

สนธิสัญญาไมตรีและความสัมพันธ์ทางเศรษฐกิจระหว่างประเทศไทย และสหรัฐอเมริกา

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บทคัดย่อ

บทความนี้วิจารณ์สนธิสัญญาไมตรีและความสัมพันธ์ทางเศรษฐกิจระหว่างประเทศไทยและสหรัฐอเมริกา ซึ่งประกาศใช้มาเป็นเวลากว่า 40 ปีแล้วนับตั้งแต่ พ.ศ. 2509 และเปิดโอกาสให้แก่บริษัทของชาวอเมริกัน และบุคคลต่าง ๆ เข้ามาลงทุนในกิจกรรมทางธุรกิจหลาย ๆ ด้านในประเทศไทยและได้สิทธิการครอบครองบริษัท เหล่านี้ถึง 100 % เต็ม ซึ่งผลประโยชน์นี้ไม่ได้มีไว้สำหรับชาวต่างชาติหรือบริษัทต่างชาติอื่น ๆ ที่โดยทั่วไป มีสิทธิการครอบครองบริษัทใดบริษัทหนึ่งในประเทศไทยได้เพียง 49 %

อยู่จริงก็ตาม ทั้งประเทศไทยและสหรัฐอเมริกาดังก็เป็นสมาชิกขององค์การการค้าโลก (WTO) และเมื่อ องค์การการค้าโลกได้ก่อตั้งขึ้นเมื่อปี 2538 ประเทศไทยได้รับเวลา 10 ปี เพื่อจัดหาเงื่อนไขที่เท่าเทียมกันให้แก่ ประเทศสมาชิกอื่น ๆ ตามพื้นฐานของหลักการปฏิบัติเยี่ยงชาติที่ได้รับการอนุเคราะห์ยิ่ง (MFN Principle)

บทความนี้วิเคราะห์สนธิสัญญา การเจรจาองค์การการค้าโลกรอบโดฮา และข้อกำหนดของหลักการ ปฏิบัติเยี่ยงชาติที่ได้รับการอนุเคราะห์ยิ่ง และยิ่งเสนอแนวคิดที่ว่าเหตุใดประเทศไทยจึงไม่ยอมปฏิบัติตาม ข้อเรียกร้องขององค์การการค้าโลก

THE TREATY OF AMITY AND ECONOMIC RELATIONS BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF THAILAND

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ABSTRACT

This article reviews the Treaty of Amity and Economic Relations between the United States of America and Thailand. This Treaty was entered into over 40 years ago (1966) and gives American companies and individuals the opportunity to invest in business activities/companies in many areas of business in Thailand and hold 100% ownership of these companies. This benefit is not provided to other foreign nationals or companies where generally foreigners can only own 49% of a company in Thailand.

However, both Thailand and the USA are members of the WTO and when it was formed in 1995, Thailand was given 10 years to provide equivalent conditions to all WTO member countries, in accordance with its basic Most-Favoured-Nation (MFN) Principle. At this time, Thailand has still not provided such equivalent conditions. The article explores the Treaty, the Doha Round of the WTO, and the MFN provision, and gives some ideas as to why Thailand has not yet complied with the WTO requirements.

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The Treaty of Amity and Economic Relations was entered into in 1966 and its aim was to promote friendly relations between both countries and to encourage mutually beneficial trade and closer economic and cultural ties between the peoples of both countries.

At that time, the USA was heavily involved in the Vietnam War and Thailand was its only direct ally

in Southeast Asia. Thailand had also become the major military base for the USA in Southeast Asia and a major area for Rest and Recreation ('R&R') for American troops during this war.

Under the Treaty, American nationals, either natural or juristic persons (i.e., American companies) can conduct business in Thailand on the same basis as Thai nationals, except for six restricted activities.

namely (1) communications, (2) transportation, (3) fiduciary functions, (4) banking involving depository functions, (5) exploration of land or other natural resources, and (6) domestic trade in indigenous agricultural products.

The Treaty remained in force for 10 years and continued thereafter unless terminated by either party, giving one year's written notice. Such a termination notice has never been served, so the Treaty has continued to operate.

The Treaty, then, gives American companies and individuals company ownership rights in Thailand which do not apply to companies or individuals from other countries. In general, individuals and companies from other countries, can only own 49% of a business in Thailand.

As at 1st January, 1995, the World Trade Organization (WTO) was formed, taking over from and expanding the functions of the previous international multilateral trade body, the General Agreement on Tariffs and Trade (GATT). Both the USA and Thailand were members of GATT and both are now members of the WTO.

The WTO operates under a number of principles which are regarded as the foundation of the multilateral trading system. One of these basic principles concerns 'trade without discrimination' and one of the most important principles under this heading is the 'Most-Favoured-Nation' (MFN) provision, which means that a member-country of the WTO, must treat all other member countries equally.

This was the first article under GATT and also has priority in the General Agreement on Trade in Services (GATS) (Article 2) and the agreement on Trade-Related Aspects on Intellectual Property Rights (TRIPS) (Article 4).

These three agreements encompass all the major areas of trade covered by the WTO.

Nevertheless, it is possible, under certain circumstances, to allow exemptions, or at least, temporary exemptions to this rule. One such example, is of a 'temporary' nature, where member countries may be given certain periods of time before they are required to adhere to all aspects of this principle.

