Trade in Services Negotiations: Thailand Experience

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Department of Trade Negotiations
Thailand’s Experiences on:

- Overview of Trade in Services Negotiations
- Structure of Trade in Services under Thailand’s FTAs
- Approach/Modality of Trade in Service Negotiations
- Text based Negotiations
- Request – offer / Market Access Negotiations
- Other Experiences
Overview of Trade in Services Negotiation
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Structure of Trade in Services under Thailand’s FTAs

TIS is one of the Agreements under Framework/umbrella agreement:
Treaty of Amity, ACFTA, AFAS, AIFTA, AKFTA

Comprehensive Agreement/FTAs where TIS is one of the Chapters:
TAFTA, TH-Chile FTA, JTEPA, AJCEP, AANZFTA, RCEP, etc

No substantial difference but it is just a style.
The comprehensive one is quite preferable in the modern FTAs
**Positive list:**
List out sectors to be opened

**Negative list:**
List out measures needed to be reserved or maintained

**Hybrid:**
It can be anything/many styles where the Parties agreed upon,

**Treaty of amity**

AFAS
ACFTA, AKFTA, AJFTA, etc

TAFTA
Almost all TH’s FTAs are **Positive List Approach**

**But!**

**some minor differences:**
- **AJCEP** : Standstill obligations in sectors specific commitments
- **AJCEP/JTEPA** : Transparency list is committed as a value-addition
- **AIFTA** : No MFN provision, even negotiated MFN
- MNPs is included under TIS Chapter or as a separate Chapter
**TAFTA style**

- An indication of sectors to be bound but laws or regulations or measures of that particular sectors are mentioned and reserved in the schedule, regardless of modes of supplies.
- No MA/NT columns as usual.

**Limitations**

**Distribution Services**

- In compliance with the Ministry of Finance Announcement (Liquor Administration) B.E. 2543 (2000), distilled liquor distribution services must be operated by a limited company under Thai laws with foreign equity participation less than 49 percent.

**Education Services**

- Under the Private School Act B.E. 2525 (1982), private school licensees must be Thai-born nationals. Foreign equity participation must be less than 50 percent and number of foreign shareholders must less than 50 percent of the total number of shareholders. The manager of a private school must be a Thai national.

- Under the Private Higher Education Institute Act B.E. 2546 (2003), number of foreigners must less than 50 percent of the total number of competent members of the council of a private higher education institute.

**Tourism and Travel Related Services**

- Under the Travel Agency and Tourist Guide Business B.E. 2535 (1992), foreign equity participation in a travel agency and tourist guide business must less than 49 percent and number of foreign shareholders must less than 50 percent of the total number of shareholders.
Australia-Chile FTA

*Lesson learnt of hybrid FTA from previous negotiations*

Cross-Border Trade in Services Chapter: Mode 1 and 2

Investment Chapter: Mode 3 (services & non-services)

Single schedule for those chapter with 2 annexes

Annex I
Existing measures

Annex II
Future measures/policy space

MA is listed in Positive list in Annex 2
## Australia-Chile FTA

<table>
<thead>
<tr>
<th>Obligation</th>
<th>CBTS Chapter</th>
<th>Investment Chapter</th>
<th>Scheduling Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Market Access (MA) [list in annex II]</td>
<td>✓*</td>
<td></td>
<td>Positive List</td>
</tr>
<tr>
<td>National Treatment (NT)</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Most-Favoured-Nation Treatment (MFN)</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Performance Requirements (PR)</td>
<td>✓</td>
<td></td>
<td>Negative List</td>
</tr>
<tr>
<td>Senior Management and Boards of Directors (SMBD)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local Presence (LP)</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**Example: Annex II Reservation on MA**

<table>
<thead>
<tr>
<th>Sector:</th>
<th>All Sectors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obligations Concerned:</td>
<td>Market Access (Article 9.5)</td>
</tr>
<tr>
<td>Description:</td>
<td>Investment and Cross Border Trade in Services</td>
</tr>
</tbody>
</table>

Australia reserves the right to adopt or maintain any measure relating to Article 9.5, except for the following sectors and sub-sectors subject to the limitations and conditions listed below:

...  

*Services incidental to mining and site preparation work for mining:*
(1) None  
(2) None  
(3) None  
(4) Unbound, except as indicated in Temporary Entry Chapter  
...

*Hotels and restaurants:*
(1) Unbound due to lack of technical feasibility  
(2) None  
(3) None  
(4) Unbound, except as indicated in Temporary Entry Chapter
Example: Annex II Reservation on other obligations

