shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments". That is, obligations with regard to transfer and payments are attached to specific commitments to liberalize a sector or sub-sector and not a general obligation. It should also be noted that Article XII, to which Article XI referred, allow restrictions on international transfer and payments in case the country develop serious balance of payments problem in the process of economic development or transition. Such safeguard clause, however, is not available under the FTA.</p>
Transparency		
<p><i>Article 8.12</i> requires certain degree of transparency in the development and application of domestic regulations. A party (a) shall establish and maintain mechanism that will respond to inquiries about domestic regulations; (b) to its best efforts, provide advance notice with regard to new regulations, provide substantive comments received from interested persons regarding the proposed regulations, and allow reasonable time between publication and final regulation.</p>	<p><i>The Treaty of Amity</i> does not contain any provision regarding transparency of domestic regulations.</p>	<p>This is a rather general obligations that are based on "best efforts" rather than binding. Similar provisions can be found in the GATS.</p>

Chapter 8

Telecommunication & E-Commerce

8.1 Telecommunication

8.1.1 Introduction

The Thai telecommunication market is plagued with problems of ineffective competition and poorly designed regulations. Prices of telecommunication services are generally higher than that of other Asian countries (See Table 8.1)¹⁸. Consumer complaints are common but consumer protection mechanisms are weak. Reforms have been initiated but are moving at a very slow pace. The National Telecommunications Commission (NTC), the sector regulatory body, has yet to be set up. The privatization of state-owned enterprises has also been delayed.

**Table 8.1 Differences in Telecommunication Pricing
between Thailand and Other Asian Countries**

(Unit: %)

Service	Average price differences	Maximum price differences
Domestic long distance ¹	59.1	82.7
International long distance ²	27.3	57.7
Mobile phone ³	26.0	45.1
Internet international half circuit ⁴	> 43.0	NA

Notes: 1. Calling distance is between 351-500 km.
2. The destination is U.S.A.
3. Usage time is 200 minutes per month
4. 45 Mbps half-circuit price between Thailand and U.S.A.

Source: Tangkitvanich (2002).

8.1.2 Main Features of the U.S.-Singapore FTA

Chapter 9 of the U.S.-Singapore FTA applies to the telecommunication sector, exclusive of the broadcasting sectors. The FTA requires the following obligations to the Parties:

- Each Party shall ensure that enterprises of the other Party have access to public telecommunication transport networks and services, including leased circuits, offered in its territory or across its border on reasonable, non-discriminatory terms and conditions (Article 9.2). This will, in effect, allow branches of a U.S. firm located in Thailand to use leased lines provided by a U.S.-based operator.
- Each Party shall ensure that enterprises of other Party may use public transportation networks and services for the movement of information in its territory or across borders and for access to information contained in the databases. Exceptions are allowed in certain circumstances to ensure the security and confidentiality of messages. (Article 9.2).

¹⁸ Although prices of some services in Thailand have been adjusted downward recently, it is still true that telecommunication pricing in Thailand is overpriced, comparing with other Asian countries.

- Each Party shall ensure that suppliers of public telecommunication services in its territory provide interconnection with the facilities and equipment of suppliers of public telecommunications services of the other Party (Article 9.3).
- Each Party shall ensure that major suppliers¹⁹ in its territory, on a timely basis and on reasonable and non-discriminatory terms and conditions (Article 9.4):
 - provide suppliers of the other Party access to network element on an unbundled basis
 - provide suppliers of the other Party physical or virtual co-location
 - offer for resale to suppliers of the other Party at cost-oriented rates
 - provide access to poles, ducts and conduits owned or controlled by them
 - provide number portability
 - provide interconnection to facilities and equipment to suppliers of the other Party
 - make publicly available a reference interconnection offer, procedures for interconnection negotiations, file interconnection agreements with the regulatory body
 - provide leased circuits services on a reasonable rate, to be compared with the rates of like circuits in comparable markets in other countries (for major suppliers of leased lines).
- Each Party shall also ensure the availability of:
 - competitive safeguards (Article 9.4),
 - mechanisms to resolve interconnection disputes (Article 9.4),
 - recourses to telecommunication regulatory bodies to resolve disputes, opportunities to appeal for reconsideration and opportunities to obtain judicial review (Article 9.11)
- Each Party shall ensure that its telecommunication regulator is separate and not accountable to any telecommunication suppliers. Each Party shall notify the other Party of its intention to privatize its state-owned enterprises in the telecommunication sector (Article 9.6).
- Each Party shall ensure that any universal service obligation is competitively neutral (Article 9.7), the licensing procedure transparent (Article 9.8), the allocation and use of scarce resources objective and transparent (Article 9.9) and the rulemakings transparent.
- Each Party shall ensure that suppliers have the flexibility in the choice of technologies and endeavor to rely on market forces (Article 9.14-15).

It should be noted that the U.S.-Singapore FTA does not require market access. This is because the Singapore telecommunication market has been fully liberalized since 2002. It

¹⁹ Major suppliers are defined as suppliers of public telecommunication services that has the ability to materially affect the terms of participation in the relevant market as a result of control over essential facilities or use of its position in the market. The concept of a major supplier is closely related to that of a market dominant found in the competition policy literature. It should be noted that in the U.S.-Singapore Agreement, the requirements for major suppliers do not extend to suppliers of commercial mobile services.

is likely that the U.S. will demand certain market access to the Thai telecommunication market.

8.1.3 Potential Costs and Benefits to Thailand

Most participants in the brainstorming session did not foresee any Thai operators to enter the U.S. market due to their limited investment and technology capacity.

As a result, benefits to Thailand from the FTA are likely to arise from a more disciplined and transparent telecommunication regulatory regime, required by the FTA. For example, rulemakings and issuance of licenses would be required to be more transparent than those available in the existing regime. This, however, poses a question whether the U.S. operators will be treated more favorably than domestic operators in Thailand.

Additional potential benefits will result from more investment into the Thai market, provided that the market has been liberalized and the regulatory regime improved. While some local operators raised a concern that the Thai telecommunication market has already over-invested, additional investment should be beneficial at least in a longer term. A more intense competition due to market liberalization is likely to bring telecommunication prices down to be in line with other Asian countries.

8.1.4 Assessment of the Adjustment Needed

To reap full benefits from the FTA and prevent potential adverse impacts:

- The Telecommunication Business Act needs to be revised to meet international standards to prevent discrimination against domestic operators. For example, reasons for denials of license should be given to every supplier, foreign and domestic.
- Telecommunication market in general (and leased-circuit market in particular) needs to be gradually liberalized. In the transitional period, rates of telecommunication services should be regularly benchmarked with other countries.
- Privatization of state-owned enterprises (TOT and CAT) should be implemented as planned to enhance their efficiencies, ensure a credible commitment and comply with provisions in the FTA.
- Competition policy regime needs to be strengthened to provide competitive safeguards and prevent any potential abusive behaviors of domestic as well as foreign suppliers.
- Reservation on social and cultural grounds should be maintained with regard to the movement of information Article 9.2. For example, ISPs should be allowed to block socially harmful contents.

8.2 E-commerce

8.2.1 Introduction

E-commerce in Thailand is still in its infancy. There are still very few companies that can make profit from selling digital goods or providing online services through the

Internet. Successful E-commerce companies are mainly those selling conventional goods, e.g., jewelry (Thaigem.com) and books. The adoption rate of E-commerce for B-to-B transaction is also low. Most B-to-B applications are in the form of improving customer relationship management (CRM), rather than restructuring supply chains. Only a few sectors, e.g. retail and automobile, have adopted Electronic Data Interchange (EDI) in their procurement process. In the public sector, e-procurement has been adopted in some agencies, but the sustainability of such projects is still in question.

8.2.2 Main Features of the U.S.-Singapore FTA

The FTA contains provision on electronic supply of services and digital products.

Services (Article 14.2)

- Supply of a service using electronic means is protected under relevant provisions of Chapters on cross-border trade in services, financial services and investment, subject to any reservations or exceptions applicable to such obligations.

Goods (Article 14.3)

- For digital products imported or exported by electronic transmission, customs duties and other duties will be exempted.
- For digital products imported or exported through other channels, customs duties will be valued according to the cost or value of the carrier medium alone, without regard to the cost or value of the digital products stored in the medium.
- Some digital products shall not be treated less favorably than other like digital products.

8.2.3 Potential Costs and Benefits to Thailand

In the case of trade in goods, a previous study found that custom duties collected from information goods constituted only US\$ 6.6 million in 1998 or 0.03 percent of the Thai government's total annual revenue (Tangkitvanich, 2002). Thus, tariff exemption seemed to have a very small impact on government income. Considering the difficulty in collecting tariffs for digitized products, it would seem logical to conclude that imposing tariffs on international transmission is hardly worth the cost of collection.

8.2.4 Assessment of the Adjustment Needed

In the case of service trade, allowing online services will mostly benefit service-exporting countries, most notably the U.S. Of course, consumers in Thailand will also gain from a more liberal regime. However, at this stage, there maybe risks related to capital flow in online transaction of financial services and investment. To avoid the risk that the liberalization will bring about unforeseen impacts, only services currently supplied cross-border should be allowed via the Internet. A monitoring mechanism should be set up and actual impacts should be carefully assessed before the provision on online service is implemented.

Chapter 9

Financial Sector

9.1 Introduction

FTA in Financial Services aims at reducing governmental measures that prevent financial services from being liberally provided across national borders or that discriminate against locally-established service firms with foreign ownership. FTA represents an important step toward achieving bilateral free trade in financial services. It is intended to improve efficiency in the financial sector by easing the constraints on activities of financial institutions.

9.2 Main features of FTA in financial services

Financial services in the FTA context comprise two broad categories: insurance and insurance-related services, and banking and other financial services. The first category include life and non-life insurance, reinsurance and retrocession, insurance intermediation such as brokerage and agency services, and services auxiliary to insurance such as consultancy, actuarial, risk assessment and claim settlement services. Banking includes traditional services provided by banks, such as acceptance of deposits, lending of all types, and payment and money transmission services. Other financial services include trading in foreign exchange, derivatives, and all kinds of securities, securities underwriting, money brokering, asset management, settlement and clearing services, provision and transfer of financial information.

Major obligations contained in the FTA in financial services are:

1. **National treatment.** It requires both parties to treat foreign investors, financial institutions, investments in financial institutions, and cross-border financial service suppliers under the same terms and conditions as domestic suppliers are treated.
2. **Most-favored-nation treatment.** It requires a country to treat investors, financial institutions, investments in financial institutions, and cross-border financial service suppliers from another country no less favorable than it does to suppliers from any other countries.
3. **Market access.** It prohibits governments from limiting the number of financial institutions, the total value of financial service transactions, the total number of financial service operations, the total number of people employed in a particular financial service, and the type of legal entity through which a service can be provided.
4. **Cross-border trade in financial services.** It requires both parties to apply national treatment to cross-border financial service suppliers of the specified services and allow its people to purchase these services from cross-border financial service suppliers.
5. **Senior management and boards of directors.** It allows for temporary entry of senior managerial or other essential personnel to facilitate financial service

operations. It also requires that a party may not impose certain nationality and residency requirements for the directors of the other party's financial institutions.

FTA in financial services allows both parties to list limitations and conditions of the above obligations in schedule of commitments and non-conforming measures. The Financial Services Chapter also contains an exception for prudential measures based on the GATS, and certain measures in pursuit of monetary and related credit or exchange rate policies that do not affect commitments under the Chapter 12.

Summary of the U.S.-Singapore FTA

The U.S.-Singapore FTA in financial services will provide new opportunities for U.S. banks, insurance companies, securities and related financial services as follows:

- The U.S. firms can obtain new licenses for full-service banks within 18 months and within three years for wholesale banks.
- Licensed full-service banks will be able to offer all their services up to 30 locations in the first year, and at an unlimited number of locations within two years.
- Locally incorporated subsidiaries of U.S. banks can apply for access to the local ATM network within two and a half years. Branches of U.S. banks can get access within four years.
- U.S. insurance companies have full rights to establish subsidiaries, branches or joint ventures.
- Singapore will open cross-border supply of marine, aviation and transport (MAT) insurance, reinsurance, insurance brokerage of reinsurance and MAT insurance and insurance auxiliary services.
- Singapore will provide expedited procedures of insurance services so that prior regulatory product approval is not required.
- Singapore will allow U.S. firms to provide asset and portfolio management and securities services in the country through the establishment of local offices, or through acquisition of local firms.
- U.S. firms may supply pension services under Singapore's privatized social security system, with more liberal requirements regarding the number of portfolio managers who must be located in Singapore.
- Singapore will open cross-border supply of financial information, advisory, and data processing services.

