

# **THAILAND AND AUSTRALIA FREE TRADE AGREEMENT (TAFTA): THE ADVANTAGE PACE OF FOREIGN INVESTMENT OF BOTH COUNTRIES**

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## **1. INTRODUCTION**

It is confidently to state that the global trade is focusing on the liberalisation. WTO, with the notion of liberalisation, is the significant institution for establishing the free and fair trade among countries. WTO, however, may contribute to the liberalised international trade by the long term due to the fact that its conference combines with a number of countries that try to protect their own local market. It, thus, has the new trend of liberalisation of trade by using bilateral agreement. For example, North America Free trade agreement (NAFTA), this free trade agreement leads to the flow goods between USA and Canada which significantly catalyses the export and import by removing barriers of trade such as customs and tariffs. From the NAFTA that can be seen as the prototypes of the implement of trade liberalisation by Free Trade Agreement, it contributes to the international bilateral agreements of many countries for keeping their performance in competitiveness in global market. Thailand and Australia with the view of opportunity from Free Trade Agreement have constituted “Thailand-Australia Free Trade Agreement” (TAFTA) between both countries to increase their international trade. This agreement has been in use since 1 January 2005. It contains the obligation to gradually reduce and remove their trade barriers in tariff and non-tariff. The TAFTA is, therefore, the important pace of Thailand and Australia. It provides the facilitation of cross boarder commerce for each party which may contribute to the growth of economy of both countries. Moreover, it brings both parties the tight relations in the long run by the cooperation. The TAFTA contains the significant obligation that has to be focused. This paper, therefore, tries to present the impact of TAFTA on Australia and Thailand when this agreement is come in to existence. It will, firstly, show the development in international relationships between Thailand and Australia. Secondly, with the main point of the agreement, the paper will provide the impact of the Agreement on restricted rule such as reduction of tariff, decrease of the obligation of direct investment, entry of businessperson, and right to hold the shares in company for foreign investors. It will, next, show the impact of

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TAFTA on both parties' economy by the deregulation from the Agreement. The paper, then, will discuss on the reaffirmation of non-tariff barrier in TAFTA that may be seen the obstruction of free trade. In the final part, it will provide volume of trade during 5 months of enforcement of TAFTA and conclusion.

## **The relationship between Thailand and Australia**

### **Background**

The connection of official diplomat between Thailand and Australia were limited due to the influence of British over Australian foreign policy and the European power in Southeast Asia region. However, it has some evidence show that Australia had contacted with Thailand in 1880s.<sup>2</sup> For instance, in 1882, the Thai language press presented that Louse, the son of Anna Leonnowens (the writer of the King and I fame) returned from Victoria with shipload of 200 horses, carriage equipment and a gift of Australia animals from the Victorian Zoological Gardens.<sup>3</sup> Also in the 1880s, it has the touring of Australian circus in Thailand that is the first circus to visit Thailand.<sup>4</sup> At this time, Horses from Australia were popular in Thailand because of demand for cavalry and racing industries in upper society of Thais.<sup>5</sup>

In commerce, there were important contacts for Australian food products which were sold in Bangkok and Phuket.<sup>6</sup> Moreover, it had the investment in tin mining at Phuket. In 1906 Thai government signed the agreement with Captain E,T Miles of Tasmania which ignited the tin mining industry by the use of dredges.<sup>7</sup>

Giblin, a Tasmanian Surveyor worked in Bangkok's Royal survey department in 1894, becoming Director in 1901. He held this position for a decade with 20 Europeans and 306 Thai staffs.<sup>8</sup> During the coup in 1932 which overthrew the absolute monarchy to democracy, the small number of Thai aristocrats immigrated to Australia as political refuges but there still were a few Thais in Australia.<sup>9</sup> Ronald Mr. Francis Stuart, an oxford educated Australian

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<sup>2</sup> Centre for the study of Australia-Asia relations, *The Asia-Australia survey 1997-98*, (1998)413

<sup>3</sup> Joint Standing Committee on Foreign Affairs, Defence and trade, *Australia Relations with Thailand*, the parliament of the Commonwealth of Australia, Canberra, (1995)13.

<sup>4</sup> Ibid 13.

<sup>5</sup> Ibid above n 1.

<sup>6</sup> Ibid above n 2 14.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid above n 1,413.

<sup>9</sup> Ibid 413.

served in British Consular Service from 1937 and 1941 in Bangkok.<sup>10</sup> Although, there were contacts between Thailand and Australia, Australian were little known to Thais as same as the knowledge about Australia in Thailand.<sup>11</sup>

In early of WW II, January 1941, it has the important diplomat, that Prime Minister Menzies made an unofficial visit to Thailand in meeting Field Marshal Phobun Songkram, Thai Prime Minister<sup>12</sup>. During the period of WW II there was a sad event which riveted the picture of Thailand into Australian minds. The Australian prison of war was barbarically treated on the infamous Thailand-Burma Railroad.<sup>13</sup> Japanese discriminated Australians brutally but Thai villagers provided some assistance to the Australian prisoners.<sup>14</sup> At the end of the war, officially 2800 Australians died in Thailand therefore Australia assisted Thailand in the negotiation with British with the final part contained the upkeep of Commonwealth war grave at Kanchanaburi. Its task is continued today.<sup>15</sup> There is 1360 are buried at commentary.<sup>16</sup> Since the end of World War II and the raise of the decolonisation, The Australia diplomatic affair emerge to deal with Southeast Asia region.

### **Political and Diplomatic relation**

In December 1945, Australia constructed a mission in Bangkok which become the consulate-general in 1946 and contributed the establishment of Australian Embassy on 6 December 1955.<sup>17</sup> Thailand raised the legion in 1952 which established the status of Embassy on 7 December 1955.<sup>18</sup> In 1980s, cold war period, Australia and Thailand have dominated bilateral relationship because of the Cold War security issue. Both countries were the member of South East Asia Treaty Organisation (SEATO); Australia provided Thailand considerable support both through organisation and bilateral basis such as joint military technical training project, official vehicle maintenance project and Tribunal Support Centre.<sup>19</sup>

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<sup>10</sup> Ibid .

<sup>11</sup> Ibid .

<sup>12</sup> Ibid .

<sup>13</sup> Ibid .

<sup>14</sup> Ibid 414.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid 415.

<sup>18</sup> Ibid above n 2, 15

<sup>19</sup> Ibid, above n 1,417

There were many bilateral Agreements that can be implied as the future step of relation such as a 1979 Cultural Trade Agreement, a 1989 Development Cooperation Agreement, and a 1990 Economic Cooperation Agreement.<sup>20</sup> Moreover, it has a number of Memoranda of Understanding, Covering Air Service(1982), Science and Technology (1987), Energy( 1989), Research and Education(1991), Defence Logistic(1993), Health(1993) and Surveying Mapping(1994).<sup>21</sup>

### **Economic relation**

Australia did contact with Thai in trade mission from the late 1950 and held large trade fair in Bangkok in 1966 but the trade between both countries was just A\$25 million in 1967-1968.<sup>22</sup> In the late 1980, industrial development in Thailand moved rapidly forwards, Thailand was becoming the significant economy in Indochina and Southeast Asia region.<sup>23</sup> Thai economy was climbing faster than other in the world from 1984 to 1990.<sup>24</sup> The trade relations between Australia and Thailand remain sound; Thailand would like to export more and Australia would like to raise investment in Thailand despite the fact that Australia' investment and trade with Thailand felt behind those with Indonesia, Malaysia and Singapore.<sup>25</sup>

Bilateral Trade between Australi and Thailand Figures (\$A million)

	2000	2001	2002	2003	2004
Exports	1,958	2,289	2,513	2,251	3,052
Imports	2,815	2,683	3,140	3,604	3,775

Source: ABS presented by DFAT

However, as seen in the table above, the merchandise between countries rarely increased during 2000-2004. The trend of bilateral volume is seen to be stable. For example, the in 2000 the value of bilateral imports and exports are \$A 1,958 and \$A 2,815 millions. In 2002, the value of import is \$A 2,513 and of export is \$A 3,140 millions. Australia is ranked as the

<sup>20</sup> Ibid 419.

