

TRADE

The FTA-shaped hole - On the Thai-EU Free Trade Agreement

Thursday 31 January 2013, by [Kannikar Kijtiwatchakul](#) (Date first published: 29 January 2013).

After a series of warnings from civic groups that any international trade agreement without public consultation violates the constitution, the Commerce Ministry finally, albeit reluctantly, held a public hearing on the draft framework of the Thai-EU Free Trade Agreement (FTA) last Wednesday.

People sign up to a campaign launched by the FTA Watch alliance in front of the Foreign Ministry to press the government to listen to the public before drafting laws governing international trade deals.
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The ministry, however, let the public know about the hearing only two days in advance - an inappropriate move given the hearing involved a very complex trade agreement with far-reaching repercussions. It reflected the authorities' tendency to ignore the concerns of civil society groups that the trade deals may give certain trade privileges to big business at the cost of the well-being of ordinary Thai people.

It was also disappointing that a so-called public hearing on such an important issue lacked the presence of top executives from the Department of Trade Negotiations (DTN) and the Commerce Ministry to listen to the opinions of about 200 active citizens and other stakeholders.

Worse, those who chaired the forum could not reassure its participants that their voices would be well recorded and submitted to parliament together with the draft framework.

Let's decipher the details of the draft framework (it can be accessed at www.DTN.go.th) so as to understand the concerns of those who have monitored the FTA's talking points and why they have called for changes.

The four main areas of concerns are: medicine becoming inaccessible for the poor; threats to the sustainability of farmers' livelihoods; the promotion of excessive drinking of alcohol; and arbitration to settle cases of disputes between investors and the state.

It's an open secret that the Thai business sector has heavily lobbied for the Thai-EU FTA to protect local business, especially Thai exports, which now enjoy trade privileges under the Generalised System of Preferences, or GSP, which allows an exemption from the more general rules of the World Trade Organisation (WTO). By the end of 2014, the GSP benefits will be terminated and the predicted damage to Thai exports would be about 80 billion baht, according to Siam Commercial Bank research.

The DTN, however, has estimated that the Thai export loss would reach 290 billion baht. Many believe this is an exaggerated figure.

Interestingly, the draft FTA mentions nothing about the potential social costs and damage to the national budget _ the draft neglects to dwell on how much the trade privileges will cost the country

in the long term.

It is a fact that the European Trade Commission has been eyeing the growing liquor market in Thailand. Competitive prices are key to the success of EU products in the Thai market. Hence its demand for a 90% alcohol tariff reduction within seven years.

Already, Thailand has one of the highest death tolls in traffic accidents in the world with more than 3,300 deaths roughly a year. During the 2013 New Year holiday period, 365 lives were lost to road accidents. While the main cause of these tragedies was drunk driving, many deaths were among non-drinkers. The social damage from drinking is immeasurable if we include other alcohol-related social problems. The cheaper the alcohol, the greater the number of Thai drinkers.

Ironically, while the price of alcoholic drinks will go down, those of medicines will go up if trade negotiators fail to heed local concerns.

In the section on Intellectual Property Rights, the draft framework emphasises that the negotiations will be “in harmony with the WTO”.

At a glance, this sounds unproblematic. It seems to mean “we agree on what we have agreed”. No harm done.

But in trade bargaining games, the phrase “in harmony with” here is translated as an invitation for further negotiations. It means that if the bilateral partners have agreed on a certain issue that exceeds the requirements under the WTO agreement, then the negotiation is considered in line with the framework.

If the DTN is sincere about closing all the loopholes, it should make the wording more precise by changing this phrase from “in harmony with” to “not exceeding”.

The overly broad framework has also worried public health authorities in the Food and Drug Administration and health activists.

The EU has sent strong signals that it will demand an extension of 20-year medicine patents and five years of data exclusivity. Both demands will aggravate the drug monopoly situation in Thailand. And just like with any monopoly, the price of imported medicines will dramatically rise and become unaffordable for ordinary people. The rural poor will be hit the hardest.