Summary of the U.S.-Chile FTA

The U.S.-Chile FTA in financial services will provide new opportunities for U.S. banks, insurance companies, securities and related financial services as follows:

- U.S. insurance companies have full rights to establish subsidiaries, branches or joint ventures.

- Chile will open cross-border supply of marine, aviation and transport (MAT) insurance, reinsurance, insurance brokerage of reinsurance and MAT insurance and confirm existing rights for reinsurance.
- Chile will provide expedited procedures of insurance services so that prior regulatory product approval is not required.
- U.S. banks and securities firms may establish branches and may invest in local firms, except in very limited circumstances.
- Chile will open cross-border supply of financial information and data processing, and financial advisory services with a limited exception.
- U.S. financial institutions may offer financial services to citizens participating in Chile's exhighly successful privatized voluntary savings plan.

9.3 Potential Benefits

FTA obligations will make it possible for investors, financial institutions, investments in financial institutions, and cross-border financial service suppliers to diversify geographically and to exploit complementarities among areas of insurance and insurance-related services, and banking as well as other financial services. The elements of FTA in financial services could help generate the following benefits.

1. FTA commitments could help improve transparency of and reduce barriers to market access, guarantee security and predictability of market access, prevent discrimination, and provide for rapid settlement of disputes. Financial institutions, investors, investments in financial institutions, and cross-border financial service suppliers of both parties will be decreasingly affected by explicit discriminatory policies or market access limitations, as well as constraints that result from a non-transparent policy process.
2. FTA commitments could help increase new opportunities for financial institutions, investors, investments in financial institutions, and cross-border financial service suppliers of both parties to diversify their portfolios. Financial services can be traded through sales of foreign-based affiliates as well as on a cross-border basis, thereby increasing the sources of domestic competitiveness.
3. FTA commitments allow governments to pursue sound regulatory and macroeconomic policies in order to achieve domestic policy objectives. The Financial Services Chapter establishes that: first, none of the FTA obligations prevent both parties from taking measures for prudential reasons, e.g., to ensure the integrity and stability of the financial system. Second, services supplied by the exercise of governmental authority, including activities conducted by a central bank in pursuit of monetary or exchange rate policies, are excluded from the scope of the FTA. Third, FTA allows both parties to impose restrictions on current or capital account transactions in the event of serious balance of payments or external financial difficulties or the threats thereof. Finally, both parties may undertake other domestic policy objectives provided that the measures are neither discriminatory nor intended to restrict access of suppliers to the market.

4. With the FTA, both parties can put in place systems and procedures to ensure that legitimate transactions can claim preferential treatment under the bilateral commitments. Exchanges of information are likely to increase so that both parties can use risk management techniques to block illegal transactions.
5. FTA could help increase diversification of financial products and services that would benefit consumers of both parties.

Possible gain for Thai banks, insurance companies, securities and related financial services.

The major financial institutions in Thailand comprises the central bank (Bank of Thailand), commercial banks, specialized financial institutions, finance companies, securities companies, insurance companies, and mutual fund management companies. However, most financial activities have been overwhelmed by commercial banks, with the banks' total assets to GDP ratio increased from 85% in 1990 to 127% in 2002. In practice, acceptance of deposits and lending of all types constitute a large part of financial services provided by domestic commercial banks, while foreign bank branches participate in wholesale banking, trade finance, foreign exchange, and corporate finance. On the other hand, the provision of insurance services has been relatively small, with total assets of life and non-life insurance companies amounting to only 6% and 2% of GDP respectively in 2002. To date, the operation of U.S. insurer in Thailand has been a favorable one for some time.²⁰

Foreign participation in the Thai financial sector has tremendously increased after the financial crisis in 1997. The restructuring program was accompanied by a recapitalization of four Thai banks²¹, in which foreign banks gained majority of their total shares. Changes in ownership have brought about new management techniques, such as auditing, product pricing, and electronic banking. There are also various improvements of consumer service, such as an introduction of queuing system at the Bank of Asia. Banks have become increasingly efficient from a reduction of operating costs. It is apparent that technology transfer has served as an important strategic driver and facilitator of all these positive changes.

In the event that Thailand will participate in the FTA negotiations, the expectations of Thai financial institutions towards a more participation in the U.S. market are less than straightforward. The intense competitive pressures in the U.S. market compel Thai banks with strong incentives to use the comparative advantages derived from the development of new financial products and services. However, only a few financial institutions have the management capabilities to conduct international banking operations. Because Thai financial sector has focused mainly on banking services for the domestic market, little has been done to identify opportunities and potential partners in the U.S. The potential benefits to Thailand may arise from nontraditional financial services that are being proposed for negotiations. It is important that FTA commitments must be complemented by additional

²⁰ American International Assurance (AIA) has been operating life insurance in Thailand since 1938. The company has the largest total assets in the industry, with a 50% market share of the total premium in December 2000.

²¹ These are Bank of Asia, UOB Radanasin Bank, DBS Thai Danu Bank, and Standard Chartered Nakornthon Bank.

technology transfer channeled through the Thai financial institutions. A key need is to assist Thai financial institutions in enhancing their capacity to trade.

Possible losses and hurdles

One of the most striking structural changes in the Thai financial system during the 1990s has been the growing presence of foreign participation, especially in the banking system. Changes in the restrictions on foreign entry have at times been motivated by a desire to improve the levels of competition and efficiency in the banking system, and later triggered by the need to restructure and recapitalize ailing banks after the 1997 financial crisis. The experience with banking system instability has demonstrated a number of concerns about the FTA obligations.

First, the associated introduction of cross-border trade in financial services may have an impact on the level of systemic risks in the Thai financial system. The issue of whether there will be adequate supervision is often voiced. Since it is likely that Internet will become a key structural force for cross-border financial suppliers to engage in new and more sophisticated activities. This could easily lead to the emergence of new financial services. Thai financial regulators may face informational constraints of the complex cross-border financial transactions, such as OTC derivative products used in mature markets.

Second, it is difficult for Thai financial institutions to expand financial services into the U.S. Thai banks have limited understanding of the U.S. markets, believing it is too large and complex. They have yet to overcome a number of disadvantages, including limited access to capital, lack of experience with multiple markets, delays in and higher costs of implementing new products and services, and limited capabilities to afford new technologies. In particular, Thai banks need to deal with nonperforming assets and to rebuild their capital base.

Third, the diversification of financial services does not necessarily yield a more stable source of credit for domestic borrowers. It is acknowledged that Thai commercial banks have been an important source of funds for many small and medium enterprises as well as low-income people. FTA obligations will result in domestic banks facing growing competition from a variety of financial services that can put pressure on their interest rate margins and profits. Banks may use funds raised in the Thai financial market to undertake a more profitable lending. Thai entities might not have the same degree of access to domestic savings.

A final concern is linked to the timing of FTA commitments. The "big bang" approach to liberalize financial services can worsen banking system stability. Since Thai banks have relatively weak capital positions, some may either respond to increased foreign competition by undertaking higher-risk activities in an attempt to rebuild their capital positions or they will be forced into bankruptcy. Sequencing of specific FTA commitments is needed, so that Thailand can build up more efficient and stable financial system in the aftermath of financial crisis.

9.4 Legal Concerns

To some parties, an FTA as currently proposed by the U.S. may seem promising in several respects. For instance, a stronger degree of market competition as allowed by the FTA should bring about gains in various segments of the economy including consumers,

investors as well as traders. However, others may doubt whether FTA could be put into effect in the presence of existing legal constraints in Thailand. For example, Article 7 of the Commercial Banking Act does not allow foreign banks to establish new branches in Thailand. Worse yet, because of different capital bases as specified in the regulations, foreign banks encounter more stringent restrictions on credit extension and net foreign exchange open position than Thai banks. The following section will therefore investigate some legal angles of the FTA and determine whether the FTA is in consonance or conflict with relevant Thai laws.

FTA is similar to two Thai laws, (a) Treaty of "Amity" and Economic Relationship between Thailand and the United States B.E. 2511, and (b) Announcement of the National Executive Council No. "281" B.E. 2515 in some regards. For example, they contain common clauses on national treatment, most-favored-nation treatment, and market access. Given these similarities, it is worth examining one legal case in the past quoting Amity and 281.

In 1992 Paisal Insurance Co., Ltd., whose shares were almost entirely (99.84%) held by foreign nationals or entities, requested a permission to establish 11 branches, citing rights as stated in Amity and 281. But after thorough examination of arguments plus rationales for and against the case, the Council of State finally disapproved the request in 1994 based upon the following two primary reasons. First, at that time the Insurance Against Loss Act B.E. 2535 was already in effect, ruling against the branching of foreign insurance firms (whose Thai shareholding and management executives added up to less than 3/4 of the grand total). If this restriction was to be waived, the Insurance Against Loss Act B.E. 2535 had to be amended or the Amity had to be endorsed by the Parliament in this particular respect. But there was no such amendment of the Act, and neither was the Amity proposed for endorsement from the Parliament. Second, as for the resort to the 281 Announcement, the Council of State ruled that since the business of insurance against loss was specifically and directly administered under the Insurance Against Loss Act B.E. 2535 already, the 281 Announcement could not be quoted, as such Announcement was meant to be applicable to foreign nationals' business in general, not any particular line of business for which there was a specific law like insurance against loss.

As the request for branching of Paisal Insurance Co., Ltd. was finally rejected by the Council of State, any commercial banking case is likely to be on the same track. That is, the Commercial Banking Act which has been in effect earlier will not be overruled by the Amity Treaty or the 281 Announcement or any bilateral FTA. In other words, the restrictions against branching, credit extension, and foreign exchange positioning of foreign banks will not be lifted because of the implications as stated in Amity or 281.

The U.S. must have recognized that similar obstacles could easily arise because FTA is similar to Amity and 281 in the manner mentioned above. Nevertheless, the U.S. still has a strong desire to open up free trade in financial services, as evident in the inclusion of the following two Articles to the FTA.

Article 10.9 (Non-Conforming Measures) states that if each country party has already undertaken any measure which is in conflict with the Articles on national treatment, most-favored-nation treatment, market access for financial institutions, cross-border trade in financial services, senior management and boards of directors beforehand, then those Articles are not effective. In other words, Article 10.9 recognizes the importance of existing measures once they are stated explicitly in the Annex, so those measures are not subject to national treatment, most-favored-nation treatment, market access for financial

institutions, cross-border trade in financial services, senior management and boards of directors.

Article 10.10 (Exceptions) allows each country party to adopt or maintain any measures for the safety, soundness, integrity, and financial responsibility of individual financial institutions or cross-border financial service suppliers. Besides, Article 10.10 also permits each party to pursue any non-discriminatory measures related to:

- monetary, credit, exchange rate policies
- payment transfers
- prevention of frauds or malpractices

As mentioned above, the bilateral FTA pact between the U.S. and her partner (e.g. Singapore) does not conflict with general Thai laws controlling financial practices in Thailand. Nevertheless, Thai regulators ought to devote strong attention to the following points.

1. FTA will definitely lead to more competition, as vindicated by Thailand's experience in the early 1990's when phases of financial deregulation were undertaken. The pivotal question is whether domestic financial institutions are ready to cope with such a greater degree of competition without losing any stability. In that regard, it should be recognized that to strive successfully in the midst of highly competitive financial markets necessitates several elements, e.g. adequate capital funds, proficient staff, and possession plus efficient uses of updated technology. Otherwise, prudent risk management may not be satisfactorily achieved. In this perspective, two other factors should also be taken into account as they have strong bearing upon Thai financial institutions after the emergence of Asian financial crisis in 1997, i.e. the handling of non-performing assets and status of macroeconomic activities.
2. The units which deserve continual care are not only private agencies which offer financial services but also regulators. The central authorities need to be steadily modernized with respect to both knowledge and technology. Otherwise, loopholes can easily emerge or rules can only be issued but not enforced, especially in the updated scenario whereby cross-border financial services are widely supplied by units overseas and regulators may easily have formidable difficulties in identifying or cross-checking with correct service suppliers. In addition, before issuing new rules the central authorities should take into account the significance of cultural differences, because these differences are meaningful and they often lead to adoption of different methods of financial risk management. Clear-cut examples in this regard are compulsory credit extension in rural areas and dispute settlements in a compromising or conciliatory fashion.
3. The above two points become even more important as Thailand lags behind Singapore with respect to the financial standards, market caliber, and economic development achieved thus far. Therefore, it is unsurprising to find that both regulators and private financial institutions in Thailand favor gradual liberalization or sequencing of cross-border financial services. Such sequencing should be consonant with aggregate financial sector master plan. Before opening up domestic financial markets to a larger extent, decision-makers should closely monitor the status of local financial institutions and evaluate their readiness or capability to compete. Those duties, which involve both remnants of the past (e.g. NPL) and current adjustments, will certainly help in correctly

appraising projected effects or possible consequences of further liberalization of domestic financial markets. In short, though FTA may help in strengthening domestic financial sector, steady examining and supervising Thai financial institutions is indispensable.