<sup>21</sup> Ibid

<sup>22</sup> Ibid 417.

<sup>23</sup> Ibid 419.

<sup>24</sup> Ibid above n 2, 52.

<sup>25</sup> Ibid, above n 1,423

eleventh exporter of Thailand. When compared to other countries, the volume of export from Thailand to Australia is at 2.5 percent. For the

Thailand's principal export destinations,2004

	Countries	Volume %
1	United states	15.9
2	Japan	13.9
3	China	7.3
4	Singapore	7.2
5	Malaysia	5.4
11	Australia	2.5

Source: DFAT

Thailand's principal import sources,2004

	Countries	Volume
1	Japan	23.6
2	China	8.6
3	United states	7.6
4	Malaysia	5.6
5	Singapore	4.4
12	Australia	2.3

Source: DFAT

import from Australia to Thailand, Australia is presented as twelfth importer of Thailand, the import volume is at 2.3 percent when compared with other countries. It can be implied that although Thailand and Australia have the merchandise between them, the figure in their trading did not considerably increase.

### Security relation

As stated above both countries are the members of SEATO. Australia focused Thailand as the strategic area; the strategic review and Defending Australia 94 pointed Thailand as a significant country in region.<sup>26</sup> Both countries have regular military exchange programs such as CHAPEL GOLD, which involves the Australian rifle company, AUSTHAI – the joint air forces exercise in Gulf of Thailand, and THAI BOOMERANG – a joint air forces exercise at Nakorn Rachasrima.<sup>27</sup> The budget of Australia spent for defence cooperation with Thailand is \$A4.2 million in 1996-97 and the Australian Defence Forces School of Language continue to train five to seven personel in the Thai language each year.<sup>28</sup>

### Australian Assistance for Thailand

<sup>26</sup> Ibid 429.

<sup>27</sup> Ibid 429.

<sup>28</sup> Ibid 430.

Australia development's cooperation with Thailand has been continued from 1952 until now.<sup>29</sup> The corporation is typically in form of grant aid. Table 1 below will presents the expenditure of the programs since 1991/1992.

**Total program activities FY1991/92 to 1994/95**

	1991/92	1992/93	1993/94	1994/95
Agricultural and rural development	33%	22%	14%	12%
Economic Infrastructure ,energy and mining	27%	30%	21%	18%
Education and training	24%	30%	35%	39%
Public planning and social infrastructure	11%	14%	23%	21%
Other	5%	4%	7%	10%
Total	100%	100%	100%	100%
Country program	\$A25.7m	\$A28.4m	\$A25.3m	\$A27.4m
Other	\$A9.2m	\$A13.3m	\$A15.5m	\$A17.5m
Total	\$A34.9m	\$A41.7m	\$A40.8m	\$A44.9m

Source : Joint Standing Committee on Foreign Affairs, Defence and trade, *Australia Relations with Thailand* ,the parliament of the Commonwealths of Australia, Canberra, (1995),91.

From the table above, it seems that Australia has assisted Thailand in various approaches. In 1991/92 budget was granted mainly to agricultural and rural development but this budget decreased to only 12% in 1994/95. In contrast with the education and training sector, its program was increasingly granted from 24% in 1991/92 to 39% in 1994/95. The Education and Training Cooperation has been focused as main grants in Australian Assistant programs. Although Thailand had the significant economic growth until 1997(Thai's GDP growth of over 8% per year) that contributed to the result that Australian-development aid would

<sup>29</sup> Ibid above n 2, 90.

decline and phase out by 2001, the Thai economy was in crisis during 1997-1998.<sup>30</sup> Australian government rapidly respond to the suffering from Thai economic crisis. It grants \$A1 billion to IMF \$US 17.2 billion rescue package to Thailand.<sup>31</sup> In addition Australia provided some project aiming to specific sectors, such as Thailand-Australia Science and Engineering Assistance Project \$A18.5 million from 1996-2001, Public Sector Reform \$A770,000 from 1998-2001, Land Titling Project \$A8.5 million from 1995-2000, and Aid Ambulatory Care project \$A 4.1 million.<sup>32</sup> In 2003, Thai government expressed its desire to phase out from being an aid recipient. Australia's development cooperation, therefore, has been considerably decreased to only \$A10.6 million in 2004-2005.<sup>33</sup>

The development of bilateral agreement between Thailand and Australia

Australia government presented the view of the shift in expanding of bilateral and trade in the Governments White Paper 1997 on Foreign and Trade Policy, In International Interest.<sup>34</sup> In July 2001, Thailand's Foreign Minister confirmed that Australia and Thailand would undertake a joint scoping study on the possibility of an FTA.<sup>35</sup> On 14 November 2001 Australia's Trade Minister, Mark Vaile, and Thailand's Minister for Commerce, Dr Adisai Bodharamik, announced that Bilateral Free Trade Agreement was under track of joint focusing study.<sup>36</sup> Both government commenced the study and consultation that would be complete and could be the step of both governments to decide whether to proceed formal negotiation and more detail consultation to business that mirror the desire of both governments for any FTA to be comprehensive in scope and to establish Australia and Thailand's commitment to the WTO multicultural system.<sup>37</sup> On 30 May 2002, there was an announcement of formal negotiation would be raised next day.<sup>38</sup> On 19 October 2003, successful conclusion of negotiations for an FTA was announced by Australia Prime minister

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<sup>30</sup> *Australia and Thailand Supporting social and economic recovery for the people of Thailand*, Canberra, (2002), 3

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid* 7-13.

<sup>33</sup> Australian Agency for International Development (AusAid), *Country program Thailand*, (2005)

<sup>34</sup> Parliament library information, analysis and advice for parliament, *Custom Amendment (Thailand-Australia Free Trade Agreement Implementation) Bill 2004*, Bill digest, 21 January 2005, nos. 89-90, 2004-5, ISSN 1328-8091, page 5

<sup>35</sup> *Ibid*

<sup>36</sup> Australia Department of Foreign Trade and Affairs, *AUSTRALIA'S TRADE*, (2002) 36

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid* above n 33 6

Howard and the text of the Agreement was released on 12 May 2004.<sup>39</sup> On 5 July 2004, Thai Prime minister Taksin and Australian Priminister Haward, in Canberra, signed The Thailand-Australia Free Trade Agreement.<sup>40</sup>

### **The important aspect of Thailand-Australia free trade agreement**

Thailand -Australia free trade agreement (TAFTA) which has been in force on 1 January 2005 contains some interesting obligation which can affect the rules governing the cross boarder trade and business between both countries.

#### **Trade in goods**

In chapter 2 of TAFTA presents the trade in goods and Article 203 set out the elimination of custom duties. The tariff and customs of trade between both countries will be removed to effort their trade between both parties (Thailand and Australia).