One such case is the Treaty of Amity and Economic Relations between the USA and Thailand. When the WTO commenced in 1995, Thailand was given 10 years before this Treaty would be required to be terminated, i.e., by 1st January, 2005. As indicated, the reason being that the Treaty violates the WTO principles and rules.

As international trade observers are aware, the so-called Doha Development Round of the WTO, which commenced in Doha, Qatar, in November, 2001, and was originally scheduled to conclude by January, 2005, has still not been concluded despite a number of meetings. The reason for the lack of success in completing this round has been a lack of agreement on various critical trade issues, such as provisions to address the special needs of developing countries, particularly access for their agricultural products into the markets of developed countries and the dismantling or substantial reduction of subsidies given by developed countries to their agricultural sectors and

the opening up of the markets of developing countries to manufactured products and services from developed countries.

The discussions/negotiations associated with the Doha round stalled again at a meeting in Geneva, in July, 2006, and following that meeting, no date was set for further discussions, and indeed, there were some fears that the whole international trading system called 'break-down'. However, in April, 2007, a meeting of the G 6 (USA, Brazil, Germany, India, Japan, and Australia) was held in New Delhi, to try to break the deadlock in the Doha Round. This meeting was attended by the six trade ministers who form the informal executive of the negotiations on the Doha Round, and it was agreed that they would meet again in May in Australia or Japan to try to break the deadlock.

It is obviously most important to try to reach at least some sort of agreement as soon as possible. It is understood that after June, 2007, the US Congress may not renew the US government's trade promotion authority which would mean that U.S. negotiators would have to seek congressional approval for any trade concessions or agreements. While it is probably unlikely that complete agreement on the Doha Round can be finalized by this time, if it looks as if an agreement is likely in the reasonably near future, say, by the end of 2007, then this may not be a problem.

Perhaps, because the Doha Round has not been finalized as originally scheduled (January, 2005), or these broader problems of international trade have not been resolved, possibly the WTO requirements and conditions applying to individual WTO member countries, have tended either to have been neglected

or have not been resolved or enforced. As a result, to date (April, 2007), the Treaty of Amity continues to operate, almost 30 months after it was due to expire or be resolved.

Initially, the Treaty was extended until the end of 2005 but, in January, 2006, the Thai Department of Business Development of the Ministry of Commerce, suspended issuing new amity certificates for a period of two months. After this, however, they again resumed issuing these certificates. Since that time, extensions have continued to be granted, each for a 90-day period.

Another related aspect to this matter, is that in October, 2003, under the Enterprise for ASEAN Initiative (EAI), U.S. President, George Bush, announced the intention to negotiate a Free Trade Agreement (FTA) with Thailand. In the early period following this announcement, a number of meetings were held, negotiations occurred, and apparent progress was made. Initially, it was expected that such a free trade agreement would be agreed upon and concluded by 2005, but this did not occur. Possibly, there were a number of reasons for this but one was undoubtedly the demonstrated dissatisfaction in Thailand with the government of the then Thai Prime Minister, Dr. Thaksin Shinawatra and his party (Thai Ruk Thai), which developed in 2005 and intensified in 2006, until he and his government were overthrown by a military coup in September, 2006. The main reason for this overthrow was alleged corruption.

One of the intended outcomes of the proposed US-Thailand Free Trade Agreement was the absorption of the Treaty of Amity into the FTA.

Although a US-Thailand FTA has not been concluded at this stage, it is still possible that it could be 'resurrected', particularly once a democratic government is again restored in Thailand (democratic elections are due to be held in December, 2007).

Even under the government installed after the coup, Thailand has continued to negotiate and finalize free trade agreements, the most recent being the Japan-Thailand Free Trade Agreement which was signed by the Prime Ministers of both countries on April 3rd, 2007. Thailand now has FTAs with China, Australia, India, New Zealand, Japan, and the ASEAN countries.

At some stage, it would be expected that there will be some move to enforce the MFN provisions of the WTO, as far as the Treaty of Amity is concerned. When this happens, Thailand is likely to have several choices open to it:

1. To apply for a further extension period from the WTO.

While it would be possible to make such an application, it might not meet with success, as the Thai authorities have already had a 10-year period to review this Treaty (and, as indicated, in practice, it has now operated for over 12 years).

2. They could extend the Treaty of Amity provisions to all other WTO-member countries.

This would then comply with the WTO Most-Favoured-Nation Provisions.

3. They could terminate the Treaty altogether, meaning that US citizens and companies would no longer receive preferential or special treatment.

If this were to occur, it is understood that those American individuals and companies already receiving benefits under the Treaty of Amity would continue to receive those benefits but no 'new' US individuals or companies could receive them.

4. If a free trade agreement was successfully negotiated between the USA and Thailand then the Treaty of Amity provisions could be incorporated into the FTA. This would make it exempt from the WTO rules under section 5 of TRIPS (apparently, although the author has been unable to verify this provision).

However, it is now considered unlikely, at least in the short-term, that a US-Thai WTO will be finalized.

It is rather surprising that other WTO member-countries have not put pressure on either the Thai government or on the WTO to have this matter resolved. Perhaps they have, 'behind the scenes' but, if so, this author is not aware of this 'pressure'. Understandably, other countries, members of the WTO, are concerned at a Treaty which gives one very powerful WTO-member-country, the USA, investment and ownership opportunities which are not equally available to other WTO member-countries.

One would hope that at some stage in the near future, this matter will be resolved in such a way as to uphold the basic provision of the WTO regarding Most-Favoured-Nation treatment so that in the future, all WTO member countries are treated equally.

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