9.5 Overall Assessment

The prospect of FTA in financial services has prompted concerns about potential influences it may have on the Thai financial sector. FTA obligations are expected *inter alia* as having the beneficial effects when Thai financial institutions, investors, and cross-border financial suppliers can assimilate the practices of international banks from a transfer of technology that help improve quality, pricing, and availability of financial products and services. As domestic financial market is largely focused on deposit taking and lending activities, non-traditional financial services would be of particular interest to Thailand. However, there have also been concerns about supervision of cross-border trade in financial services, disadvantages of Thai banks, access to credit for domestic borrowers, and timing of FTA commitments. The relatively weak financial position of Thai financial sector has led to the suggestion that the establishment of affiliates or joint ventures is preferable to other modes of the possible U.S.-Thai FTA in financial services.

Apart from the potential benefits and impediments of FTA obligations, there is also a debatable issue of the Agreement in its Chapter on Financial Services. Based on an examination of the U.S.-Singapore FTA, a negative list approach was used in negotiating the financial services chapter. This approach is rather inappropriate for the relatively less developed Thai financial sector. Thai financial supervisory and regulatory authorities may encounter informational constraints on financial services devised in the U.S. market. In particular, the Agreement contains important provision to facilitate cross-border supply of financial services that are likely to have an impact on the level of systemic risk in the Thai financial sector. Thus, we suggest that a positive list approach should be used in the liberalization.

Notwithstanding these shortcomings, the proposed FTA is generally favorable since it will help Thailand participate in the growing financial markets more competitively and efficiently. One step for FTA to succeed is that essential reservations and exceptions should be carefully listed. Of particular importance, the details of FTA commitments should be tailored along the line with the Financial System Master Plan formulated by the Bank of Thailand.

Chapter 10

Competition Policy

10.1 Main Features of the U.S.-Singapore Agreement

The U.S.-Singapore FTA requires each party to have measures that proscribe anti-competitive practices and to take appropriate action with respect conduct to ensure fair trade. The particular regime should be not discriminate between firms of different nationality and it should provide due process to the parties involved -- i.e., the opportunity to be heard and present evidence and to seek review of sanctions or remedies. The focus appears to be on anti-competitive or discriminatory practices carried out by state-owned or state-linked enterprises, which are abundant in both Singapore and Thailand. The FTA also provides for loose cooperation and consultation on matters relating to the implementation of the law.

It should be noted that certain articles in this chapter are not subject to the dispute settlement mechanism -- i.e., there are no penalties for violations. These include articles regarding cooperation, consultation and the obligation to adopt or maintain measures to proscribe anti-competitive business conducts in general. The article regarding the disciplining of designated monopolies and state enterprises behavior, however, is binding -- i.e., subject to the dispute settlement mechanism. Similarly, Article 12.5 concerning the exchange of information is mandatory. Each party, at the request of the other party, shall make available public information concerning (1) the enforcement of its measures proscribing anti-competitive conduct (2) government enterprises and designated private and state monopolies and (3) exemptions from the competition law.

10.2 Potential costs and benefits to Thailand

A strong and transparent competition policy regime should be beneficial to Thailand. This is because having the competition law properly functioning is good for Thailand as it helps protect small and medium enterprises against large competitors, be they Thai or foreign.

The country passed the Trade Competition Act, which contains comprehensive provisions on anti-competitive practices including abuse of dominance, agreements, mergers and unfair trade practices in 1999. The Office of Trade Competition Commission, the designated implementing authority, is part of the Department of Internal Trade, Ministry of Commerce. The Trade Competition Act does not discriminate between firms on the basis of nationality. Various provisions in the Act and in the Administrative Law 1996 provide sufficient transparency and due process in the administrative procedure -- i.e., the opportunity to be heard and present evidence -- as required. Appeals can be made to the Appeals committee, set up by the Trade Competition Commission itself (hence, may not be independent). However, if the complainant is dissatisfied with the decision of the Appeals Committee, they may submit the case to the Administrative Court, which is independent of the Trade Competition Committee.

There are several concerns, however, about the existing competition law and regime. First, the threshold market shares used to determine a firm's market dominance and pre-merger notification requirement have not yet been established.²² As a result, section 25 on abuse of dominance and section 26 on mergers are not yet operational. This may be considered a violation of Article 12.2, which requires each Party to maintain measures to proscribe anti-competitive conduct and to take appropriate actions when such conduct arises. However, it should be reminded that this particular article is not subject to the dispute settlement mechanism and this, may be less of a concern.

Second, the Trade Competition Act exempts state-owned enterprises, defined narrowly according to the Budget Procedure Act as enterprises with total direct government (state agencies and enterprises) shareholding²³ of greater than 50%. This is a violation of Articles 12.3 (1) and 12.3(2) that prohibit state-owned enterprises from engaging in restrictive trade practices or abusing their monopoly positions without efficiency ground. Third, many state enterprises in existence bear social responsibilities and thus may not act in accordance with commercial considerations. This may be a violation of Articles 12.3 (1) and 12.3(2), which require that state-owned enterprises must act solely in accordance with commercial considerations in its sale and purchase of goods with regard to price, quality, availability and marketability. Fourth, many state enterprises are required to purchase local goods and services and thus violate Article 12.3 (1) which prescribes non-discriminatory treatment for covered investment, goods and service suppliers in its purchase or sales of goods. It should be noted that Article 12.3 is binding -- i.e., violations will be subject to the dispute settlement mechanism. That is, commitment to these articles will require an amendment of the competition act as well as rules and regulations governing the procurement of state enterprises.

10.3 Assessment of the Adjustment Needed

On view of the above concerns, the research team would like to suggest the following:

1. Pass general dominance and merger thresholds that automatically apply to all sectors and businesses to ensure compliance with Article 12.2 even if violation will not be subject to dispute settlement mechanism. As mentioned above, having the competition law properly functioning is good for Thailand as it helps protect small and medium enterprises against large competitors.
2. Amend the Trade Competition Act 1999 to remove exemptions provided to state-owned enterprises so as to comply with Article 12.3(1)-(1). Government enterprises should not be allowed to abuse their market dominance in competitive markets.
3. Remove Article 12.3-2d as there is no ground for treating state-owned enterprises any differently from other private enterprises if such enterprises are already subject to the domestic competition law. Also, the requirement that state enterprises must act solely according to commercial considerations removed, as

²² More recently, the Trade Competition Committee proposed sector-by-sector market share dominance thresholds that would seriously undermine the coverage of this law.

²³ Direct government shareholding means shares held by the Ministry of Finance only, not including state-owned enterprises. Thus, subsidiaries of state-owned enterprises enjoy the status of a private company.

this seems to go beyond the normal competition concerns. The requirement that state-owned enterprises do not enter into agreement or engage in any exclusionary practices is unnecessary as the Trade Competition Act already has provisions that deal with such practices.

4. Assess the implications of granting non-discriminatory treatment to U.S. investment, goods and service suppliers in the sales and purchase of goods and services made by government enterprises.
5. Add to Article 12.5 on Information Requests that each party, at the request of the other party, shall make available non-confidential information on enterprises registered within its territory that have been alleged to have conducted restrictive trade that affect the local consumers or businesses in the other party's territory. This additional clause will facilitate the Thai Trade Competition Commission in the investigation of anti-competitive practices carried by U.S. multinational enterprises that do not have any representation in Thailand.

Table 10.1 Brief Summary of Agreement on Competition Policy

Obligations under the FTA	Existing Regime	Remarks
<p><i>Article 12.2</i> requires that (1) each party to maintain measures to proscribe anticompetitive business conduct (2) establish and maintain an authority responsible for enforcement which does not discriminate on the basis of nationality of the subjects involved. (3) ensure that a person subject to sanction or remedy violation is provided with the opportunity to be heard, present evidence and seek review of such sanction or remedy in a domestic court or independent tribunal.</p>	<p>Thailand should have no problem in complying with Article 12.2. Our Trade Competition Act 1999 contains comprehensive provisions on anti-competitive practices including abuse of dominance, agreements, mergers and unfair trade practices. The Office of Trade Competition Commission, the designated implementing authority, is part of the Department of Internal Trade, Ministry of Commerce. The Trade Competition Act as well as our Administrative Law 1996 provide sufficient transparency and due process in administrative procedures as required. Appeals can be made to the Appeals committee, set up by the Trade Competition Commission itself (hence, may not be independent) and further to the Administrative Court (independent).</p>	

(Continued on page 90)

Table 10.1 (Continued)

Obligations under the FTA	Existing Regime	Remarks
<p><i>Article 12.3 (1)</i> stipulates that each party shall ensure that any <u>private monopoly</u> that it designates <i>after the date of entry</i> of this agreement and any <u>government monopoly</u> that it designates or <i>has designated</i> (1) does not act anti-competitively or abuse its monopoly position in non-monopolized markets (2) must act solely in accordance with commercial considerations in the purchase and sale of good or service (3) does not discriminate against covered investment, goods or service suppliers of other Party in its purchase or sale of good or service</p>	<p>Article 4 of the Thai Trade Competition Act 1999 exempts government enterprises from the Act. The definition of a government enterprise according to the Act is enterprises in which the state directly holds at least 50% of equity share, which is more narrowly defines that that proposed in the FTA.</p>	<p>Compliance to these articles will require an amendment of the existing competition law. But more importantly, one should carefully consider the implications of the requirement that all government enterprises act solely in accordance with commercial considerations. This can be a problem given that most state enterprises operate according to a social mandate. Thus an eventual FTA should accommodate state enterprises' flexibility to pursue social goals.</p>
<p><i>Article 12.3(2)</i> requires that <i>any</i> government enterprises (a government enterprise refers to enterprises in which the government own not less than 20% of equity share both directly and indirectly) (a) act solely in accordance with commercial considerations in its sales and purchase of goods and services with regard to price, quality, availability, marketability and transportation and other terms and conditions of sale. (b) do not enter into agreement or engage in exclusionary practices that restrict competition without efficiency grounds.</p>		
<p><i>Article 12.7</i> stipulates that provisions regarding co-operation and consultation are not subject to dispute settlement.</p>	<p>Presently, Thailand has no official agreement to co-operate or consult with any foreign country on competition matters.</p>	<p>The Thai Competition Authority should carefully assess the costs and benefits of having a stronger provision on consultation and co-operation than those proposed in the FTA</p>

Chapter 11

Intellectual Property Rights

11.1 Main Features of the U.S.-Singapore Agreement

Chapter 16 of the U.S.-Singapore FTA applies to the protection of intellectual property rights (IPR). The FTA imposes the following obligations to each Party. Firstly, it requires each Party to ratify or accede to the following agreements:

- the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974);
- the International Convention for the Protection of New Varieties of Plants (1991), known as the UPOV Convention;
- the WIPO Copyright Treaty (1996);
- the WIPO Performances and Phonograms Treaty (1996); and
- the Patent Cooperation Treaty (1984).

It also requires each party to give effect to:

- Articles 1-6 of the Joint Recommendation Concerning Provisions on the Protection of Well-known Marks, adopted by the Assembly of the Paris Union.
- The Trade Mark Law Treaty.²⁴

The FTA also contains specific provisions in each area of intellectual property right protection. Major features are as follows:

Trademarks and geographical indications

- Neither party shall require, as a condition of registration, that signs be visually perceptible. Each Party shall make best efforts to register scent marks.
- Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using identical or similar signs, including geographical indications, in the course of trade where such use would result in a likelihood of confusion.

Domain names on the Internet

- Each Party shall require that registrants of domain names in its country code top Level Domain (ccTLD) are subject to a procedure modeled after the principles in ICANN Uniform Domain Name Dispute Resolution Policy (ICANN UDRP) to resolve disputes related to the bad-faith registration of domain names in violation of trademarks.