*1. The provisions of this Chapter concerning the elimination of customs duties on imports shall apply to goods originating in the territory of the Parties.*

*2. A Party shall not increase an existing customs duty or introduce a new customs duty on imports of an originating good.*

*3. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods of the other Party in accordance with its Tariff Schedule at Annex 2. The base rate and the interim rate of customs duty at each stage of reduction for an item are indicated for the item in each Party's Schedule. Reductions shall occur upon entry into force of the Agreement and thereafter on 1 January of each year, as provided for in each Party's Schedule.*

Article 203(1) provides that the removing of customs duties has to be applied in goods which were originated in the territory of both parties. This relates to Chapter 4 (Rule of Origin) of the agreement which will be presented below. Article 203(2) obligates both countries to not raise their customs duty or use new customs duty on imports of good which is verified and certified as originating in their territory. Article 203(3) presented the process of tariff

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<sup>39</sup> Ibid

<sup>40</sup> Ibid



elimination that has been stated in the tariff schedule of the agreement. Both parties have to use the decreased rate of tariff that is indicated in Schedule on January, 1 each year. Furthermore, to increase the reduction of custom duty, Article 204(4) sets out that Party can unilaterally reduce their tariff on imported good of other party but the party shall inform other party as soon as possible before the new tariff rate will be in use. Although this agreement contains the obligation of elimination of custom duties it states the component of protection in case of dumping market and agricultural subsidies. In article 206 (1) Thailand and Australia reaffirms commitment under the provisions of the WTO Agreement on Implementation of Article VI of GATT 1994<sup>41</sup> and both parties shall observe the act of dumping market on the request of exporter of parties by using the framework of time for determining the volume of dumped import.<sup>42</sup> The agricultural subsidies are also concerned in this agreement. The agreement requires that both countries have not to maintain or introduce export subsidies agricultural goods traded between their countries.<sup>43</sup> Moreover, TAFTA include the Article 502 that allow domestic industry in both countries to adjust new trading environments that the increase of imports which accelerated by TAFa may be the cause of serious damage for domestic industry.<sup>44</sup> It can be seemed that Chapter Trade in goods of TAFTA is the important implement that propels the elimination of customary barrier in foreign trade of both parties with the rule that control fair trade.

### **Rule of Origin**

The Rule of Origin( ROO) is established to solve the problem that the flow of good in importation of good through the low tariff member and trans- shipment to higher tariff members of Free Trade Agreement or Free Trade Area.<sup>45</sup> TAFTA also set out the ROO and procedure to determine good in the preferential treatment of importing country.<sup>46</sup> Article 4 of TAFTA presents its ROO and annex 4.I set out its specific requirement for particular goods. Whether goods will be recognized as originated in both countries can identify by

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<sup>41</sup> Article VI of the GATT se out the right of contracting parties to apply anti-dumping measures. For example, if the price of imported product is below the “normal value” (normally, the price have to be not lower than the price of products in the exporting country), the measures of agisting dumping price can be used for importing country.

<sup>42</sup> Article 206(2) of TAFTA

<sup>43</sup> Article 208(2) Of TAFTA

<sup>44</sup> Australia government Department of Foreign Affair and Trade, *A Business Guide to The Thailand and Australia Free Trade Agreement (TAFTA)*, 2004 21.

<sup>45</sup> Trebilcock M. and Howese R., *THE REGULATION OF INTERNATIONAL TRADE*, 1998, 28

<sup>46</sup> CCH Australian customs news, *Thailand-Australia Free Trade Agreement*, 8 October 2004, 1

- the goods are wholly obtained<sup>47</sup> in Thailand and/or Australia;<sup>48</sup> or
- The good satisfy any applicable requirement of Annex 4.I, as a result of process performed entirely in Thailand and/or Australia by one or more producers<sup>49</sup>

Where the goods are not “wholly obtained “goods, they can regard as preferential goods by tariff classification of harmonized goods in Annex 4I.<sup>50</sup> The Annex indicates the tariff items in specific set of rules that applies to a particular heading (4-digit code), subheading (6-digit code) or split subheading (ex. 6-digit code) of tariff item and presents the particular rules to harmonised goods.<sup>51</sup> In most case the rules require that the manufacturing or producing process carried out in territory of Thailand and/or Australia is sufficient to cause a change in tariff classification but there is the difference in degree of change from the chapter level down to sub heading.<sup>52</sup> For example, Keys presented separately of Sub heading 830170 will be qualified if change to subheading 830170 from any other chapter. Hat-racks, hat-pegs, brackets and similar fixtures, however, will be preference if change to subheading 830260 from any other subheading. In some case, there is a requirement for regional value content in particular percentage. For in stance, motor vehicles for the transport of ten or more persons, including the driver classified to heading 8702 will be qualified for preference if the process of their manufacturing undertake in originating country causes the change to heading 8702 from any other heading provided there is a regional value content of not less than 40 percent. It seem that there are various criteria using for qualifying preferential goods as depicted above that the process of manufacturing process can satisfy the requirements of classification of originating goods.

Furthermore, goods which are not preference by the phrase “wholly obtain” can be satisfied as originating good if;

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<sup>47</sup> The phrase “Wholly obtain” is defined in Purpose of The article 401

<sup>48</sup> Ibid 2. and The Article 402(1) Of TAFTA

<sup>49</sup> Ibid 2. and The Article 402(1) Of TAFTA

<sup>50</sup> Ibid 2

<sup>51</sup> Annex 4I Headnote to Annex (1)(3)(5)

<sup>52</sup> Ibid above n 44 2

- The materials of product that is not passed the requirement of TAFTA originated classification does not 10 per cent of Free on Board value of goods<sup>53</sup>
- The goods meet another criteria or standard of the ROO of TAFTA<sup>54</sup>

It seem that there are various criteria using for qualifying preferential goods as depicted above about the process of manufacturing that satisfy the requirements.

Regional Value Content (RVC) also has been set out as the indicator of good classification. RVC is a formula<sup>55</sup> for calculating specific good in Annex 4I and other Article. There is another rule for exporters more than the qualification of goods. The exporter must obtain the certificates of origin<sup>56</sup> for each shipment of good from an authorized body.<sup>57</sup> The certificates must be in possession of importer when claiming preference unless the requirement has been waive from importing country.

## **SANITARY AND PHYTOSANITARY MEASURES AND FOOD STANDARDS**

In the chapter 6 of the agreement, Thailand and Australia reaffirm their existing rights and obligations in the agreement of the Sanitary and Phytosanitary Measures (SPS Agreement) and the Technical Barriers to Trade (TBT Agreement). Thailand and Australia can retain its laws to implement sanitary and phytosanitary measures and other standards, including with the authority to take appropriate goods that do not conform to that Partys SPS measures and such other standards.<sup>58</sup> The Agreement also set out that each party should

- “give consideration to accepting the relevant control, inspection and approval procedures of the other Party.

<sup>53</sup> The Article 402(3)(a) Of TAFTA

<sup>54</sup> The Article 402(3)(b) Of TAFTA

<sup>55</sup> where:

(a) “RVC” is the regional value content between the Parties, expressed as a percentage;

(b) “FOB” is the FOB value of the goods; and

(c) “VNM” is the CIF (Cost, Insurance and Freight) value of all non-originating materials that:

(i) in the form in which they were first supplied to the producer of the goods, were imported into Australia or Thailand; or

(ii) in the form in which they were first supplied to a producer in the

territory of a Party of non-originating materials that are supplied to the producer of the goods, were imported into Australia or Thailand.

<sup>56</sup> Ibid above n 44 3 and Article 408 of TAFTA

<sup>57</sup> Annex 4.2 of TAFTA

<sup>58</sup> Article 604 of TAFTA

- review its inspection, testing, certification and other relevant import and export approval systems or procedures.
- cooperate on a product trace back system for the notification of
- non-compliance of imported consignments for commodities subject to SPS measures<sup>59</sup>

### **Trade in service.**

In Chapter 8 of TAFTA, it sets out the liberalization of trade in service between Thailand and Australia and enhances the cooperation in trade in service of both countries.<sup>60</sup> Then in part II of this chapter, there are obligations and disciplines of trade in service for both countries. In subject to Article 1605<sup>61</sup>, Article 805 states that both countries must not imply restricted rule on international transfer and payment for current transaction that is defined by International Monetary Fund. Thailand and Australia hold the same right under relevant GATS<sup>62</sup> provisions such as VI (1), (2), (3), (5) and (6); VIII (1),(2), (5); the Annex on Financial Services; the Annex on Air Transport Services, paragraphs (1), (2), (3), (4), (6); and the Annex on Telecommunications, paragraphs (1)(5).<sup>63</sup> TAFTA also contains some points of cooperation to strengthen existing collaboration that effort trade in service and to enhance the development in trade in service. At part III of Chapter 8, Article 808 indicates the area of cooperation of service sector that are not covered by existing cooperation arrangements, through inter alia:

- research and development;
- human resource and professional development and apprenticeship;- trade in services
- data management; and
- small and medium enterprises capacity enhancement.