The extended patents will also affect the competitive edge of local pharmaceutical companies which are now able to provide cheaper, quality generic versions. If the EU's wishes are granted, this will be a second blow the government has dealt to local pharmaceutical firms.

Before 1992, the local pharmaceutical industry was on the rise, with a domestic market share of 70%. The best Thai pharmacists had been successful in developing generic medicines.

But when the US government threatened to cut GSP benefits, the government at that time agreed to amend the Patents Act in an exchange for GSP privileges. It was a death sentence for the local pharmaceutical industry.

Since then, the market share has reversed to 30% generics and 70% imported drugs.

Unlike Thailand, India fought tooth and nails to protect its pharmaceutical industry against trade talk pressures. Before 1992, Thai and Indian pharmaceutical industries were competitive. India escaped the external pressure until 2005 when it finally agreed to observe intellectual property

rights following the 2000 Trade-Related Aspects of Intellectual Property Rights (Trips) agreement. But with the 13-year gap between Thailand and India, New Delhi has exploited the time to develop medicines.

Now standing at the forefront of the world's pharmaceutical industry, India has been dubbed as "The world's drug store" with its cheap generic varieties.

Like it or not, we have to acknowledge that Thailand is not in a position to afford expensive patented medicines to care for its population under any social healthcare scheme.

To make matter worse, the Thai-EU negotiations on intellectual property rights will not only cover medicine patents, they will also push for patents of plant varieties.

Under the WTO agreement, member countries were offered two plant protection options by either adopting a plant patent or an effective sui generis system, the special statutes that fit its unique characteristics. But several countries including Thailand chose a third option by promulgating their own plant protection laws. In 1999, Thailand's Plant Variety Protection Act came into effect.

There have been concerns that the EU will pressure Thailand to abandon the Act and adopt the 1991 UPOV Convention (New Plant Variety Convention). If that is the case, more hardships are in store for local farmers.

At present, the Act protects plant patents for 12-20 years. The adoption of the UPOV Convention will further extend plant patents to between 20-25 years. The most vulnerable, and in highest demand, are the annual plants (rice, corn, for example), whose patents will be extended to almost double from 12 years to 20 before the farmers are granted the right to save seeds.

Worse still, under the UPOV Convention, signatory states are encouraged to do away with farmers' rights to save seeds. Saving seeds for new farming seasons is a key part of a farmer's way of life and a basic right for food security, under the Food and Agriculture Organisation (FAO) treaties.

The UPOV Convention, as bio-diversity advocates worldwide have critiqued, avoids direct violation of the FAO treaties by giving an "option" for each country to issue laws prohibiting seed saving. In practice, however, it is pretty much like an obligation.

Isn't this a modern-day feudal system, where farmers break their backs on the farms to make gigantic transnational seed conglomerates wealthier?

The last main issue of concern is the setting up of the arbitration system to handle investor-state dispute settlement (ISDS). Australia, Japan and India have been adamant about excluding the arbitration system in their FTA negotiations.

In recent years, foreign investors have brought their disputes to arbitration in several countries. When any government has lost, the damages have been massive both in compensation value and by suspending public policies protecting locals. Among ISDS cases that saw investors win over governments was a toxic waste management dispute in Mexico, where the government had to give 480 million baht in compensation to an American company.

Thailand lost a case with the Don Muang Tollway Public Company under arbitration in 2011. Apart from paying compensation of over 1.2 billion baht in addition to another 140 million baht in lawyers' fees, the result was a failure to maintain a public policy on moderate toll fees for local consumers.

What members of the parliament should do when they are scrutinising the Thai-EU FTA draft

framework this week is to look at the areas that affect people's lives. Weigh the long-term adverse consequences for the people with the short-term damages of GSP loss. Then ask yourself if we really should sacrifice the well-being of Thai society and ordinary people to help big business.

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P.S.

* Published by the Bangkokpost under the title "The FTA-shaped hole": 29 Jan 2013 at 00.00Newspaper section:

<http://www.bangkokpost.com/opinion/opinion/333095/digging-thailand-into-an-fta-shaped-hole>

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