²⁴ Singapore shall not be obliged to give effect to Articles 6 and 7 of the Treaty.

Copyright and Related Rights

- Each Party shall provide to creators of copyrighted works the exclusive right to authorize or prohibit the communication to the public of their works, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.
- Neither Party shall permit the retransmission of television signals on the Internet without the authorization of the right holders.
- Each Party shall extend the term of protection of a work to no less than the life of the creator and 70 years after the creator's death;
- Each Party shall provide protection to technological measures that restricts unauthorized acts to copyrighted works and protection to rights management information. Criminal sanctions and civil remedies shall be provided against violators. Rights holders shall be able to choose compensation calculated based on actual damages or pre-established (estimated) damages.
- Each party shall provide protection of encrypted program-carrying satellite signals. Criminal sanctions shall be provided against violators.

Patent

- Each Party shall make patent protection available for any invention, including plants and animal.
- Each Party shall provide for the adjustment of the term of a patent to compensate for unreasonable delays in granting the patent. An unreasonable delay includes a delay in the issuance of the patent of more than 5 years from the date of filing, or 3 years after a request for examination, whichever is later.

Measures related to certain regulated products

- If a Party requires the submission of undisclosed information concerning the safety and efficacy of a pharmaceutical or agricultural chemical product to grant a marketing approval, it shall not permit third parties to market the same or similar products for at least 5 years from the date of approval for a pharmaceutical product and 10 years for an agricultural chemical product.
- With respect to any pharmaceutical product that is subject to a patent, each Party shall make available an extension of the patent term to compensate the patent owner for unreasonable curtailment of the term as a result of the approval process.

11.2 Potential Costs and Benefits to Thailand

The U.S. has one of the highest standard for IPR protection and the most sophisticated technological capabilities in the world. If Thailand adopts the U.S. standard as appeared in U.S.-Singapore FTA without comparable technological capabilities, it will be

deprived of a flexibility to design its IPR system that the U.S. and other developed countries enjoyed in their earlier stages of development.

From a perspective of Thailand, it is necessary to ensure that the IPR system facilitates, rather than hinders, its development goals. In particular, the copyright law should allow Thailand to extend its basic and higher education coverage by allowing access to educational materials and information technology. The patent law should facilitate access to medicine for poor people while the plant variety protection law should not impose undue costs to local farmers and plant breeders.

Thus, the benefits for Thailand from inappropriately high standards of IPR regime are, at best, long term, while the costs of adopting them are real and immediate. Such costs include legislative and administrative costs involved in revising current laws and regulations, legislating new ones and implementing them. However, the current legal system is already over-burdened and can hardly accommodate new obligations, at least in the short run.

11.3 Assessment of the adjustment needed

If the FTA is to be adopted, certain provisions need to be revised or clarified to avoid potential negative impacts of granting undue monopoly rights.

General adjustments

- The date of entry into force of the FTA should be extended to accommodate necessary adjustments for the Thai side. In particular, a period of 10-12 years should be considered.
- Safeguards, including strong competition law, should be developed to ensure that monopoly rights related to IPR protection are not exploited inappropriately.

Plant varieties

- The UPOV Convention 1991 was designed with the commercialized farming in developed countries in mind. To be protected by the Convention, a plant variety needs to meet very high standards in terms of novelty, distinctness, uniformity and stability. This is not currently achievable by most plant varieties developed by Thai breeders. In the transition period, Thailand should be allowed to give effect to a previous version of the Convention, e.g., UPOV 1978, before adopting the current UPOV Convention.

Trademarks and geographical indications

- The use of geographical indication in good faith should not be prevented by the registration of similar or identical trademarks. In practice, many geographical indications have been used even before the adoption of the trademark system.

Domain names on the Internet

- While a procedure to resolve disputes related to bad-faith registrations of domain names in violation of trademarks is needed, Thailand should maintain a flexibility to implement its own dispute resolution system concerning domain names under its ccTLD, e.g., to freely nominate or license a dispute resolution provider.

Copyright and Related Rights

- The term of protection of a copyrighted work should be kept to 50 years after the creator's death. The extension of the term to 70 years is not likely to provide additional incentive for creation and will limit the access to educational materials.
- Exceptions based on the concept of 'fair-use' should be introduced into the provisions on the protection of technological measures and rights management information to make them compatible with the general copyright principle.

Patent

- The scope of patentable subject matter should be limited. In particular, genetic material found in nature, plants, animals and biological processes for the production of such plants and animals should not be patentable. Patenting software and business methods should also be excluded until an effective procedure to reduce patents granted to trivial inventions is developed.
- Conditions for compulsory licensing should be kept flexible as allowed by the Doha Declaration on TRIPs and Public Health. In particular, the conditions should include, but not limited to, those appearing in the U.S.-Singapore FTA.
- In the area of pharmaceutical products, an access to test data reduces the duplication of a costly test process and thus promotes early entry of generic drug producers. An access to test data by third parties should therefore be allowed, provided that the data is protected against unfair commercial use.²⁵

²⁵ In the U.S., the Drug Price Competition and Patent Term Restoration Act, known as the Hatch-Waxman Act, was legislated in 1984 to reduce drug prices by facilitating early entry of generic drug producers into the market.

Chapter 12

Investment

12.1 Introduction

Thailand has had an investment agreement with the United States under the Treaty of Amity and Economic Relations since 1966. The treaty accords the same rights to U.S. and Thai citizens and companies to own and operate in the other's territory with the exception of professional services and 6 sectors namely, communications, transportation, fiduciary functions, banking involving depository functions, exploitation of land and natural resources and domestic trade of indigenous agricultural products. That is, the treaty has a relatively wide coverage. The treaty does not include the right to own land, which precludes U.S. companies or nationals to purchase land except on a project-based basis permitted by the Board of Investment or the Industrial Estate Authority. The treaty also does not cover work permits or visas even for those who own a business entitled to the treaty protection. In practice, however, U.S. nationals as well as other nationals are able to obtain the required visa and work permits.

Although at the time when the treaty was signed and came into force, there was little benefit to U.S. investors as any foreign nationals were allowed to engage in businesses in Thailand with little restrictions. Through time, however, Thailand has developed new laws and regulations that limit the rights of foreign nationals to operate in Thailand. As a result, special treatments to U.S. investors in the Treaty of Amity became privileges that other foreign nationals do not enjoy. Consequently, the Treaty is considered to be in violation of the WTO's most-favored nation (MFN) obligations, which requires Thailand to accord equal treatment to all member states.²⁶ Thailand had asked for an exemption from the obligation for 10 years. The exemption is expiring in January 2005.

At this juncture, Thailand has 4 choices. The first is to ask for an extension of the exemption in the WTO. The second is to terminate the Treaty and thus, abolish all privileges available to U.S. companies and nationals. The third is to offer the same privileges to all other WTO members. The final choice is to reconstruct a new bilateral investment agreement in the form of a WTO-consistent FTA. Thailand will have to make a decision by January 2004, as a one-year notice is required for the termination of the Treaty. The first option appears to be remote, as another extension is unlikely to be approved. The second choice requires careful assessment of the impact of withdrawing investment privileges to U.S. investors.²⁷ The third choice is unlikely as well since many local businesses would be adversely affected by the sudden investment liberalization on a MFN basis. The final choice of an FTA will be discussed below.

²⁶ The United States do not face such problem since the rights granted to Thailand under the Treaty are available to all foreign investors.

²⁷ According to statistics collected by the Department of Business Development, which administers the Foreign Business Act of 1999, 1293 U.S. companies currently operating in Thailand take advantage of the rights protected by the Treaty of Amity.

12.2 Main Features of the U.S.-Singapore FTA

In assessing the various provisions in the FTA on investment, it is therefore, necessary to make references to the Treaty of Amity. We have thus summarized the key differences between the FTA on investment and the Treaty of Amity as appeared in Table 12.1 at the end of the chapter.

Like most bilateral investment treaties (BITs), the proposed investment agreement seeks to guarantee each Party's investors rights to: (1) acquire and operate businesses in the other Party's territory that is equal to the host country's counterparts; (2) transfer capital, be it in the form of profits, dividends, interests, etc., into or out of the territory. It also seeks to provide protection for each Party's investment from unfair treatment by the government of the host country by guaranteeing access to and fair treatment in administrative and legal proceedings and protection from police. It bans certain performance requirements that a Party may impose on the other Party's direct investment, such as export requirement and technology transfer. Most importantly, to ensure compliance, the agreement provides for a dispute settlement mechanism through arbitration that may lead to arbitral awards.

Compared to the Treaty of Amity, the investment provisions in the FTA is more limited in its scope of application in terms of sectoral coverage, but it is much more advanced in depth. In terms of coverage, Article 15.3 states that "*In the event of inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency*". That is, if chapters on say, cross-border services, telecommunication and finance, have different provisions on investment, then these shall override the provisions stipulated in the investment chapter. In fact, as discussed in Chapter 7 agreement on cross-border services allow for relatively generous exemptions. It should also be noted that the agreement applies to only central and regional level of the government and not the local governments.²⁸ The agreement also exempts measures that are of environmental concerns. The relatively limited sectoral coverage of the agreement is not surprising in view of its advanced and comprehensive provisions in protecting of rights and interests of the other Party's investment as will be discussed below.

The definition of "covered investment" in the FTA is extremely broad. It covers not only nationals and companies as appeared in the Treaty of Amity, but also equity participation in enterprises, bonds, debentures, other debt instruments, and loans, futures, options and derivatives, contracts, intellectual property rights, licenses authorization permits and similar rights and other tangible and intangible property and related property rights such as mortgages, leases and pledges. At the same time, while the Treaty specifies the types of activities to which Party's investors are to be accorded national treatment, the FTA does not. As a result, national treatment is to be guaranteed to all activities with respect to "*the establishment, expansion, management, conduct, operation and sale or other disposition of investments in its territory*". It is necessary to clarify whether this implies the rights of U.S. investors to acquire land, which is excluded in the Treaty of Amity.

The FTA accords in general similar protection for the other Party's investment against unfair treatment and expropriation as does the Treaty of Amity. Both require "*constant or full protection and security, treatment according to customary international law*". However, in case of expropriate, a slight difference in the wording has important

²⁸ For the United States, regional level of government means a state of the United States, the District of Columbia and Puerto Rico. It is not yet determined which definition will apply in Thailand's case.

implications. The Treaty stipulates that property of nationals and companies of either Party *"shall not be taken without due process of law or without payment of just compensation in accordance with the principles of international law"*. A similar provision in the FTA states that *"Neither Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization"*. The words "indirectly" and "measures equivalent to expropriation" allow for a much broader interpretation and are the subject of controversy in many arbitration cases. It should be noted, however, that the particular article allows exemptions for measures carried out for public purposes. It is noteworthy that Canada, U.S. and Mexico have attempted to limit the principle of "fair and equitable treatment" of investments under the NAFTA investment protection (template for the FTA) have given rise to a proliferation of cases of disputes and costly arbitral awards.

But the key difference between the investment provisions in the FTA and the Treaty of Amity is the private-government dispute settlement mechanism. The Treaty of Amity does not have provisions for such a mechanism while the FTA allows investor of a Party, as a claimant, to submit to arbitration under the ICSID Additional Facility Rules or under UNCITRAL Arbitration Rules, or any arbitration institution agreeable to both the claimant and the respondent. Decisions may lead to monetary awards or financial compensation for the claimant. Therefore, while the scope of investment protection under both the Treaty and the FTA are comparable, the latter is significantly more binding with the support of a dispute settlement mechanism.

Besides dispute settlement mechanism, the investment chapter in the FTA also contains additional provisions disciplining state regulations concerning transfers and investment performance requirements that were not available under the Treaty of Amity. Article 15.7 prohibits Parties from imposing restrictions on all transfers relating to covered investment. While there are no such restrictions in place to date, the Bank of Thailand has the authority under the Exchange Control Act to regulate the manner in which money is brought in or taken out of the country. Thus, the proposed provision would be inconsistent with the Exchange Control Act.