The countries have to support the development of cooperation in educational, healthcare, and tourism. Moreover, Thailand and Australia have to collaborate to promote the facilitation of

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<sup>59</sup> Article 607(2),(3),(4) of TAFTA

<sup>60</sup> Article 801 of TAFTA.

<sup>61</sup> In the event of serious balance of payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on payments and transfers of funds of any investor of the other Party.

<sup>62</sup> The General Agreement on Trade and Service

<sup>63</sup> Article 807 of TAFTA

temporary entry of business people in particular, by developing the capacity to grant applications offshore for business entry.<sup>64</sup>

In part IV of trade in services chapter, there are specific commitments for market access and national treatment. For accessing in service market, both parties have to treat services or service supplier no less favourable than that provided for under the terms, limitations and conditions agreed and specified in Annex 8.<sup>65</sup> In limitations and measurements where market access commitments are undertaken, unless otherwise, specified in Annex 8, are:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test (this does not cover measures which limit inputs for the supply of services);
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

In aspect of National treatment of Article 810, both countries have to accord to service or service supplier in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.<sup>66</sup> The countries accord to other service and service suppliers by formally identical or different treatment as it

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<sup>64</sup> Article 808(3) of TAFTA

<sup>65</sup> specific commitments for market access and national treatment measures listed in the limitations column condition all the sector.

<sup>66</sup> Article 810(1) of TAFTA

accords to its own like services and service suppliers.<sup>67</sup> The formally identical and different treatment can be considered being less than favourable where it has modification of condition of competition in favour of its service and service suppliers when compared with services or service suppliers of the other countries.<sup>68</sup> As given above, it has various obligations for liberalisation of trade in goods between countries. The rules Chapter 8 of TAFTA, such as the limitation of implication of rules for money transfer and payment, the strengthening of cooperation in development of service trade, and natural treatment, can contribute to the decrease of barrier of trade in service and to the increase of exchange of services and service supplier of service trade between Thailand and Australia.

## **Investment**

The investment between Thailand and Australia is concerned in TAFTA. In Chapter 9 of TAFTA, it has the regulation to promotion and protection of investment for both countries such as Article 909, 910, 912 and 914.

It has the implication of the component of catalyzation in fair and secure investments. The investors who invest in each country will be supported and encouraged from government of both countries in each territory and they will be equitably treated and secured in their investment form each government.<sup>69</sup> Next, the unreasonable expropriation from government is not permitted in TAFTA for the security of investments of both countries' investors. No country in TAFTA can nationalise, expropriate, or subject to the equivalent of expropriation and nationalisation unless the country has reasons that the expropriation is for public purpose under due public law, that the expropriation is non-discrimination, and that the expropriation is accompanied by the payment of prompt, adequate and effective compensation.<sup>70</sup>

Moreover, in the context of Most Favoured Nation Treatment<sup>71</sup> both governments have to treat investors and their investments of other country as no less favour than it treat, in same

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<sup>67</sup> Article 810(2) of TAFTA

<sup>68</sup> Article 810(3) of TAFTA

<sup>69</sup> Article 909(1),(2),(3) of TAFTA

<sup>70</sup> Article 912(1) of TAFTA

<sup>71</sup> Michael and Robert, the Author of The regulation of International trade, presents that Most Favour Nation can be seen in Multilateral Agreement on Investment(MAI) that has its principal that government must not discriminate against the investors from countries that has signed The obligation of National Treatment and Most Favour Nation Agreements

circumstance, to other countries that are not party in TAFTA.<sup>72</sup> The payment and transfer in investment also set out in this Agreement. Both governments have to allow, when requested, all funds that relate with investment of investors to be transferred freely into and out of its territory unless the transfers or payments of these funds are not relating with bankruptcy, insolvency or the protection of the rights of creditors or ensuring the satisfaction of judgements in adjudicatory proceedings.<sup>73</sup> There are regulations to govern the investment in respect of security and support of investment in the Chapter 9. It, therefore, can imply that the governments of both countries will cooperatively support and encourage the investment between their countries due to the regulations in this chapter.

### **Movement of natural person**

The purpose of this part is this part is to facilitate the temporary business entry and erecting simplified and transparent immigration formalities for business persons in conduct of trade and investment between countries.<sup>74</sup> The interesting aspect in the Chapter 10 is the obligation that Thailand and Australia must grant, in respect that the business person satisfy its immigration criteria, the right to business persons of each country for temporary entry for a period of up to 90 days.<sup>75</sup> In the same way, accord with Annex 8, both countries must grant temporary entry to an intra-corporate transferee or a contractual service supplier of the other countries who meets its criteria for the grant of an immigration formality unless there has been a breach of any of the conditions governing temporary entry, or an application for an extension of an immigration formality has been refused on such grounds of national security or public order.<sup>76</sup>

### **Competition**

There are the regulations of fair business competition in Chapter 12 of TAFTA. These obligation is use to promote fair competition and limit the practice of anti competitive that adversely affects competition such as misuse of market power, anti competitive of horizontal and vertical arrangement between competitors ,and anti-competitive mergers and

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<sup>72</sup> Article 910(1),(2) of TAFTA

<sup>73</sup> Article 914(1),(3) of TAFTA

<sup>74</sup> Article 1001 of TAFTA

<sup>75</sup> Article 1004 of TAFTA

<sup>76</sup> Article 1005 of TAFTA

acquisitions.<sup>77</sup> Both countries have to ensure that all businesses are subject to such generic or relevant sectoral competition laws and are subject to measurement of enforcement actions that against anti-competitive practices in their respective territories.<sup>78</sup>

## **Intellectual property**

TAFTA recognise the protection of intellectual property by observance of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights<sup>79</sup> and any other multilateral agreement relating to intellectual property.<sup>80</sup> It obligates that each government must, on receipt of information or complaints, take measures to prevent the export of goods that infringe copyright or trademarks, according to its laws, regulations, or policies.<sup>81</sup> Furthermore, TAFTA sets out the cooperation on enforcement of infringing intellectual property right. Thailand and Australia have to cooperate with a view of elimination of infringing intellectual property right by their respective laws, regulations, or policies.<sup>82</sup> For example, the cooperation's are the notification of contact points for the enforcement of intellectual property rights, the exchange of information concerning the infringement of intellectual property rights, policy dialogue on initiatives for the enforcement of intellectual property rights in multilateral and regional fora.<sup>83</sup>

Thailand and Australia Free Trade Agreement has contained many obligations that lead to the facilitation and increase of cross boarder trade in goods and services that were restricted before this agreement is in enforce. The international trade and investments between their territories will be accelerated by means of the reduction or elimination of custom tariff of trade and the promotion of trade in goods and service. And for clarifying the origin of goods, this Agreement contains the rules that can be used for classifying the origin of goods. Inevitably, the obligation of the Agreement will contribute to the impact on the both parties in the Agreement. Thailand and Australia, therefore, under the rule that they signed, have to be affect from the Agreement.

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<sup>77</sup> Article 1201 of TAFTA

<sup>78</sup> Article 1203 of TAFTA

<sup>79</sup> It can seen in Uruguay round TRIPS Agreement that relate with Trademark, Copyright, and Patent

<sup>80</sup> Article 1301,1302 of TAFTA

<sup>81</sup> Article 1303 of TAFTA.

