

## TPP: a fair Free Trade Agreement?

There's a party about to start, to which Thailand has yet to be invited. The party's a big one too: it includes 40% of the global economy.<sup>1</sup> Is it one that will benefit Thailand in the long run though?

### *Wide-ranging*

The Trans-Pacific Partnership (TPP), signed in early October this year, is a free trade agreement which is the culmination of a seven-year negotiation process involving twelve countries. It is incredibly wide-ranging with thirty chapters, covering subjects such as: financial services, e-commerce, intellectual property, rules of origin and small & medium-sized companies<sup>2</sup> and around 18,000 types of goods.<sup>3</sup>

The agreement has so far been signed by New Zealand, Singapore, Brunei, Chile (signatories to a previous agreement), as well as the US, Australia, Vietnam, Malaysia, Japan, Peru, Mexico and Canada. In similarity with its US-EU equivalent, the TTIP, the TPP has courted controversy.<sup>4</sup>

To begin with it was negotiated in secret, meaning that the millions of people potentially affected by such an agreement had to rely on occasional leaks to learn snippets of its content. Trade groups and civil society organizations have raised concerns about some of the chapters which have come out.<sup>5</sup>

To some extent, that can be expected. After all, any reduction in tariffs exposes local players to competition from abroad. If that competition is able to provide a service or product cheaper – be it because of overall efficiencies, lower salaries, operating costs or less regulation in their home countries – the local business feels at threat. More direct foreign competition can be beneficial in the long run, forcing local businesses to become more efficient and making it easier for them to expand going forward. However the downside is that such an agreement may have an adverse effect on salaries, which is of particular cause for concern if the local economy – as in Thailand's case – is caught in a middle-income trap.<sup>6</sup>

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<sup>1</sup> <http://www.ft.com/cms/s/0/f78c3fa8-83fb-11e5-8e80-1574112844fd.html#ixzz3rdZDONik>

<sup>2</sup> <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/october/summary-trans-pacific-partnership>

<sup>3</sup> <http://www.ft.com/cms/s/0/f78c3fa8-83fb-11e5-8e80-1574112844fd.html#axzz3rdX5rF3A>

<sup>4</sup> <http://www.thenation.com/article/nafta-steroids/>

<sup>5</sup> <http://www.bangkokpost.com/business/news/764616/civic-groups-plot-tpp-war>

<sup>6</sup> <http://tdri.or.th/wp-content/uploads/2012/12/t5j2012-somchai.pdf>

That said, some of the accusations, if proven to be accurate, are quite worrying. For example, there is concern that chapters regarding the agricultural sector are opening the door for the legalisation of genetically-modified plants. The issue is that if this happens, never mind the unknown effects on the local eco-system, it will give powerful US corporations a monopoly on new plant varieties.<sup>7</sup>

From the US side, there is the expected concern over job losses as firms decide it is even more cost-effective to move to countries with cheaper labour costs. Added to that, there is even criticism from those who are actually party to the wording of the agreement. Apparently the US government has prohibited its advisors from sharing the specifics of the TPP with the public. Thus, if they make public criticisms, the US government accuses them of being too vague.<sup>8</sup>

The TPP does allow private parties to sue governments for making decisions contrary to the agreement through *investor-state dispute settlement panels*.<sup>9</sup> Whilst this clause has been criticized for allowing big multinationals the opportunity to wield power and influence over governments, it does have limits and some mechanism is required to block a government from acting purely in its own interest.<sup>10</sup> What those limits are, however, remains unclear.

Companies will also be able to send data across borders freely and governments will be banned from requiring companies to house servers and other IT facilities in a country. Countries will not be allowed to impose “localization” rules either, a practice which cloud computing companies see as a major trade barrier. However, the financial services industry will be exempt from this data liberalization.<sup>11</sup>

According to the US Trade Representative, the TPP will enable the sale of “certain financial services across borders,”<sup>12</sup> meaning that providers will not necessarily have to establish a company in the host country to offer these services. This isn’t a UCITS-style passport<sup>13</sup> however, as the products on offer would require authorization by the host regulator first. It won’t cover all products but regulators will not be permitted to make their financial services markets more restrictive to foreign providers.<sup>14</sup> That’s all very well in principle but it could prohibit regulators from banning risky financial products permitted in one signatory country<sup>15</sup> – as this would be seen as

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<sup>7</sup> <http://www.bangkokpost.com/business/news/764616/civic-groups-plot-tpp-war>

<sup>8</sup> <http://www.politico.com/magazine/story/2015/05/tpp-elizabeth-warren-labor-118068#ixzz3o1rz9me4>

<sup>9</sup> <http://www.ibtimes.com/trans-pacific-partnership-trade-deal-us-banks-get-victories-tpp-agreement-2127384>

<sup>10</sup> <http://www.ft.com/cms/s/0/f78c3fa8-83fb-11e5-8e80-1574112844fd.html#ixzz3rdZDONik>

<sup>11</sup> *ibid*

<sup>12</sup> <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/october/summary-trans-pacific-partnership>

<sup>13</sup> <http://www.mbg-investment.com/in-the-media/inthedia/67>

<sup>14</sup> <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/october/summary-trans-pacific-partnership>

<sup>15</sup> [http://www.exposethetpp.org/TPPImpacts\\_FinRegulation.html](http://www.exposethetpp.org/TPPImpacts_FinRegulation.html)

further restricting free trade. Governments have also signed up to bring in regulations and procedures to quickly allow insurance services to become available across borders.<sup>16</sup>

Dispute resolution in the financial services sector does at least seem to be reasonable on paper. Apparently the agreement is that arbitrators must have financial services expertise. The financial service chapter also includes exceptions to preserve broad discretion for regulators to act to ensure financial stability and the integrity of their financial system – though it's unclear whether *ensuring financial stability* includes banning potentially toxic products as mentioned above. The implementation of monetary or other financial policies will also be permitted, so long as they are not discriminatory.<sup>17</sup> Who decides which cases are *discriminatory* is not mentioned – will currency devaluations be deemed as discriminatory?

As for retail banking, industry groups have asked that foreign banks get the same treatment as their local rivals. For example, in Vietnam foreign banks may only open one branch per province and in Malaysia a foreign lender cannot operate within 1.5 km of an existing local competitor's branch.<sup>18</sup>

Like many international trade agreements, there are winners and losers in each sector. Yet, as the purpose of these agreement is nominally to make trade easier between all signatory countries. Thus an open, frank discussion would be helpful to ensure the best agreement possible is in place. Seemingly, though, certain parties do not wish this to be the case.

Whether it is beneficial for Thailand to have its economy, legal system and financial system bound by such an agreement is, as yet, uncertain. Of course it doesn't want to miss out on the opportunity to further increase its export market – especially in the automotive sector, where it is currently the world's 5<sup>th</sup> largest truck producer. 17<sup>th</sup> largest in cars and 13<sup>th</sup> in automotive parts<sup>19</sup> and further develop its financial services sector.

However, it may be better to wait and see how the system works in practice. Of course that all depends on whether the country is even invited to join the party in the first place.

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<sup>16</sup> *ibid*

<sup>17</sup> *ibid*

<sup>18</sup> <https://ustr.gov/sites/default/files/2015%20NTE%20Combined.pdf>

<sup>19</sup> [www.worldstopexports.com](http://www.worldstopexports.com)

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