Article 15.8 also prohibits Parties from imposing (a) export requirement (b) local content requirement (c) purchase of or provision of preference to local goods or services requirement (d) net foreign exchange generation -- i.e., tying import value/volume to export value/volume (f) transfer of technology, production process, or other proprietary knowledge requirement (g) requirement that goods or services to a specific regional or global market be supplied exclusively from the territory of the Party. Among these, (a) to (d) are already covered by the TRIMs (Trade-related Investment Measures), the latter two are not, however. As some research works have pointed out that technology transfer is essential for developing countries in building up their technological capabilities, the proposed prohibition would appear to limit the investment policy of Thailand.

12.3 Assessment of the Adjustment Needed

From the above analysis and the results from the brainstorming sessions with business representatives and academics, the following suggestions can be made with regard to the agreement in investment:

1. The definition of "covered investment" should include only long term investment or FDI. Other elements, in particular short term investment that are speculative and volatile such as derivatives and options should not be included. This is because Thailand, unlike Singapore, has not yet built up the capacity required to effectively regulate these highly sophisticated financial instruments.
2. While an investor-state dispute settlement mechanism would provide protection for foreign investors against unfair government measures, the extent of the protection provided should not infringe upon the sovereign rights of the state to impose domestic rules and regulations that are in the interest of the public. That is, the scope of the protection should be made as clear as possible. Vague terms such as "fair and equal treatment and full protection and security" as well as "measures equivalent to expropriation" should be clearly defined in order to avoid infringements upon domestic regulatory space and avert excessive arbitration cases and costly awards.
3. In connection with the suggestion above, in addition to environmental concerns, exemptions from the agreement in investment as a whole should be provided for all measures concerning development including, public health, security and safety.
4. The importance of investment privileges to the flow of U.S. investment into Thailand should be carefully assessed. While statistic provided by the Department of Business Development shows a large number of companies enjoying the privilege, concerns were also expressed by several businesspersons that the unequal treatment discourages non-U.S. investors from investing in Thailand.
5. The performance requirement should not prohibit technology transfer requirements.
6. Both parties should make clear the extent to which the agreement applies to different levels of the government so that its coverage and implications can be properly assessed.
7. Whether the Agreement implies the rights of U.S. citizens and business entities to acquire land should be clarified.

Table 12.1 Brief Summary of Agreement on Investment

Obligations under the FTA	Existing Regime	Remarks
<p><i>Article 15.3</i> stipulates that in case of inconsistency between this chapter on investment and other chapters --i.e., cross border trade in services and sector-specific chapters such as finance and banking and telecommunications--the other chapter shall prevail.</p>		
National Treatment and Most-favored Nation Obligations		
<p><i>Article 15.4</i> requires that each Party accord to investors of the other Party and to their covered investments the better of national treatment or most-favored nation.</p> <p><u>Covered investment</u> refers to an investment of another Party's investor, which include (a) enterprise; (b) shares stock and other forms of equity participation in an enterprise; (c) bonds, debentures, other debt instruments, and loans; (d) futures, options and derivatives; (e) contracts; (f) intellectual property rights; (g) licenses, authorization, permits and similar rights and (h) other tangible and intangible property and related property rights such as leases, mortgages and pledges.</p>	<p>Article IV(1) of the <i>Treaty of Amity</i> stipulates that <i>national and companies</i> of either Party shall be accorded national treatment with respect to establishing and acquiring enterprises and other business activities within the territory of the other Party.</p> <p>Article V(1) of the <i>Treaty of Amity</i> stipulates that <i>national and companies</i> of either Party shall be accorded national treatment with respect to (a) leasing of immovable property (b) purchasing or acquiring movable property and (c) disposing of property.</p> <p>Article V(2) of the <i>Treaty of Amity</i> stipulates that <i>national and companies</i> of either Party shall have the same right as nationals and companies of that other Party in regard to patents for invention, trademarks, trade names, designs and copyright in literary and artistic works.</p>	<p>The definition of covered investment appeared in Article 15.4 of the FTA provides a much broader coverage that do the various articles found in the Treaty of Amity. For example, the former include stocks, bonds, future options and derivatives, licenses and "other tangible and intangible" properties which are not covered under the Treaty if Amity.</p>

(Continued on page 100)

Table 12.1 (Continued)

Obligations under the FTA	Existing Regime	Remarks
Minimum Standard of Treatment		
<p><i>Article 15.5</i> stipulates that "Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security".</p>	<p><i>Article I (1) of the Treaty of Amity</i> requires that nationals of either Party shall receive most constant protection and security, in no case less than required by <i>international law</i>.</p> <p><i>Article I (2)</i> stipulates that nationals and companies of either Party shall have access to courts of justice and administrative agencies within the territories of the other Party upon terms that are no less favorable than those accorded to nationals or third parties.</p> <p><i>Article III (1)</i> requires that each Party shall at all times accord <i>fair and equitable treatment</i> to national and companies of other Party, and to their property and enterprises.</p>	<p>All keywords including "international law", fair and "equitable treatment" and "full protection and security" appear in both the FTA and the Treaty of Amity. It should be noted that these vague terms have been a subject of contention in many bilateral agreements, in particular the NAFTA. These principles, when interpreted broadly, can limit the regulatory space of domestic regulations and may lead to a proliferation of private versus state dispute cases. It should be recognized that these principles are subject of an evolving case law. Recent rulings in the ICSID, however, appear to provide relatively broad interpretation of the terms "fair and equitable treatment".</p>
Expropriation		
<p><i>Article 15.6</i> stipulates that neither Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization except (a) for public purposes; (b) in a non-discriminatory manner; (c) on payment of prompt, adequate and effective compensation and (d) in accordance with due process of law and minimum standard of treatment.</p>	<p><i>Article III(2)</i> stipulates that property of nationals and companies of either Party shall receive most constant protection and security. Such property shall not be taken without due process or without just payment of just compensation in accordance with principles of international law.</p>	<p>The scope of definition of "measures equivalent to expropriation" is not clearly defined. It may include a wide range of government policies, laws or administrative measures.</p>

(Continued on page 101)

Table 12.1 (Continued)

Obligations under the FTA	Existing Regime	Remarks
Transfers		
<p><i>Article 15.7</i> states that all transfers relating to a covered investment must be allowed to be made freely and without any delay into and out of the territory of the agreed Parties.</p>	<p><i>The Treaty of Amity</i> does not have any provisions regarding transfer and payments.</p> <p>The Bank of Thailand administers foreign exchange controls on behalf of the Ministry of Finance according to the Exchange Control Act B.E. 2485. It may regulate the manner in which money is brought in or taken out of the country. However, there are no current restrictions on the repatriation of investment funds, dividends, profits as well as loans repayment.</p>	
Performance Requirement		
<p><i>Article 15.8</i> prohibits Parties from imposing the following performance requirements on investors (a) export requirement (b) local content requirement (c) purchase of or provision of preference to local goods or services requirement (d) net foreign exchange generation – i.e., tying import value/volume to export value/volume (f) transfer of technology, production process, or other proprietary knowledge requirement (g) requirement that goods or services to a specific regional or global market be supplied exclusively from the territory of the Party.</p>	<p><i>The Treaty of Amity</i> does not impose any restrictions on the type of performance requirement that a domestic investment authority may require of a potential foreign investor.</p>	<p>It should be noted that (a) (b) (c) and (d) are already covered by the TRIMs (Trade-related Investment Measures) to which all WTO members must comply. Prohibitions (f) and (g) are additional to the TRIMs. Prohibition (f) may be inconsistent with the BOI's new investment promotion strategy that focuses on promoting "quality" rather than "quantity" of investment. This may imply that technology transfer may be a performance requirement.</p>
Senior Management and Board of Directors		
<p><i>Article 15.9</i> prohibits Parties from requiring that senior management positions be of any particular nationality. A Party may require that the majority of the board of directors, or any committee thereof, of an enterprise be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor of the Party to exercise control over its investment.</p>	<p>The new Foreign Business Act 1999 stipulates that the composition of the nationality of the board of directors must reflect the equity shareholding. In case of businesses related to national security, at least 2 in 5 of the directors on the board must be Thai regardless of the equity share structure. It should be noted, however, that exemptions to these rules can and have been authorized by the Foreign Business Committee.</p>	

(Continued on page 102)

Table 12.1 (Continued)

Obligations under the FTA	Existing Regime	Remarks
Investment and Environment		
<i>Article 15.10</i> states that nothing in the agreement in this chapter shall prevent parties from adopting, maintaining, or enforcing any measures that are of environmental concerns.		Considerations may be given to the possibility of exempting public health, safety and security concerns.
Non-conforming Measures (Exemptions)		
<i>Article 15.2</i> stipulates that the non-discrimination obligations, the performance requirements and provisions with regard to senior management and board of directors shall not apply to (a) existing non-conforming measures of the central and regional governments as set out in Chapter 8 (cross-border services) and (b) measures taken by local governments.	Sectors that are excluded in the <i>Treaty of Amity</i> are (1) transport (2) communications (3) fiduciary functions (4) banking involving depository functions (5) exploitation of land and natural resources and (6) domestic trade of indigenous agricultural products. Professional services are also excluded from the treaty.	The FTA allows a greater scope for exemptions that does the Treaty of Amity.
Dispute Settlement Mechanism		
<i>Articles 15.15</i> stipulates that in the event that an investment cannot be settled by consultation and negotiation, the claimant (investor of a Party) may submit to arbitration under the ICSID Additional Facility Rules (since Thailand is not yet a member of ICSID) or under the UNCITRAL Arbitration Rules; or any arbitration institution agreeable to both the claimant and the respondent.	<i>Treaty of Amity</i> does not contain private to state dispute settlement mechanism.	Thailand is not yet a member of ICSID

Chapter 13

Environment

13.1 Introduction

Issues related to trade and environment is important as the U.S. is an import market for the Thai exports. However, past records show that there is a possibility of concerns on these issues as demonstrated by the Shrimp-Turtle dispute, the Salmon dispute or the Tuna-Dolphin dispute. These environment-related trade disputes between Thailand and the U.S. indicate that Thailand needs to be cautious about the possibility that the U.S. will employ a unilateral trade measure to justify its environmental objectives or to exercise environmental enforcement to justify its trade objectives. The most undesirable situation for Thailand is when the U.S. exercises both trade and environmental measures to justify their political objectives. In order to maximize the benefits of FTA, it is important that the conditions on trade and environment are understood.

13.2 Main Features of the U.S.-Singapore FTA

The U.S.-Singapore FTA confines to broad working conditions between the U.S. and Singapore on issues related to trade and environment. Chapter 18 of the Agreement contains ten Articles describing the intentions, how both Party will work together in dealing with the issues of trade and environment. (Article 18.1 to Article 18.10) Main features of the agreement can be summarized as follows.

- **Level of Protection:** This section shows that each Party can have its own level of domestic environmental protection. This means that a Party can set its environmental protection standard above or below that of another Party. Nevertheless, it is required that each Party should continue to "improve" its environmental laws. However, it is not clear as to what the term "improve" may entail. It may mean tightening the environmental standards as well as relaxing them, depending on the situations (Article 18.1).
- **Application and Enforcement of Environmental Law:** This article shows that each Party will try its best to enforce its environmental laws. Each party will not promote trade at the expense of relaxing the environmental laws. Nevertheless, it is also recognized that each Party can exercise discretion when it comes to the enforcement of environmental laws (Article 18.2).
- **Procedural Matters:** This article ensures that each Party will institute sufficient legal procedures to take action when its environmental laws are violated. Furthermore, persons can request the authority to take legal actions when the environmental laws are violated (Article 18.3).
- **Institutional Arrangement:** There will be a Joint Committee or subcommittee to discuss matters related to the environmental issues (Article 18.4).

- **Opportunity for Public Participation:** This article indicates an intention that discussion on the issue of the environment be opened to the public. Public participation in the form of identification of matter to discuss, sharing views, make recommendations or provide advice is encouraged (Article 18.5).
- **Environmental Cooperation:** This article recognizes the need to strengthen capacity to promote sustainable development. Cooperation in areas of environmental activities between the two Parties is encouraged. Furthermore Parties shall share information on experiences on trade and environment issues (Article 18.6).
- **Environmental Consultation:** This article recognizes that there will be forums of consultation between the two Parties to discuss and resolve matters related to trade and environment (Article 18.7).
- **Relationship to Environmental Agreements:** This article recognizes the need for each Party to observe the role of Multilateral Environmental Agreement (MEAs) and paragraph 31 of the Doha agreement of WTO (Article 18.8).
- **Principles of Corporate Stewardship:** Each Party shall encourage enterprises to voluntarily adopt stewardship in their internal policies (Article 18.9).