<sup>82</sup> Article 1304 of TAFTA.

<sup>83</sup> Article 1304(1),(2),(3) of TAFTA.



## **The impact of Thailand-Australia Free Trade Agreement**

After Thailand and Australia free trade Agreement has been enforced since 1 January 2005, its obligation contributes to the impact of both countries. The impact from TAFTA can be presented in the impact on tariff of both countries and on the regulation of foreign investment of each country. Moreover, the agreements implementation can be predicted to impact on the economy of both parties.

Impact on tariff of trade in goods As mention above in chapter 2 of TATTA that the reduction has to occur upon the entry into force of TAFTA, there are obligations of reduction of tariff in number of goods. The tariff reduction should be focused at the important sector of goods such as agricultural, textile, and automotive goods.

### **1. Agricultural sector**

Thailand has to adjust its tariff in agricultural product much more than Australia because Australian tariff of agricultural product was at or below 5.<sup>84</sup> When TAFTA was enforced, Australia will eliminate its agricultural to 0 percent. However, Thai tariff in agricultural product that is interested from Australian exporter is in high rate. It has maximum tariff rate at 60 percent and tariff rates quotas on 23 categories of agricultural goods which Thailand considers are sensitive, including certain dairy products such as milk powder, rice, sugar, a range of horticultural products, coffee and tea, pepper, raw silk, some oils, maize, soy beans and coconut products.<sup>85</sup>

Thai tariff phasing modalities in agricultural product.

In specific product, Thailand has the tariff rate of beef meat on 1 July 2003 at 51 per cent but since the Agreement came in to existence, Thailand has decrease its tariff rate on beef meat to 40 per cent and will phase down to 0 per cent in 2020.<sup>86</sup> Thai rate tariff of sheep meat at 1 July 2003 is 32 percent and Thailand offered to cut tariff to 30% on entry into force, then phase to 0% in 2010. Moreover, Thailand has the rate of offal meat on 1 July 2003 at 42

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<sup>84</sup> DFAT and Thai custom

<sup>85</sup> DFAT, *Australian and Thailand Free Trade Agreement Benefits for Australian Exporters*, Canberra, 2004,7.

<sup>86</sup> Ibid 13

percent and it will immediately cut its tariff to 30 percent on the entry in to force of TAFTA

<sup>87</sup> Australian dairy products also gains benefit from TAFTA.

Thai tariff in dairy product will be inclined when the TAFTA is in existence. For example, Thai tariff for butter was 33 percent on 1 July 2003 but it has been 33 percent after TAFTA in used and then phase to 0 per cent in 2020.<sup>88</sup> Thai has increased its quoter of 120 tonnes for milk and cream product that intervals until 2025, when all tariffs and quotas will be eliminated.<sup>89</sup> Moreover, Thai tariff of alcohol products will decrease from the old rate. The tariff of wine and spirits has been decreased from 60 to 40 and 60 to 30 respectively in the date of entry of TAFTA and phasing down to 0 percent in 2015.<sup>90</sup> However, Australian alcohol tariff products have been removed to 0 percent since the day of entry of TAFTA.<sup>91</sup>

The agricultural products are seen as the important part of the reduction of tariffs in TAFTA. Thailand and Australia have the remedies for protect the agricultural products which are fragile market for the reduction of tariff in the TAFTA. Thailand has focusing in the dairy product and frozen beef because of the strong performance of producing these products of the Australian agricultural sectors.

#### Thai milk importing quota

Goods	WTO Commitment(2004)			FTA Thai-Australia				
	Tariff rate		Quota (tones)	Tariff rate in quota		Quota		
	In quota	Out quota		2006	2021	2006	2020	2021
Milk	20	41	2,400	20	0	120	192.19	0
Milk powder	20	216	55,000	20	0	2,200	3,523.55	0

Source: DTN Ministry of Commerce Thailand

Thai dairy producer can not produce its product to sufficient Thai consumers. Thailand, therefore, has to import the skim milk powder 70,000 tones to combine it with waters for

<sup>87</sup> Ibid 14.

<sup>88</sup> Ibid 16.

<sup>89</sup> Ibid 16

<sup>90</sup> Ibid 30

<sup>91</sup> Annex 8 of TAFTA.

satisfying the demand in Thai market.<sup>92</sup> Thailand is bound by the WTO to import the skim milk powder at least 50,000 tones a year with 20 % of tariff rates but, in practice, Thailand imports the powder 70,000 tones a year.<sup>93</sup> After TAFTA is in used Thailand will specially open for Australian dairy exporter 2,000 tones per annual.<sup>94</sup> The Thai tariff rate of the dairy product will be gradually decreased 1 percent every year until phasing down to 0 percent in 2020.<sup>95</sup>

Moreover, Thailand concerned the frozen beef and pork meat that will be imported to its market. Thai market of these products is very delicate due to the fact that the importing the huge amount of the products to Thailand will vastly affected Thai farmers. The time in decreasing of these products are, therefore, longer than other agricultural products. It will be implementation of special safeguard to protect the importation of the meat product to Thailand.

#### Thai special safe guard for meat market

Goods	Base rate	Decreasing of tariff rate %		The rate of importation ( tones)	
		2005	2020	2005	2020
Beef meat	51	40	0	776	1,613
Pork meat	33-22	30	0	60	124.74
Ham and dried pork meat	33	30	0	10	20.79
Dried beef meat	51	40	0	10	20.79

Source: DTN Ministry of Commerce Thailand

The Thai special safeguard is that if there is the amount of this importing meat over than “Trigger Level”<sup>96</sup>, Thailand can reused the tariff rate that is set out before there will have been the passing of Trigger Level or can rely on the MFN rate of that products that the rate

<sup>92</sup> Department of Trade Negotiation, Ministry of Commerce Thailand, *Thailand – Australia Free Trade Agreement: Benefit for Thai Exporter*, Bangkok, 2005.

<sup>93</sup> Ibid

<sup>94</sup> Ibid

<sup>95</sup> Ibid

<sup>96</sup> The Trigger Level is calculated by relying on the imported amount in past 3 years and on the possibility of trading the products.

must be less than another one. For example, the beef meat that its original rate is 51 percent will decrease to 40 percent in first year and to 34.4 percent in third year. In this third year, the amount of imported beef meat product must not exceed 855.5 tones but if there is the overing of the controlled amount Thailand can reuse the original rate at 51 percent.<sup>97</sup> It can be seen that Thailand has the implement of special safeguard for prevent its market.

However, Australia also adopted the special safeguards for its market of agricultural product. Australia approached to use the special safeguard because Thailand is the major exporter for products such as tuna and fruit juices. Australia concerns that the importing tuna from Thailand will significant increase. Thailand has is Australia's major exporter of tuna that Thailand has share in Australian tuna market about 94 percent.<sup>98</sup> This can contribute to Australia to adopt the special safeguard for the tuna product. Australia set out the special safe guard to adjust its tuna market as seen in the table below that set out the quota for Thailand in importation of Tuna and pineapple juice to Australia.

The Australian tuna tariff for Thailand is cut from 5 to 2.5 percent, and the tariff will gradually decrease to 0 percent in 2008.<sup>99</sup> But the tariff for fruit juice with the special safeguard for Australia market is decline to 0 percent since the tariff is in use.

