



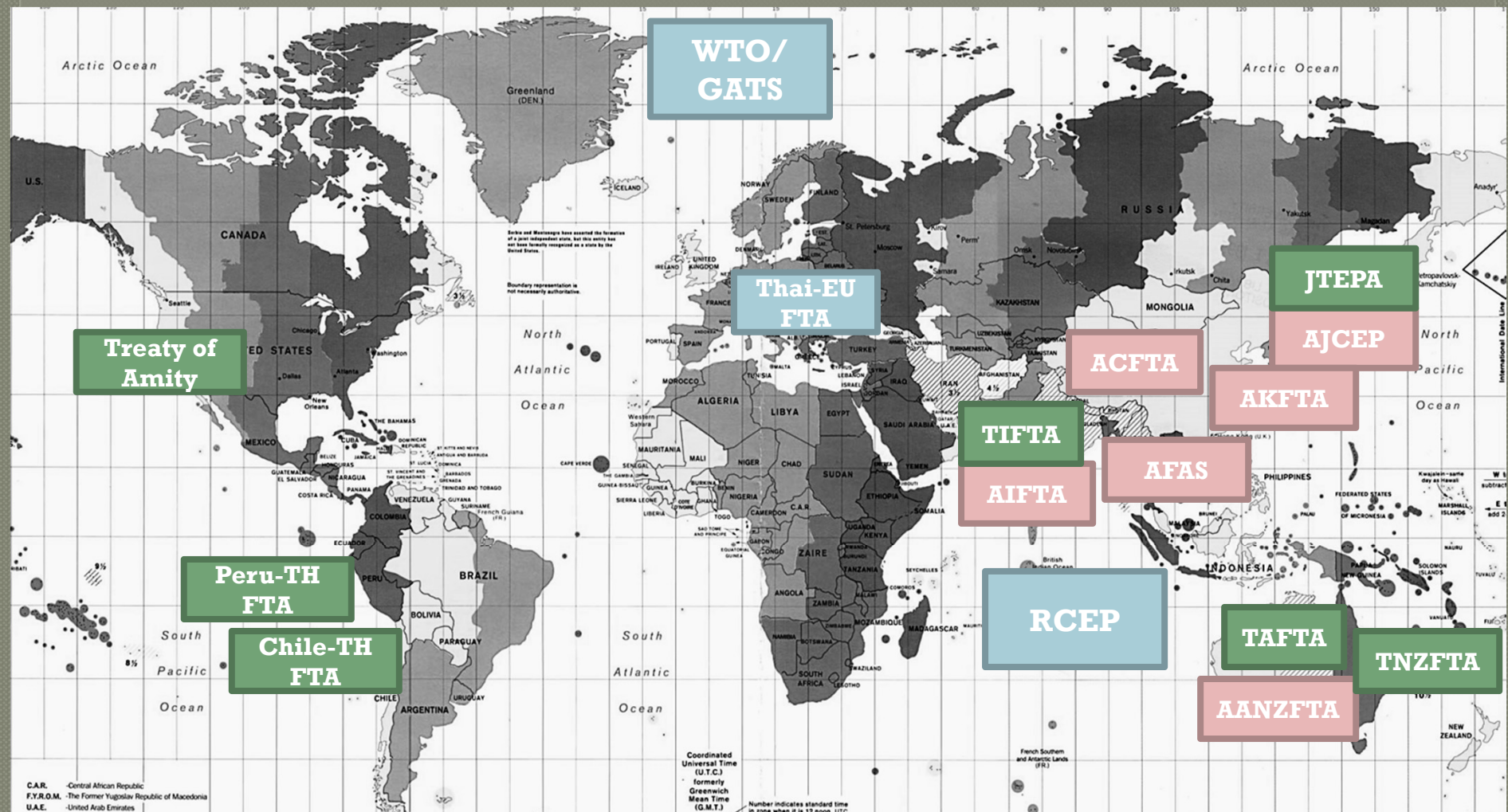
Trade in Services Negotiations: Thailand Experience

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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

Approach/Modality of TIS negotiations

Positive list:

List out sectors to be opened

AFAS
ACFTA,
AKFTA,
AJFTA,
etc

Negative list:

List out measures needed to be reserved or maintained

Treaty of amity

Hybrid:

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

TAFTA

Positive List Approach

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

Hybrid Approach

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

Obligation	CBTS Chapter	Investment Chapter	Scheduling Method
Market Access (MA) [list in annex II]	✓*		Positive List
National Treatment (NT)	✓	✓	Negative List
Most-Favoured-Nation Treatment (MFN)	✓	✓	
Performance Requirements (PR)		✓	
Senior Management and Boards of Directors (SMBD)		✓	
Local Presence (LP)	✓		

Example: Annex II Reservation on MA

Sector:	All Sectors
Obligations Concerned:	Market Access (Article 9.5)
Description:	Investment and Cross Border Trade in Services
	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: ... <i>Services incidental to mining and site preparation work for mining:</i> (1) None (2) None (3) None (4) Unbound, except as indicated in Temporary Entry Chapter ... <i>Hotels and restaurants:</i> (1) Unbound due to lack of technical feasibility (2) None (3) None (4) Unbound, except as indicated in Temporary Entry Chapter

Positive
listing

Example: Annex II Reservation on other obligations

Negative listing

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

Positive List with Value Added

Positive
Listing



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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Text Negotiations

Major Obligations	Content
Scope/ coverage	- Carve out government procurement, cabotage, air transport services (except aircraft repair and maintenance services, selling and marketing, computer reservation system services)
Domestic Regulation	- Ensure that all measures (in sector where specific commitments are undertaken) are administered in a reasonable, objective and impartial manner.
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
Safeguards	- Ensure the relevancy of this article with the ongoing negotiation of Safeguard measures under WTO

Text Negotiations (continued)

Major Obligations	Content
General / security exception	- to ensure that all relevant measures are yet to be applicable in all emergency situations
Subsidies	- Carved out but the Parties may request consultations or information
Market Access	-6 limitations same as GATS
National Treatment	-GATS
Progressive Liberalisation/ review	- provide rooms to review or enter into successive rounds of negotiations so as to progressively liberalise trade in services among the Parties
MFN	- Negotiated/ consultation MFN
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:

	AUS	NZ	KR	JP	CN	India
Professional services	√	√	√	√	√	√
Computer services	√		√	√		√
Telecommunication services	√	√	√	√		√
Construction services			√	√	√	
Distribution services	√		√	√	√	
Educational services	√	√	√	√		
Financial services	√		√	√		√
Health related services		√			√	
Tourism and travel related services	√	√	√	√	√	
Recreational services* (game services)			√			
Transport services	√	√	√	√	√	

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