From the provisions in this Chapter, the following conclusions can be drawn:

- The Agreement intends to encourage each Party to strictly enforce its environmental laws leading to sustainable development.
- To ensure that environmental laws are strictly enforced and observed, the Agreement requires taking legal actions against violators, disclosing public information, sharing of information and allowing public participation.
- Matters arising in the area of trade and environment will be resolved via discussion in joint committees, subcommittees or consultation between the two Parties.

13.3 Potential Costs and Benefits to Thailand

Sectors of potential concern for Thailand include shrimp, canned seafood, electrical circuits, computer and computer parts, clothing and foot ware. These exporting industries can create environment-related trade conflicts as the volume of Thai exports to the U.S. markets is substantial. Past record shows that large volume of Thai export of frozen shrimp and canned tuna to the U.S. market has led to shrimp-turtle and tuna-dolphin disputes between the two countries.

The potential conflict in the case of the Thai shrimp export to the U.S. may be due to the U.S. concern over the issue of inappropriate fishing net used by the Thai farmers that may endanger marine turtles or whether shrimp farming along the Thai coastal areas may lead to reduction in the mangrove areas. As for canned seafood, there is a possibility that due to the high volume of Thai exports to the U.S. market there may be a concern whether the packaging process of Thai seafood meets the U.S. food safety standard.

As for the electrical circuits, computers and computer parts, the concern is over the issues related to the fact that Thailand is currently a signatory to the Montreal Protocol that governs the use of ozone-depletion substances such as CFC. Thailand has also ratified in the Basel Convention that governs the movement of hazard wastes. The U.S. may use the commitment that Thailand has related to these two multilateral environmental agreements (MEAs) as possible trade barriers.

As for the clothing and foot ware and foot ware parts, the concern is over the labor issue and health impact.

13.4 An Assessment of Adjustment for Thailand

Given the contents as described in this Chapter, Thailand will need to make adjustments in the following areas.

- There may be an increasing number of legal cases that the Thai authority may have to take actions against the Thai operators who violate the Thai environmental laws. These legal cases will probably lead to penalties in terms of fines, financial penalties or imprisonment of the violators. Law enforcements will translate into some costs to be born by the Thai public and the private sectors. Nevertheless, strict observation of local environmental regulations should help improve the environmental conditions in Thailand.
- Thailand will need to become more open in terms of information dissemination. The U.S. will now have access to information regarding the environmental matters in Thailand. This will again help improve the Thai environmental conditions as the public will become more aware of the environmental status. However, much adjustment needs to be made on the part of the Thai public sector that are not used to information disclosure.
- Public participation condition may mean that the non-government organizations (NGOs) in the U.S. may also demand their rights to voice their concerns, make recommendations or advices on the Thai environmental matters.
- Trade and environmental conflicts will be resolved via joint committees, subcommittee or consultation between the two Parties. Capacity building in this area is likely needed for the Thai side.

Chapter 14

Conclusion

The U.S. is one of the world largest markets with merchandise imports worth more than \$ 1 trillion in 2002. It is a major export destination of most countries, including Thailand. Around 20 percent of Thai goods export goes to the U.S. market, and this represents the highest share of Thailand's exports. However, Thai export has been experiencing a declining share in the U.S. market. On the other hand, some countries, notably China and Mexico, have seen their shares growing rapidly in the past decade. The reason is that while Thai products are generally competitive in the U.S. market, most of them are products with low growth.

There are two possible ways to increase the export performance of Thai products in the U.S. market. Firstly, one can try to boost the demand for various products that are important for Thailand. This may not be so easy. Secondly, one can try to increase the relative competitiveness of Thai products in the U.S. markets. The proposed FTA can help by reducing tariff and non-tariff barriers between the two countries.

With respect to trade in goods, an FTA between Thailand and the U.S. should be expected to generate gains to both countries. Like other North-South trades, Thailand and the U.S. have trade structures that are complementary. From the Thai perspective, the bilateral Thailand-U.S. FTA should produce some positive net benefits to Thailand as it struggles to revive its share in its most important export market.

A previous study shows that the FTA between Thailand and the U.S. would increase the export and import of Thailand about 3.4 and 4.7 percent, respectively. Agricultural products, processed food, textile and automobile are examples of the sectors that are likely to benefit from the FTA. Using the TDRI CGE model, we estimated that the FTA would generate a real GDP growth of 1.34 percent, once the agreement is implemented.

However, the increase in export in many sectors will not be automatic. To capture potential benefits in the automobile sector, for example, Thailand-based assemblers and suppliers may need to reorient their product lines to match the consumer demand in the U.S. market. They also need to improve their product quality, reduce costs and improve delivery time. First-tier suppliers need also to develop design capability. Similarly, for agricultural liberalization to bring tangible benefits, Thai and U.S. negotiator need to cooperate with each other to reduce existing non-tariff barriers, e.g., quota, subsidy, administrative measures, sanitary and phytosanitary standards, etc. This may involve dealing with complicated technical aspects in each area and hence will take a long time. Finally, rules of origin need to be carefully designed to facilitate efficient preferential treatments.

In addition to export, potential benefits to Thailand are likely to arise from more investment, intensified competition in service sectors and improvement in regulatory regimes. For example, more investment inflow into Thailand should enable the country to grow more rapidly since FDI has always been one of its key growth engines.

However, potential benefits in these areas are harder to be realized than those related to export of goods. This is because institutional capacities in many areas would need to be

developed. This is likely to take a long time. In addition, the proposed FTA, which contains many provisions related to domestic laws and regulations, also poses sensitive problems for Thailand in a number of areas, notably service, investment, government procurement and intellectual property protection.

Care should be taken that the scope of foreign investment covered in the FTA and the extent of the protection guaranteed are well defined and suitable to the local environment. For example, investments that are short term and speculative in nature may not be desirable. In the negotiation, it is also important to make clear where the boundary of the protection ends so that there will not be excessive disputes that will be costly to settle.

The service sector can also gain from greater competition. For example, liberalization in the telecommunication market would help Thailand to bring its telecommunication prices down to be in line with other Asian countries. But the balance between free and fair trade must be ensured, in particular in service markets where there are only few large players in the market. On this matter, liberalization must be complemented by a strong discipline imposed on large multinational companies and cooperation between competition authorities. On this note, a more transparent and effective implementation of the domestic competition law should help to promote the cause.

In terms of intellectual property rights, Thailand should negotiate to prolong the timeframe for implementing obligations in the FTA for at least ten years to ensure that the IPR system facilitates, rather than hinders, its development goals. In particular, the copyright law should allow Thailand to extend its basic and higher education coverage by allowing access to educational materials and information technology. The patent law should facilitate access to medicine for poor people while the plant variety protection law should not impose undue costs to local farmers and plant breeders.

It is also of utmost importance that the agreement does not infringe on the sovereign rights of the Thai government to implement regulatory rules or measures that are in the public interest, be it cultural, developmental, or social.

In conclusion, an FTA between Thailand and the U.S. has the potential to increase trade and investment between the two countries and generate net benefits for Thailand. Some of the more sensitive areas will need careful negotiations to achieve a coverage and sequencing that is appropriate to the institutional context of the country. And given the comprehensive nature of the FTA, many complicated issues will need to be negotiated. Because of this, it is essential that the Thai side is fully prepared for the negotiation process. A capable negotiation team must be assembled. Due to limited domestic expertise and negotiation resources, a structure that allows governmental agencies under various ministries to work together as a negotiation team is a pre-requisite. Sufficient resource must be provided to support the negotiation process. In addition, it is essential that all stakeholders need to be brought into the process, particularly the private sector, academicians, as well as the non-government and the people sector. With full cooperation from all sides, a satisfactory outcome should result from the negotiation, and Thailand will be in a good position to fully benefit from the resulting FTA.

Appendix 1

Summary of U.S. Bilateral Agreements

Albania

- Agreement on Bilateral Trade Relations
- Bilateral Investment Treaty

Argentina

- Private Courier Mail Agreement
- Bilateral Investment Treaty

Armenia

- Agreement on Bilateral Trade Relations
- Bilateral Investment Treaty

Australia

- Settlement on Leather Products Trade
- Understanding on Automotive Leather Subsidies

Azerbaijan

- Agreement on Bilateral Trade Relations
- Bilateral Investment Treaty

Bahrain

- Bilateral Investment Treaty

Bangladesh

- Bilateral Investment Treaty

Belarus

- Agreement on Bilateral Trade Relations
- Agreement regarding Imports of Certain Fiberglass Fabric

Bolivia

- Bilateral Investment Treaty

Brazil

- Memorandum of Understanding between the Government of Brazil and the Government of the United States Concerning Trade Measures in the Automotive Sector

Bulgaria

- Agreement on Trade Relations
- Bilateral Investment Treaty
- Agreement Concerning Intellectual Property Rights

Cambodia

- Agreement Between the United States of America and the Kingdom of Cambodia on Trade Relations and Intellectual Property Rights Protection
- Agreement on Trade in Textiles and Textile Products (1999)
- Agreement on Trade in Textiles and Textile Products (2002)

Cameroon

- Bilateral Investment Treaty

Canada

- Agreement on Salmon & Herring (1993)
- Agreement Regarding Tires
- Memorandum of Understanding on Provincial Beer Marketing Practices
- Agreement on Ultra-High Temperature Milk

- Agreement on Beer Market Access in Quebec and British Columbia Beer Antidumping cases
- Agreement on Salmon & Herring (1994)
- Agreement on Barley Tariff-Rate Quota
- Record of Understanding on Agriculture
- Agreement on Magazines (Periodicals)
- Agreement on Implementation of the WTO Decision on Canada's Dairy Support Programs

China

- Accord on Industrial and Technological Cooperation
- Memorandum of Understanding on the Protection of Intellectual Property Rights
- Memorandum of Understanding on Prohibiting Import and Export in Prison Labor Products
- Memorandum of Understanding Concerning Market Access
- Agreement on Trade Relations Between the United States of America and the People's Republic of China
- Agreement on Providing Intellectual Property Rights Protection
- Report on China's Measures to Enforce Intellectual Property Protection and Other Measures
- Interim Agreement on Market Access for Foreign Financial Information Companies
- Agreement to Strengthen Space Launch Trade Terms
- Bilateral Agriculture Agreement

Colombia

- Memorandum of Understanding on Trade on Bananas

Congo, Democratic Republic of the (Formerly Zaire)

- Bilateral Investment Treaty (1989)

Congo, Republic of the

- Bilateral Investment Treaty (1994)

Costa Rica

- Memorandum of Understanding on Trade in Bananas

Croatia

- Memorandum of Understanding on Intellectual Property Rights
- Bilateral Investment Treaty

Czech Republic

- Agreement on Bilateral Trade Relations
- Bilateral Investment Treaty

Ecuador

- Agreement on Intellectual Property Rights Protection
- Bilateral Investment Treaty

Egypt

- Bilateral Investment Treaty

Estonia

- Bilateral Investment Treaty

European Union

- Wine Accord
- Agreement for the Conclusion of Negotiations Between the United States and the European Community under GATT Article XXIV:6
- Agreement on Exports of Pasta with Settlement, Annex and Related Letter
- Agreement on Canned Fruit (updated)

- Agreement Concerning the Application of The GATT Agreement on Trade in Civil Aircraft
- Agreement on Meat Inspection Standards
- Corn Gluten Feed Exchange of Letters
- Malt-Barley Sprouts Exchange of Letters
- Oilseeds Agreement
- Agreement on Recognition of Bourbon Whiskey and Tennessee Whisky as Distinctive U.S. Products
- Memorandum of Understanding on Government Procurement
- Letter on Financial Services Confirming Assurances to Provide Full MFN and National Treatment
- Agreement on EU Grains Margin of Preference
- Exchange of Letters Concerning Implementation of the Marrakesh Agreement Establishing the World Trade Organization and Related Matters
- Exchange of Letters Between the United States of America and the European Community on a Settlement for Cereals and Rice, and Accompanying Exchange of Letters on Rice Prices
- Agreement for the Conclusion of Negotiations Between the United States of America and the European Community under GATT Article XXIV:6, and Accompanying Exchange of Letters
- Tariff Initiative on Distilled Spirits
- Agreement on Global Electronic Commerce
- Agreed Minute on Humane Trapping Standards
- Agreement on Mutual Recognition Between the United States of America and the European Community
- Agreement Between the United States and the European Community on Sanitary Measure to Protect Public and Animal Health in Trade in Live Animals and Animal Products
- Understanding on Bananas
- Agreement on the Mutual Acceptance of Oenological Practices