#### **- Textile, Clothing, Footwear and Leather**

From the Agreement, Australia will reduce its tariff rate at 25 percent for some specific type of clothing from 239 types. Australia will use tariff rate for clothing at 12.5 percent until 2010 that it will decrease this rate 5 percent and eliminate this rate of tariff in 2015.<sup>100</sup> For example, Australia will cut the tariff for textile and clothes from 25 percent to 12.5 percent and the tariff will be gradually decreased to 0 percent in 2016.<sup>101</sup> In footwear sector, before TAFTA is implemented the highest tariff for the Australian foot wear sector is 15 percent. The tariff will be decrease to 9 percent after the Agreement is in used and it will be phased down to 0 percent in 2011.<sup>102</sup> However, Australia will have an advantage in Thai leather and furskin tariffs. Thai will provide tariff 20 percent for Australian leather exporters when the

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<sup>97</sup> Ibid above n 91

<sup>98</sup> Ibid above n 91 16

<sup>99</sup> Ibid

<sup>100</sup> DFAT and Thai custom

<sup>101</sup> Ibid above n 91 33.

<sup>102</sup> Ibid 36

TAFTA enter to force and the tariff will be 0 percent in 2010.<sup>103</sup> Moreover, the Australian furskin exporters will be provided by Thailand the decrease of the tariff from 30 percent to 20 percent on the day that TAFTA is in existence, and the tariff will steadily phase to 0 percent in 2010.<sup>104</sup>

#### **- Automotive sector**

The tariff of automotive produces is inevitably impacted from the entry of TAFTA. Both Thailand and Australia have agreed to reduce their tariff in this business. However, the reduction of tariff covered only some selected products at the date of TAFTA came in to existence and their tariffs will be gradually decreased to 0 percent as presented. From the table, Thailand will remove its 80 per cent tariff on large passenger motor vehicles from the day the Agreement enters into force and rapidly cut down its high tariffs on other automotive products. Also in case of auto motive component that export from Australia to Thailand, its tariff will be cut to 20 percent and 15 percent when Agreement is enforced. Australia's motor vehicle manufacturers are already moving to take advantage of these positive changes, for instance, the car company in Australia such as Holden Ford and Mitsubishi are intend to expand their market in Thailand.<sup>104</sup>

From the table, Thailand will remove its 80 per cent tariff on large passenger motor vehicles from the day the Agreement enters into force and rapidly cut down its high tariffs on other automotive products. Also in case of auto motive component that export from Australia to Thailand, its tariff will be cut to 20 percent and 15 percent when Agreement is enforced. Australia's motor vehicle manufacturers are already moving to take advantage of these positive changes, for instance, the car company in Australia such as Holden Ford and Mitsubishi are intend to expand their market in Thailand.<sup>105</sup>

Australia will change its tariff in Passenger Motor Vehicles (PMVs) and commercial vehicles to 0 percent since TAFTA is in used. In the same track, the automotive component tariff will be cut from 15 percent to 5 percent and will be reduce to 0 percent in 2009. Thailand will be benefit from the reduction of these tariffs, for example, Thai exporter of motorcars and other motor vehicles principally designed for the transport of persons, including station wagons and

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<sup>103</sup> Ibid above n 84 63

<sup>104</sup> Ibid 64

<sup>105</sup> Ibid above n 91 20.

racing cars, and motor vehicles for the transport of goods will receive the 0 percent of tariff when the Agreement is implemented.<sup>106</sup>

Form the reduction of Thai and Australian tariffs that is presented above, it can be viewed that the TAFTA impact directly to the tariffs of cross boarder commerce between Thailand and Australia. The reduction and elimination in tariffs can be implied as the implement for facilitating the international businesses. However, the impact from TAFTA is not only on the tariff of goods but it also contributes to the change of restriction in international service and business between Thailand and Australia.

### **Impact on the restricted ruled of investment and service**

The sectors of international investment and service between Australia and Thailand are impacted from TAFTA. Australia and Thailand established the commitment of each party in TAFTA.<sup>107</sup> The Australian rules that restricts of service sector will be change for Thai service seller.<sup>108</sup> Australia will provide the assessing of market for Thai investment that it will permits Thai business persons to hold share of company at 100 percent in Australia except in the businesses that

- “ acquisition of “ substantial interests” in existing Australian businesses with total assets of \$50 million or more<sup>109</sup> proposals to take over offshore companies whose Australian subsidiaries or assets are valued at \$50 million or more or account for more than 50 percent of the target company’ s global sales
- proposals to establish new businesses in Australia involving a total investment of more than \$10 million
- investments by the Thai Government.<sup>110</sup>

Australia also allows Thai invesment in the real estate. However, the invesments have not to involve with

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<sup>106</sup> Ibid above n 91 38

<sup>107</sup> Annex 8 of TAFTA

<sup>108</sup> The barriers of Thai service in Australian market is provide at the Appendix

<sup>109</sup> In case that the value of Thai investment is over 50 millions, the investor must ask for the permission to establish that business from FIRB (Foreign Investment Review Board)

<sup>110</sup> DFAT and DTN

- “ non-residential commercial real estate, where the property is subject to a heritage listing, valued at more than \$5 million
- developed non-residential commercial real estate, where the property is not subject to a heritage listing, valued at \$50 million or more
- accommodation facilities
- vacant urban real estate
- residential real estate<sup>111</sup>

Thailand also provides the assessing of Thai market for Australian investment that have ever been restricted. Thailand will open market for Australian investments that the permission of these investment are categorised into 5 groups.

1. “ Group that Australians can not hold the shares over 25 percent such as the infrastructural communication service.
2. Group that Australian can not hold the share over 40 percent such as the service of satellite communication.
3. Group that Australian can not hold the share over 50 percent such as the management consulting services in communication, the selling of communication implement, the communication station renting service.
4. Group that Australia can not hold the the share over 60 percent such as major restaurants or hotels, education institutions, and maritime cargo services.
5. Group that Australian can hold the share at 100 percent such as distribution services in relation to those goods without limitation of Australian equity, management consulting services through a regional operating headquarters or associated company or branch, and construction services( that has registered the valued at least 1,000 millions Bath)<sup>112</sup>

As seen in the first and second groups, These business are seen as the importance in Thai market. The permissions in these two groups, from the agreement, is seemed to be significantly benefit for Australian investment. Moreover, the very advantage point for Australian investors is in the last group that Thailand permits the holding of share in the business up to 100 percent because the investment are normally restricted from Thai *Alien*

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<sup>111</sup> Ibid

<sup>112</sup> DNT, the open of commercial market under TAFTA (interpret from Thai language [www.ThaiFTA.com](http://www.ThaiFTA.com))

*Business Act*<sup>113</sup> that it is not permit the investment of international persons to occupy share over 60 percent of corporation (the directors must be Thai nationals and a minimum of 40 percent of the shares must be held by Thai persons) At this point, the Australian investment may be said that it has the most advantage in investing in Thailand that it can hold all of the share in company.

In the aspect of the sector of service, both country provide the access of service market for each party under TAFTA. The commitment of both party from the TAFTA impact on the obligation that had been used before the TAFTA was come into force. From the commitments of the Agreement, Australian government presented that Australia will permit Thai persons to access in its service sector, for example

- **"legal services:** Australia will permit Thai service suppliers to provide advisory services in Thai law, third country law and international law, as well as international commercial arbitration services and other alternative dispute resolution services. Australia will also permit Thai lawyers to join local law firms in all states and territories except Western Australia and South Australia.
- **landscape architectural services:** Australia will permit Thai service suppliers to provide planning and design services for the aesthetic landscaping of parks, commercial and residential land.
- **computer and computer-related services:** Australia will permit Thai service suppliers to provide database services and other computer services.
- **mining and related services:** Australia will permit Thai service suppliers to provide consultancy services incidental to mining, and other services incidental to mining, including drilling services, repair and dismantling services and well-casing services. In addition, Australia will permit Thai service suppliers to provide mining related scientific and technical consulting services, as well as mining site preparation.
- **communications services:** Australia will not impose quotas on the number of satellite and mobile services and will permit unlimited Thai interest in Optus and Vodafone. Australia has not made any commitment on the ownership by Thai nationals of Telstra

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<sup>113</sup> The Act has come into force on March 3, 2000. Under the Act, Alien means a natural person or juristic entity without Thai nationality, including a company with half or more than half of its shares held by aliens, or company with half or more than half of its shareholders being aliens.