<table>
<thead>
<tr>
<th>Sector:</th>
<th>Gambling and Betting</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obligations Concerned:</td>
<td>National Treatment</td>
</tr>
<tr>
<td></td>
<td>Local Presence</td>
</tr>
<tr>
<td></td>
<td>Performance Requirements</td>
</tr>
<tr>
<td></td>
<td>Senior Management and Boards of Directors</td>
</tr>
<tr>
<td>Description:</td>
<td>Cross-Border Trade in Services and Investment</td>
</tr>
<tr>
<td></td>
<td>Australia reserves the right to adopt or maintain any measure with respect to gambling and betting.</td>
</tr>
<tr>
<td>Existing Measures:</td>
<td>Legislation and ministerial statements including:</td>
</tr>
<tr>
<td></td>
<td><em>Interactive Gambling Act 2001 (Cth)</em></td>
</tr>
<tr>
<td></td>
<td><em>Gambling and Racing Control Act 1999 (ACT)</em></td>
</tr>
<tr>
<td></td>
<td><em>Unlawful Gambling Act 2009 (ACT)</em></td>
</tr>
<tr>
<td></td>
<td>...</td>
</tr>
<tr>
<td></td>
<td>[list continues]</td>
</tr>
</tbody>
</table>
Positive List with Value Added

**Some obligations from Negative List approach**

- **Standstill** (bound up to existing level)
- **Ratchet** in selective sectors/subsectors
- **Automatic MFN** in selective sectors/subsectors
- **Non binding transparency list**
  (to show investors what measures they are going to encounter when they invest in host countries)

**There may be an indication of transition from positive to negative list in the future**
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## Major Obligations

<table>
<thead>
<tr>
<th>Major Obligations</th>
<th>Content</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scope/ coverage</td>
<td>- Carve out government procurement, cabotage, air transport services (except aircraft repair and maintenance services, selling and marketing, computer reservation system services)</td>
</tr>
<tr>
<td>Domestic Regulation</td>
<td>- Ensure that all measures (in sector where specific commitments are undertaken) are administered in a reasonable, objective and impartial manner.</td>
</tr>
</tbody>
</table>
| Recognition       | - Recognition of the education or experience obtained, requirement met, or certificate or license granted in another Parties  
- Encourage competent authority entering into negotiations on recognition of qualification requirements |
<p>| Safeguards        | - Ensure the relevancy of this article with the ongoing negotiation of Safeguard measures under WTO |</p>
<table>
<thead>
<tr>
<th>Major Obligations</th>
<th>Content</th>
</tr>
</thead>
<tbody>
<tr>
<td>General / security exception</td>
<td>- to ensure that all relevant measures are yet to be applicable in all emergency situations</td>
</tr>
<tr>
<td>Subsidies</td>
<td>- Carved out but the Parties may request consultations or information</td>
</tr>
<tr>
<td>Market Access</td>
<td>-6 limitations same as GATS</td>
</tr>
<tr>
<td>National Treatment</td>
<td>- GATS</td>
</tr>
<tr>
<td>Progressive Liberalisation/ review</td>
<td>- provide rooms to review or enter into successive rounds of negotiations so as to progressively liberalise trade in services among the Parties</td>
</tr>
<tr>
<td>MFN</td>
<td>- Negotiated/ consultation MFN</td>
</tr>
</tbody>
</table>
| Denial of Benefits                | - non-party  
- for maritime transport services, by a vessel registered under the law of non-party or by a person of non-party which operates and/or uses the vessel in whole or in part |
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Market Access Negotiations

Request-offer/ bilateral negotiations

- Sectors in which Thailand normally request:
  - Distribution services: Retailing services
  - Education services: other language tuition services
  - Financial services: Asset management services
  - Healthcare services: Medical services
  - Other services: Cosmetic treatment, manicure pedicure, other beauty treatment services, physical well-being services
Market Access Negotiations (continued)

- Sectors in which Thailand is requested:

<table>
<thead>
<tr>
<th>Service Type</th>
<th>AUS</th>
<th>NZ</th>
<th>KR</th>
<th>JP</th>
<th>CN</th>
<th>India</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional services</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>Computer services</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Telecommunication services</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td></td>
</tr>
<tr>
<td>Construction services</td>
<td>√</td>
<td></td>
<td>√</td>
<td>√</td>
<td>√</td>
<td></td>
</tr>
<tr>
<td>Distribution services</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td></td>
</tr>
<tr>
<td>Educational services</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financial services</td>
<td>√</td>
<td></td>
<td>√</td>
<td>√</td>
<td></td>
<td>√</td>
</tr>
<tr>
<td>Health related services</td>
<td></td>
<td>√</td>
<td></td>
<td></td>
<td>√</td>
<td></td>
</tr>
<tr>
<td>Tourism and travel related services</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td></td>
</tr>
<tr>
<td>Recreational services* (game services)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>√</td>
<td></td>
</tr>
<tr>
<td>Transport services</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td>√</td>
<td></td>
</tr>
</tbody>
</table>
Market Access Negotiations (Continued)

- **By setting Threshold:**
  - **AFAS**
    - 128 subsectors to be bound
    - Mode 1-2 “no limitation”
  - Mode 3
    - Foreign equity participation: more than 70% FET
    - MA limitation: 90 subsectors: no limitation
    - NT limitation: max 1 NT limitation per one subsector
  - Mode 4 in MNP Chapter
  - 15% of flexibility
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Other Experiences

- India: more than 10 years negotiations
- India: interested in Mode 4 especially "independent professionals"
- Key success factors to conclude negotiations
  - Political motivations/ political will
  - Private sector driven force
  - Less differences/same level of ambition of parties
  - Mutual interests among parties
  - Not go beyond existing laws and regulations
Q&A