Georgia

- Agreement on Bilateral Trade Relations
- Bilateral Investment Treaty

Grenada

- Bilateral Investment Treaty

Honduras

- Memorandum of Understanding on Worker Rights
- Bilateral Investment Treaty

Hungary

- Agreement on Trade Relations
- Agreement on Intellectual Property Rights Protection
- Agreement on Comprehensive Trade Package on Tariff Reduction

India

- Agreement Regarding Indian Import Policy for Motion Pictures
- Reduction of Tariffs on In-Shell Almonds
- Agreement on Intellectual Property Rights Protection
- Agreement on Import Restrictions
- Agreement on Textile Tariff Bindings

Indonesia

- Conditions for Market Access for Films and Video into Indonesia

Israel

- U.S.-Israel Free Trade Agreement
- U.S.-Israel Agreement on Trade in Agriculture
- U.S.-Israel Agreement on Almonds and Certain other Agricultural Trade Issues

Jamaica

- Agreement on Intellectual Property
- Bilateral Investment Treaty

Japan

- Market-Oriented Sector-Selective (MOSS) Agreement on Medical Equipment and Pharmaceuticals
- Exchange of Letters Regarding Tobacco
- Science and Technology Agreement
- Measures Concerning Cellular Telephone and Third Party Radio System Telecommunications Issues
- Procedures to Introduce Supercomputers
- Measures Relating to Wood Products
- Policies and Procedures Regarding satellite Research and Development/Procurement
- Policies and Procedures Regarding International Value-Added Network Services and Network Channel Terminating Equipment
- Joint Announcement on Amorphous Metals
- Measures Further to 1990 Policies and Procedures Regarding International Value-Added Network Services
- Measures Regarding International Value-Added Network Services Investigation Mechanisms
- U.S.-Japan Major Projects Arrangement
- Measures Related to Japanese Public Sector Procurement of Computer Products and Services
- U.S.-Japan Framework for a New Economic Partnership
- Exchange of Letters Regarding Apples
- U.S.-Japan Public Works Agreement
- Mutual Understanding on Intellectual Property Rights Between the Japanese Patent Office and the U.S. Patent and Trademark Office
- Exchange of Letters Regarding Implementation of the Measures Regarding Cellular Telephone and Third-Party Radio Systems
- Rice
- Harmonized Chemical Tariffs
- Copper
- Market Access
- Actions to be taken by the Japanese Patent Office and the U.S. Patents and Trademark Office pursuant to the January 20, 1994, Mutual Understanding on Intellectual Property Rights
- Measures by the Government of the United States and the Government of Japan Regarding Insurance
- Measures on Japanese Public Sector Procurement of Telecommunications Products and Services
- Measures Related to Japanese Public Sector Procurement of Medical Technology Products and Services
- Measures Regarding Financial Services
- Policies and Measures Regarding Inward Direct Investment and Buyers-Supplier Relationships
- Exchange of Letters on Financial Services
- Interim Understanding for the Continuation of Japan-U.S. Insurance Talks
- U.S.-Japan Insurance Agreement
- Japan's Recognition of U.S.-Graded Lumber

- Resolution of WTO dispute with Japan on Sound Recordings
- National Policy Agency Procurement of VHF Radio Communications System
- U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy
- U.S.-Japan Agreement on Distilled Spirits
- First Joint Status Report on Deregulation and Competition Policy
- U.S.-Japan Joint Report on Investment
- Second Joint Status Report on Deregulation and Competition Policy
- U.S.-Japan Agreement on NTT Procurement Procedures
- Third Joint Status Report on Deregulation and Competition Policy
- Fourth Joint Status Report on Deregulation and Competition Policy
- U.S.-Japan Economic Partnership for Growth
- First Report to the Leaders on the U.S.-Japan Regulatory Reform and Competition Policy Initiative

Jordan

- Agreement Between U.S. and Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area

Kazakhstan

- Agreement on Bilateral Trade Relations
- Bilateral Investment Treaty

Korea

- Record of Understanding on Intellectual Property Rights
- Agreement on Access of U.S. Firms to Korea's Insurance Markets
- Record of Understanding Concerning Market Access for Cigarettes
- Agreement Concerning the Korean Capital Market Promotion Law
- Agreement on the Importation and Distribution of Foreign Motion Pictures
- Agreement on Market Access for Wine and Wine Products
- Investment Agreement
- Agreement on Liberalization of Agricultural Imports
- Record of Understanding on Telecommunications (January 1990)
- Record of Understanding on Telecommunications (February 1990)
- Exchange of Letters Regarding the 1986 Intellectual Property Rights Agreement: Product Pipeline Protection
- Record of Understanding on Beef
- Exchange of letters on Beef
- Agreement on Wine Access
- Record of Understanding on Telecommunications (February 1991)
- Agreement on International Value-Added Services
- Understanding on Telecommunications (February 1992)
- Exchange of Letters Relating to Korea Telecom Company's Procurement of AT&T Switches
- Beef Agreements
- Record of Understanding on Agricultural Market Access in the Uruguay Round
- Exchange of Letters on Telecommunications Issues Relating to Equipment Authorization and Korea Telecom Company's Procurement
- Agreement on Steel
- Shelf-Life Agreement
- Revised Cigarette Agreement
- Memorandum of Understanding to Increase Market Access for Foreign Passenger Vehicles in Korea
- Exchange of Letters on Implementation of the 1992 Telecommunications Agreement
- Korean Commitments on Trade in Telecommunications Goods and Services
- Agreement on Korean Motor Vehicle Market
- Exchange of Letters Regarding Tobacco Sector Related Issues

- Exchange of Letters on Data Protection

Kyrgyzstan

- Agreement on Bilateral Trade Relations
- Bilateral Investment Treaty

Laos

- Exchange of notes extending bilateral agreement on Trade in Textile and Textile Products

Latvia

- Agreement on Trade & Intellectual Property Rights Protection
- Bilateral Investment Treaty

Lithuania

- Bilateral Investment Treaty

Macedonia

- Exchange of notes extending bilateral agreement on Trade in Textiles and Textile Products
- Memorandum of Understanding Establishing Outward Processing Program

Mexico

- Agreement with Mexico on Tire Certification
- Memorandum of Understanding Between the United States and Mexico Regarding Areas of Food and Agriculture Trade

Moldova

- Agreement on Bilateral Trade Relations
- Bilateral Investment Treaty

Mongolia

- Agreement on Bilateral Trade Relations
- Bilateral Investment Treaty

Morocco

- Bilateral Investment Treaty

Nepal

- Exchange of notes extending bilateral agreement on Trade in Textile and Textile Products

Nicaragua

- Bilateral Intellectual Property Rights Agreement with Nicaragua

Norway

- Agreement on Procurement of Toll Equipment

Panama

- Bilateral Investment Treaty
- Agreement on Bilateral Trade Relations

Paraguay

- Memorandum of Understanding on Intellectual Property Rights

Peru

- Memorandum of Understanding on Intellectual Property Rights

Philippines

- Protection and Enforcement of Intellectual Property Rights
- Agreement regarding Pork and Poultry Meat

Poland

- Business and Economic Treaty
- Bilateral Investment Treaty
- Agreement on Comprehensive Trade Package on Tariff Reduction

Romania

- Agreement on Bilateral Trade Relations
- Bilateral Investment Treaty
- Memorandum of Understanding Establishing Outward Processing Program

Russia

- Trade Agreement Concerning Most Favored Nation and Nondiscriminatory Treatment
- Joint Memorandum of Understanding on Market Access for Aircraft
- Agreed Minutes regarding exports of poultry products from the United States to Russia
- Protocol of the Negotiations Between the Export of Russia and the United States of America on the Issue of U.S. Poultry Meat Imports into the Russia Federation
- Agreement on Russia Firearms & Ammunition
- Exchange of notes extending bilateral agreement on Trade in Textiles and Textile Products

Senegal

- Bilateral Investment Treaty

Singapore

- Agreement on Intellectual Property Rights Protection

Slovakia

- Agreement on Bilateral Trade Relations
- Bilateral Investment Treaty

Sri Lanka

- Agreement on the Protection and Enforcement of Intellectual Property Rights
- Bilateral Investment Treaty

Suriname

- Agreement on Bilateral Trade Relations

Switzerland

- Exchange of Letters on Financial Services

Taiwan

- Agreement on Customs Valuation
- Agreement on Export Performance Requirements
- Agreement Concerning Beer, Wine, and Cigarettes
- Agreement on Turkeys and Turkey Parts
- Agreement on Beef
- Agreement on Intellectual Property Protection (1992)
- Agreement on Intellectual Property Protection (Trademark) (April 1993)
- Agreement on Intellectual Property Protection (Copyright) (July 1993)
- Agreement on Market Access (1994)
- Telecommunications Liberalization by Taiwan
- U.S.-Taiwan Medical Device Issue: List of Principles
- Agreement on Market Access (1998)
- Understanding on Government Procurement

Tajikistan

- Agreement on Bilateral Trade Relations

Thailand

- Agreement on Cigarette Imports
- Agreement on Intellectual Property Protection and Enforcement
- Agreement on Trade in Textiles and Textile Products

Trinidad and Tobago

- Agreement on Intellectual Property Protection and Enforcement
- Bilateral Investment Treaty

Tunisia

- Bilateral Investment Treaty

Turkey

- Bilateral Investment Treaty
- WTO Settlement Concerning Taxation of Foreign Film Revenues

Turkmenistan

- Agreement on Bilateral Trade Relations

Ukraine

- Agreement on Bilateral Trade Relations
- Bilateral Investment Treaty
- Agreement on Trade in Textiles and Textile Products

Uzbekistan

- Agreement on Bilateral Trade Relations

Vietnam

- Agreement between the United States and Vietnam on Trade Relations
- Copyright Agreement

Appendix 2

Summary of the U.S.-Chile and U.S.-Singapore FTAs on Trade and Investment in Goods and Services

	U.S.-Chile FTA	U.S.-Singapore FTA
Trade in goods	<p>Consumer and industrial products</p> <ul style="list-style-type: none"> - More than 85% of bilateral trade in consumer and industrial products becomes duty-free immediately upon entry into force of the agreement, with most remaining tariffs eliminated within 4 years. - Chile's "luxury tax" on automobiles will be phased out over 4 years with the number of vehicles that are subjected to this tax will be sharply reduced immediately upon entry into force of the agreement. - Textiles and apparel will be duty-free immediately if they meet the Agreement's rules of origin, promoting new opportunities for U.S. and Chilean fiber, yarn, fabric and apparel manufacturing. Annual quotas of textiles and apparel containing non-U.S. or non-Chilean yarns, fibers or fabrics may also qualify for duty-free treatment. - Key U.S. export sectors gain immediate duty-free access to Chile, such as agricultural and construction equipment, autos and auto parts, computers and other information technology products, medical equipment, and paper products. <p>Agricultural products</p> <ul style="list-style-type: none"> - More than three-quarters of U.S. farm goods will enter Chile duty-free within 4 years and all duties of U.S. products will be phased out over 12 years. Key U.S. farm products 	<ul style="list-style-type: none"> - Most U.S. tariff on Singaporean goods will be eliminated immediately upon entry into force of the agreement, with the remaining tariffs phased out over 3-10 years. - Singapore guarantees zero tariffs immediately on all U.S. products. - Textiles and apparel will be duty-free immediately if they meet the Agreement's rules of origin, promoting new opportunities for U.S. and Singaporean fiber, yarn, fabric and apparel manufacturing. Annual quotas of textiles and apparel containing non-U.S. or non-Singaporean yarns, fibers or fabrics may also qualify for duty-free treatment. - Extensive monitoring and anti-circumvention commitments-such as reporting, licensing and unannounced factory checks- so that only Singaporean textiles and apparel receive tariff preferences.