- **financial services and banking:** Australia will permit the Thai central bank and government monetary institutions to invest in Australia at interest without providing an assurance to the Reserve Bank that it will be a stable holder of the Australian dollar or that it will consult the Reserve Bank in the event of a significant change in its Australian dollar profile.
- **education services:** Australia will permit Thai cooking training, Thai language training and training in Thai traditional massage through training institutes
- **transport services:** Australia will permit Thai to access in air and marine time service, for example, in air service provide it will allow ground-handling services, including airport operation services, cargo handling and other supporting services for air transport and in marine time service, and in marine time service, it will permit Thai international maritime operators non-discriminatory access to tug assistance and fuelling at Australian ports, and reasonable and non-discriminatory rights to have their cargoes on-forwarded from ports using other modes of transport
- **automotive repair services:** Australia will permit Thai service suppliers who provide the service of repairing automotive <sup>114</sup>

As seen in the information from DFAT commitment for TAFTA above, Australian government has to open for the assessing of service for Thai investment. It, therefore, has to state that Thai service sectors that views to invest in Australian market can draw the benefit from this Australian commitment in TAFTA. Moreover, from the Australian commitment and TAFTA, the Australian immigration law has to be changed in case the entry of Thai business persons. Australian government will grant special period for Thais who will enter into Australia with the purpose of doing business. The commitment from Australian government is that Australia will permit the temporary entry of Thai citizens without labour market testing in the following circumstances:

1. “ **business visitors** will be permitted to enter and stay for up to three months
2. service sellers will be permitted to enter and stay initially for six months, with a maximum stay of 12 months
3. **intra-corporate transferees** will be permitted to enter and stay initially for up to four years with a total of up to ten years

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<sup>114</sup> DFAT commitment on service and investment ( Annex 8 of TAFTA)

4. **contractual service suppliers** will be permitted to enter and stay for up to three years. Specialist Thai chefs entering as contractual service suppliers will be permitted to enter and stay for up to four years
5. **independent executives** will be permitted to enter and stay initially for up to four years
6. **spouses and dependants of intra-corporate transferees** will be permitted to enter stay and work for the period of the intra-corporate transferees visa<sup>115</sup>

It can be seen, from DEFAT commitment above, that the providing period of Thai business persons to visiting Australia is the significant benefit for Thai citizens. The restricted rules of granting VISA for Thais business persons have to be reduced from the commitment. In the exchange purpose, Thailand government will grant Australian persons who are in the executive, managerial, and professional position positions the special treatments of the period of working in Thailand. The special treatments are

1. “ Thailand will grant a visa and work permit for **up to five years' stay** for all Australian citizens being transferred to work in Thailand within the same company (to be renewable annually) (previously one year).
2. Thailand will grant a visa and work permit for **up to three years' stay** for all Australian citizens entering Thailand to work on the basis of a contract with an Australian or Thai company other than their employer in Australia (to be renewable annually) (previously one year).
3. Thailand will not require a work permit for Australian citizens who are business visitors conducting business meetings in Thailand for **up to 15 days, and up to 90 days for APEC Travel Card Holders**.
4. Thailand will consider applications for visas and work permits submitted by an employer on an applicant's behalf and **advise in advance** of approval and (with visa to be granted on arrival subject to identity verification).
5. Thailand will permit all Australian business visitors **access to the one-stop visa and work permit service** (previously restricted to visitors representing or employed by major investors).
6. Thailand will permit all Australians who hold work permits to **participate in business meetings anywhere in Thailand**, including locations not specified in their

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<sup>115</sup> Ibid

work permits (previous work permits had to be changed if any work was to be conducted in a location not specified in the permit).

7. Thailand will **reduce the number of documents required** from Australians for work permits and renewals and work permits.<sup>116</sup>

The commitments from Thai government will impact on its Immigration Law. Thai government, under the obligation of commitment of TAFTA, has to decrease the strict rules for the Australian business persons who work or will work in Thailand.

It has to be state, by relying on the information of commitments from Australia and Thailand, that the exchange of commitments has impact greatly on the rules of foreign investment, entry of business persons in both parties of TAFTA. There will be the significant change of the immigration law in part of the treatment for the business persons for both countries. The law that prohibits Thais and Australians in holding shares of cooperation will be changed that, from the commitment, it will provide more amount of occupying corporate share for international persons that have invested or will invest in both countries. The impact from commitment on service and investment of TAFTA will establish the facilitation of the investment between Australia and Thailand.

### **Impact on the economy of both countries**

In the topic of the impact of TAFTA in economy of Thailand and Australia, the research will provide the impact by relying on the study of TAFTA from Center for International Economics.<sup>117</sup> The Center adopted the Asia Pacific G-Cubed (APCubed) mode<sup>118</sup> for analysing the impact of economy from TAFTA.

The graph above presents the impact of TAFTA when the Agreement is immediately come in to force. It can be seen that the real consumption of Australia and Thailand will increase to 4.9 and 14.3 US\$ billion respectively. Australian GDP will increase to 6.6 US billion and Thai GDP will rise to 25.2 US billion. It can imply from the graph that both Thailand and Australia will receive the advantageous of TAFTA when the Agreement is immediately implemented. In addition, the Centre went on to study impact from TAFTA in long term

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<sup>116</sup> DTN and DFAT

<sup>117</sup> This study of Centre for International Economics is presented by DTN (Thailand)

<sup>118</sup> APG-Cubed is a dynamic general equilibrium model which separately identifies some 18 countries or regions and 6 different industry sectors

benefit. The impact, in long period, on the Australia is provided in the graph below that is generated from the four simulations;

1. immediate liberalisation of Australia-Thailand trade “ overnight” in 2003 so that the free trade agreement was fully operational in that year.
2. liberalisation by both Australia and Thailand over 5 years (2003-2007).
3. liberalisation by Australia over 3 years (2003-2005) and by Thailand over 8 years (2003-2010).
4. liberalisation by Australia over 5 years (2003-2007) and by Thailand over 10 years (2003-2012).

**The Impact of Phasing: Australia** Net present value 2002 US\$ billion  
a Over 20 years and at model determined interest rates.

Source: Centre for International Economic

From the From the graph, the benefit of TAFTA for Australia is predicted by the mode that Australian real consumption will be estimated at 4.9 US\$ billions since the immediate introduction of TAFTA until the reduction of tariff of both countries at the year tenth of Agreement. Accordingly, the Australian GDP may be at 6.6 US\$ billions from the beginning of TAFTA and the GDP will be approximately stable between 6.6-6.8 at the year tenth of TAFTA.

The impact of the Agreement, however, contributes to different trend for Thai real consumption and GDP. Thai real consumption will increase to 14.3 and it will gradually decrease to 11.6, 9.8 and 8.75 US\$ billions during the period of liberalisation from the Agreement.

**The Impact of Phasing: Thailand** Net present value 2002 US\$ billion  
a Over 20 years and at model determined interest rates.

Source: Centre for International Economics

The Thai real GDP will also follow the same fashion of real consumption; it will climb up to 25.2 US\$ billions at the beginning of the enforcement of the Agreement. The GDP will

steadily decline from 20.6, 17.4, and 15.6 US\$ billions during the 10 years phasing down of tariff by the obligation of TAFTA. It can be pointed out that the enforcement of TAFTA influence differently trends for Thai and Australia economies. Australia is predicted to have benefit from the agreement in its real consumption and GDP more than Thailand counter part. The trends of Australian of real consumption and GDP are stable; in contrast with Thailand that its real consumption and GDP will decrease after there have been the phasing down from TAFTA. It has to state that the establishment of the Agreement have to impact on the economy of its parties. This can be seen that the TAFTA in economical view may provide the advantageous in favour of Australia. The Agreement will liberalise international trade of both parties by decreasing the barriers that have obstructed the flow of the international trade. However, TAFTA may not significantly facilitate the commercial activities between its parties due to the fact that there is the existence of non-tariff barrier in its chapters.