	U.S.-Chile FTA	U.S.-Singapore FTA
	<p>will benefit from improved market access, including pork and pork products, beef and beef products, soybeans and soybean meal, durum wheat, feed grains, potatoes, and potatoes, and processed food products such as french fries, pasta, distilled spirits and breakfast cereals. Tariffs on U.S. and Chilean wines will first be equalized at low U.S. rates and then eliminated.</p> <ul style="list-style-type: none"> - U.S. farmers will be access to Chile that is as good as or better than the European Union or Canada, both of which already have FTAs with Chile. - Chilean price bands (import duties of the same product may vary according to price level) will be phased out. During the phase out, producers of these products will be treated as good as or better than their competitors with other counties. (Elimination of price bands was not part of the EU or Canada FTAs with Chile). - Eliminates the use of export subsidies on U.S.-Chilean farm trade, but preserves the right to respond if third countries use export subsidies to displace U.S. products in the Chilean market. - An agricultural safeguard provision will help protect U.S. farmers and ranchers from sudden surges in imports from Chile. - Both sides renewed their commitment to continue the work on resolving important sanitary and phytosanitary issues, such as meat and dairy inspection and meat grading, that are inhibiting access to consumers in both markets. 	

	U.S.-Chile FTA	U.S.-Singapore FTA
Trade in services	<ul style="list-style-type: none"> - Cover both cross-border supply of services and the right to invest and establish a local service presence. - Traditional market access is supplemented by strong and detailed disciplines on regulatory transparency. - Chile will accord substantial market access across its entire service regime, subject to very few exceptions (a “negative list” approach). - Market access in the service sectors including; Computer and related services, Audiovisual services, Telecommunications services, Construction and Engineering, Tourism, Advertising, Express Delivery, Professional services (architects, engineers, accountants, etc.), Distribution services (such as wholesaling, retailing and franchising), Adult education & training services, Environmental services. - The financial service chapter includes core obligations of non-discrimination, most-favored nation treatment, and additional market access obligations. 	<ul style="list-style-type: none"> - Singapore will accord substantial market access across its entire service regime, subject to very few exceptions. Singapore will treat U.S. services suppliers as well as its own suppliers or other foreign suppliers. - U.S. services firms will enjoy fair and non-discriminatory treatment through strong disciplines on both cross-border supply of services and the right to invest and establish a local service presence. - Traditional market access to services is supplemented by strong and detailed disciplines on regulatory transparency. - Market access in the service sectors including; Computer and related services, Audiovisual services, Telecommunications services, Construction and Engineering, Tourism, Advertising, Express Delivery, Professional services (architects, engineers, accountants, etc.), Distribution services (such as wholesaling, retailing and franchising), Adult education & training services, Environmental services, Energy services. - The financial service chapter includes core obligations of non-discrimination, most-favored nation treatment, and additional market access obligations. - Licensed full-service banks will be able to offer all their services at up to 30 locations on the first year, and at an unlimited number of locations within 2 years. - Locally incorporated subsidiaries of U.S. banks can apply for access to the local Automated Teller Machine (ATM) network within 2.5 years. Branches of U.S. banks get access to the ATM network in 4 years.
	<p>Expanded market access for U.S. insurance companies</p> <ul style="list-style-type: none"> - U.S. insurance firms have full rights to establish subsidiaries or joint ventures for all 	<p>Expanded market access for U.S. insurance companies</p> <ul style="list-style-type: none"> - U.S. insurance firms have full rights to establish subsidiaries, branches or joint ventures.

	U.S.-Chile FTA	U.S.-Singapore FTA
	<p>insurance sectors with limited exceptions. Chile has committed to phase in insurance branching rights.</p> <ul style="list-style-type: none"> - Chile commits to modify its legislation to open cross-border supply of key insurance sectors such as marine, aviation and transport (MAT) insurance, insurance brokerage of reinsurance and MAT insurance, and confirms existing rights for reinsurance. - Prior regulatory product approval is not required for insurance sold to the business community. Expedited procedures are available in other cases when prior product approval is necessary. - U.S. financial institutions may offer financial services to citizens participating in Chile's privatized voluntary savings plans. U.S. firms also gain some increased ability to offer such products through Chile's mandatory social security system. 	<ul style="list-style-type: none"> - Singapore commits to end its prohibition on foreign firms supplying insurance cross-border from their home country. U.S. firms will be able to sell marine, aviation and transport (MAT) insurance, reinsurance, insurance brokerage of reinsurance and MAT insurance, and insurance auxiliary services. - Prior regulatory product approval is not required for insurance sold to the business community. Expedited procedures are available in other cases when prior product approval is necessary. - U.S. financial institutions may offer financial services to citizens participating in Singapore's privatized social security system under more liberal requirements.
	<p>Securities and related financial services liberalized</p> <ul style="list-style-type: none"> - U.S. banks and securities firms may establish branches and subsidiaries and may invest in local firms without restriction, except in very limited circumstances. - Chile will allow U.S.-based firms to offer services cross-border to Chileans in areas such as financial information and data processing, and financial advisory services with a limited exception. Chilean mutual funds may use foreign-based portfolio managers. 	<p>Securities and related financial services liberalized</p> <ul style="list-style-type: none"> - U.S. firms may provide asset/portfolio management and securities services in Singapore through the establishment of a local office, or by acquisition of local firms. - U.S. firms may supply pension services under Singapore's privatized social security system, with liberalized requirements regarding the number of portfolio managers that must be located in Singapore. - U.S.-based firms may sell portfolio management service via a related institution in Singapore. - Singapore will treat U.S. firms the same as local firms for the cross-border supply of financial

	U.S.-Chile FTA	U.S.-Singapore FTA
		information, advisory and data processing services.
	<p>Express delivery services</p> <ul style="list-style-type: none"> - The express delivery commitment includes an expansive definition of the integrated nature of express services, and affirms existing competitive opportunities. 	<p>Express delivery services expedited</p> <ul style="list-style-type: none"> - Liberalization of express delivery services and other related services will all a more efficient and expedited express delivery business in Singapore. - Singapore commits that it will not allow its postal service to cross-subsidize express letters with revenues from its monopoly services.
	<p>An open and competitive telecommunications market</p> <ul style="list-style-type: none"> - Users of the telecom network are guaranteed reasonable and non-discriminatory access to the network. This prevents local firms from having preferential or "first list" of access to telecom networks. - U.S. phone companies obtain right to interconnect with networks in Chile at non-discriminatory, cost-based rates. - U.S. firms seeking to build a physical network in Chile granted non-discriminatory access to facilities, such as telephone switches and submarine cable landing stations. - U.S. firms will be able to lease elements of Chilean telecom networks on non-discriminatory terms and to re-sell telecom services of Chilean suppliers to build a customer base. 	<p>An open and competitive telecommunications market</p> <ul style="list-style-type: none"> - Users of the telecom network are guaranteed reasonable and non-discriminatory access to the network. This prevents local firms from having preferential or "first list" of access to telecom networks. - U.S. phone companies obtain right to interconnect with networks in Singapore in a timely fashion, on terms, conditions, and cost-oriented rates that are transparent and reasonable. - U.S. firms seeking to build a physical network in Singapore granted non-discriminatory access to facilities, such as telephone switches and submarine cable landing heads. - U.S. firms will be able to lease elements of Singaporean telecom networks on non-discriminatory terms and to re-sell telecom services of Singaporean suppliers to build a customer base. - A full range of commitments on telecommunications services providers for open markets, consistent with the regulatory regimes of the U.S. and Singapore. - Open rule-making procedures of telecom regulatory authority, and requires publication of inter-connections agreements and service

	U.S.-Chile FTA	U.S.-Singapore FTA
		<p>rates. Singapore commits that when competition emerges in a telecom services area, that area will be deregulated.</p> <ul style="list-style-type: none"> - Agreement specifies that companies, not governments, make technology choices, particularly for mobile wireless service, thus allowing firms to compete on the basis of technology and innovation, not on government-mandated standards.
	<p>E-Commerce</p> <ul style="list-style-type: none"> - Chile and the U.S. agree to provisions on e-commerce that reflects the issue importance in global trade. Each country also recognized the importance of supplying services by electronic means as a key part of a vibrant e-commerce environment. - Chile and the U.S. committed to non-discriminatory treatment of digital products; agreed to not impose customs duties on such products and to cooperate in numerous policy areas related to e-commerce. - For digital products delivered on hard media (such as DVD or CD), customs duties will be based on the values of the media, not on the value of the movie, music or software contained on the disc. - The e-commerce text identifies Chile as a leader in Latin America for the further development of electronic commerce. 	<p>E-Commerce</p> <ul style="list-style-type: none"> - Singapore and the U.S. agreed to provisions on e-commerce that reflects the issues importance in global trade, and the principle of avoiding barriers that impede the use of e-commerce. - The Agreement establishes explicit guarantees that the principle of non-discriminatory applies to products delivered electronically (software, music, video and text), thus providing fair treatment to U.S. firms delivering digital product via the internet. - For digital products delivered on hard media (such as a DVD or CD), customs duties will be based on the value of the media, not on the value of the movie, music or software contained on the disc. - The e-commerce text makes binding a number of e-commerce commitments that are now only voluntary or temporary in the WTO. - Establishes a binding prohibition on customs duties charged on digital products delivered electronically, such as legitimate downloads of music, videos, software or text. - Affirms that any commitments made related to services in the Agreement also extend to the electronic delivery of such services, such financial services delivered over the internet.
		Professional services

	U.S.-Chile FTA	U.S.-Singapore FTA
		<ul style="list-style-type: none"> - Singapore will ease restrictions on U.S. firms creating joint law ventures to practice in Singapore, and will recognize degrees earned from certain U.S. law schools for admission to the Singapore bar. - Capital ownership requirements for land surveying services will be eliminated. - Liberalization of the requirements for registration and certification of patent agents. - Cooperation in developing standards and criteria for licensing and certification of other professional service providers.
Investment	<ul style="list-style-type: none"> - Provide a secure, predictable legal framework for U.S. investors operating in Chile. - All forms of investment are protected under the Agreement, such as enterprises, debt, concessions, contracts and intellectual property. - U.S. investors enjoy the right to establish, acquire and operate investments in Chile on an equal footing with Chilean investors, and with investors of other countries, unless specifically stated otherwise. - Provide U.S. investors with a basic set of substantive protections which Chilean investors currently enjoy under the U.S. legal system. - Due process protections and the right to receive a fair market value for property in the event of an expropriation. - Prohibits and removes certain restrictions on U.S. investors, such as requirements to buy Chilean rather than U.S. inputs. 	<ul style="list-style-type: none"> - Provide a secure, predictable legal framework for U.S. investors operating in Singapore. - All forms of investment are protected under the Agreement unless specifically exempted (the "negative list" approach). - U.S. investors are provided treatment as favorable as local Singaporean investors or any other foreign investors. - Provide U.S. investors with a basic set of substantive protections which Singaporean investors currently enjoy under the U.S. legal system. - Due process protections and the right to receive a fair market value for property in the event of an expropriation. - Prohibits and removes certain performance-related restrictions on U.S. investors, such as limitations on the numbers of locations.

References

- De Rosa, Dean A. 2003. "US Free Trade Agreements with ASEAN." Institute for International Economics, (Draft) April 14.
- Feenstra, Robert C., John Romalis, and Peter K. Schott. 2002. "U.S. Imports, Exports and Tariff Data, 1989-2001." NBER Working Paper 9387.
- Hertel, Thomas. 1997. *Global Trade Analysis: Modelling and Applications*. Cambridge: Cambridge University Press.
- Ichikawa, Hiroya. 1997. "Constant-Market Share Analysis and Open Regionalism—A Study Suggestion." *The View of Economic and Technology Cooperation in APEC*, edited by Keiji Omura, IDE-JETRO.
- Mukherji, Indra Nath. 2003. *The Bangkok Agreement: A Negative List Approach to Trade Liberalisation in Asia and the Pacific*. New Delhi: School of International Studies, Jawaharlal Nehru University.
- Office of Industries. 2002. "Industry & Trade Summary: Motor Vehicles." *USITC Publication 3545*, U.S. International Trade Commission, United States.
- Poapongsakorn, Nipon et al. 2002. *Agriculture and Trade in Thailand: Experience Under the Uruguay Round Agreement on Agriculture and Its Interests and Concern in the Doha Round*. Bangkok: Thailand Development Research Institute.
- Tangkitvanich, Somkiat. 2002a. "The State of Competition in the Thai Telecommunication Markets." *TDR I Publication*, June.
- Tangkitvanich, Somkiat. 2002b. "Assessing Global E-Commerce Policies: A Perspective from Thailand," in *Information Technology in Asia*, edited by Chia Siow Yue et al., Institute of Southeast Asia Studies.
- Thammavit Terdudomtham. 1997. "The Automobile Industry in Thailand," ASP-5 Sub-Program on Liberalization of Trade and Investment. Bangkok: Thailand Development Research Institute.