### **Non tariff barrier of Australia and Thailand**

The barrier of international trade can be categorised as tariff and non-tariff barrier. The tariff barrier is considered as the tax that used for the imported and exported goods, while non-tariff barrier is known as the law regulation, policy, or practice of government other than an import duty that restricts on trade.<sup>119</sup> In TAFTA, although there has been the establishment of the obligation to reduce the tariff barrier, it still contains reaffirmation of the Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS) of each party in chapter 6 of the agreement. The TBT and SPS, classified as the non- tariff barrier of international trade, can establish the obstruction of the cross boarder trade between Thailand and Australia. It, therefore, has to point that the TAFTA may lead to the consolidation of non-tariff barrier for parties, though, in the Article 607, 608 and 609 of the Agreement, there are provision of the cooperation in the exchange of information in the SPS of both countries. The existence of non-tariff barrier of each party in TAFTA may contribute to difficulties of flow of the trade between parties. Thai export to Australia that is encouraged from the reduction of tariff might be obstructed by the Australian strict SPS. The Australia SPS are significantly restricted on the agricultural products from other countries. For example, there are complains of European Union and US in Australia's entire quarantine systems that US Trade Representative Bob Zoellick pointed out that one of the biggest problems in trade with

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<sup>119</sup> Ortino F, *Basic Legal Instrument for the Liberalisation of Trade: A Comparative Analysis of EC and WTO Law*, HART PUBLISHING, Oxford and Portland Oregon, 2004, 7

Australia was the stringent quarantine system which is costing US farm producers 100-500 million US dollars a year, and European Trade Commissioner Pascal Lamy stated that Australia has built a quarantine system that can block the import of agricultural products into this country.<sup>120</sup> Moreover, Australian government provided, in the WTO report, that it takes a conservative approach to biosecurity consistent with the WTO SPS Agreement.<sup>121</sup> Australia takes a managed risk approach to biosecurity based on scientifically justified measures that are the least trade restrictive possible.<sup>122</sup> The strict in system of quarantine of Australian SPS may cause unfavourable condition for the Thai exporters. Thais exporters who view the TAFTA as the opportunity to access their products to Australian market have to be challenged with the cost of Australian SPS system that can impose the discouragement of the international trade. For the aspect of Australian TBT, it can be present that the Australian government have improved its TBT such as countervailing and anti-dumping procedures. It, however, can be seen that the traditional anti-dumping is used by the Australian government.<sup>123</sup> Australia appears to have accounted for six to eight per cent of the anti-dumping cases initiated internationally in recent years, and it continues to be one of the more frequent users of anti-dumping measures.<sup>124</sup>

However, Thai government also set out its TBT and SPS for use as the implement of preventing its market. Thai government maintain the regulation that can be classified as the TBT and SPS, for instance, Food Act B.E. 2522 (1979) that Imported products have to be regulated by the Food and Drug Administration and the Ministry of Agriculture and Cooperatives, and Health and Sanitary certificate that requires the exporting country must accompany imports of certain food products.<sup>125</sup> Thailand also remains the system of import licensing and prohibition that its main purpose is to protect infant Thai industries.<sup>126</sup>

Such TBT and SPS that are set out for counter the importing international product still remain in the trade obligation of both Thai and Australian governments. It has to point out that

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<sup>120</sup> EUbusiness Ltd., *US and Europe attack Australia over "unfair" trade barriers*, <http://www.eubusiness.com/imported/2003/04/106922/>

<sup>121</sup> WTO, *Trade Policy Review Australia report by government*, 26 August 2002, 9

<sup>122</sup> Ibid

<sup>123</sup> Parliament library information, analysis and advice for parliament, *Australian Manufacturing: A Brief History of Industry Policy and Trade Liberalisation*, research paper 7 1999-2000.

<sup>124</sup> Ibid.

<sup>125</sup> WTO, *Trade Policy Review Thailand report by secretariat*, 15 October 2003 64

<sup>126</sup> Ibid 44

TAFTA that was set out its purpose for facilitating cross boarder trade between both countries may not be efficient from the existence of non-tariff barrier of each party.

### The evaluation of impact from TAFTA

After there has been the existence of TAFTA, the trade between both parties has changed its trend. The positive balance of trade that has been occupied by Thailand is now on the Australia counterpart. The increase of import volume from Australia to Thailand contributes to the imbalance of trade for Thailand. As seen in the table below. The table present the comparison of trade between Thailand and Australia.

### The value of trade between Thailand and Australia

Value : Bath Millions*					
Year	2002	2003	2004	2004(Jan-May)	2005(Jan-May)
value of trade	134,916.30	155,295.40	187,949.90	53,724.30	78,805.80
Export	70,420.30	89,717.30	99,102.00	28,316.60	34,651.30
Import	64,496.00	65,578.00	88,847.90	25,407.70	44,154.50
Balance	5,924.30	24,139.30	10,254.10	2,908.90	-9,503.20

Note: the

exchange rate is approximately Bht 31:\$A 1

Soures: Customs department of Kingdom of Thailand

Thailand' s value of trade is increase both in the sector of import and export during 5 months of enforcement of TAFTA. The export volume increase from Bht 28,316.6 to Bht 34,651.30 when compare between January to May 2004 and 2005. Thai import from is follow the same trend that it raises from Bht 25,407.70 to Bht 44,154. However, when focusing on the balance of trade the Thai balance of trade considerably plumb from Bht 2,908.90 to Bht -9,503.20. This can lead to point that, at the early period, the TAFTA contribute to benefit for Australia. However, the Thai government claims that the significant decrease of its balance of trade is resulted from the import of gold from Australia; the demand from consumption of gold

during that period.<sup>127</sup> Nonetheless, there is the positive signal for the expansion of trade between Thailand and Australia from the impact of TAFTA. The rate of trade between both countries is increased that the rate of Thai export to Australia raises from 21.03 per cent in 2004 to 46.69 per cent on the first period of 2005.

### The rate of trade expansion between Thailand and Australia

Increase of trade: per cent				
Years	2002	2003	2004	2005(Jan-May)
Export	11.9	15.1	21.03	46.69
Import	16.65	27.4	10.46	22.37
Balance	7.13	1.68	35.48	73.78

Source: Customs

department of Kingdom of Thailand.

As seen the data of evaluation during 5 months of TAFTA, it has to be concluded that the TAFTA has contribute to the expansion between its parties. There is the increase of the trade in and out between its parties. TAFTA has facilitated the bilateral merchandise between Thailand and Australia, though the benefit of the Agreement can be seen in the Australian market. TAFTA has significantly impacted the restricted rule of trade. Its obligation establishes the change of restricted rules of trade between the parties. It causes the significant reduction of high tariffs of merchandise, and the decrease of the prohibitions of Thai and Australian foreign investment and service. Moreover, TAFTA is predicted to be the factor of economical change in Thailand and Australia. The expansion of trade may lead to the change in the real consumption and real GDP of Thailand and Australia. TAFTA is, however, still contains the non-tariff barrier that can obstruct the free flow of trade of its parties.

Nonetheless, TAFTA has to be focused on its long term implication. The TAFTA can be seen as the important pace of the legal, political and economical cooperation of its parties, and it consequently can lead to the establishment of strong international relation between Thailand and Australia.

<sup>127</sup> Division of Analysis and Evaluation Department of Trade negotiation Ministry of Commerce Royal Thai government, the evaluation in TAFTA during Jan-March 2005.



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