

The protection of well-being and society from the impacts of free trade

1. The free trade of Thailand and impacts on well-being and society

Since Thailand became a member of the World Trade Organization in 1995, it has gradually ratified international treaties and agreements on free trade at bilateral and multilateral levels. Free trade is aimed at enhancing competitiveness, increasing economic growth and reducing barriers against the trade of products and services as well as investment among others.

Thailand has felt the negative impacts of free trade agreements on its well-being and society. There have been widespread criticisms and discussions on unclear guidelines for negotiations on 1) harmful products such as tobacco and alcohol that become general products listed for possible tariff reduction and 2) the intellectual property protection that affects the prices of and access to the medicines and health technologies that are merit goods.

As there are concerns about the impacts of free trade agreements on all aspects of well-being and society¹, many sectors have been calling for all the processes of developing any free trade agreements and treaties to include careful consideration on all possible impacts on well-being and society.

2. Laws and measures to prevent the negative impacts of free trade

2.1 Section 190 of the Constitution of the Kingdom of Thailand of 2007

The second paragraph of the section reads “...*A treaty that provides for a change in the Thai territories, the extraterritorial areas in which the Kingdom has a sovereign right, or any jurisdictional area the Kingdom has acquired through treaty or through international law, or requires the enactment of an Act for its implementation, or has extensive impacts on the country’s economic and social stability, or has significant bindings on trade, investment, or national budget, must be approved by the Parliament. This approval of the Parliament shall be made within sixty days as from the day such a treaty is received...*”

¹ This refers to food security, natural resources, the environment, national budgets, household expenses, morality and cultures.

Besides, Section 190 places importance on solutions to the impacts of international agreements and rehabilitation for affected people. However, there must be a law to apply the principle. Three bills to this effect have been proposed. They come from the Ministry of Foreign Affairs, House representatives of the Democrat Party and the FTA Watch group.

2.2 Clause 75 of Chapter 8 of Charter for the National Health System

The clause requires governmental organizations involved in making international agreements and laws related to international agreements as mentioned in the Constitution of the Kingdom of Thailand to 1) carefully and thoroughly consider impacts on the health and well-being of consumers in accordance with the process set by the constitution and to seek opinions widely from consumers' organizations and the civil sector; 2) prevent commitments to international agreements from causing damages and to develop the mechanisms that cushion impacts and do not obstruct public health improvement in the country; and 3) support the consideration of the impacts of implemented international agreements on consumers, especially their health, to work out compensation methods and mechanisms and to change or lift the agreements that have great impacts.

2.3 The 1st National Health Assembly (2008)

The 1st National Health Assembly in 2008 approved strategies for the universal access to medicines of the Thai population as described in Resolution No. 1.2 on Universal Access to Medicines of Thai people. Clause 3.2 of Strategy No. 3 requires the flexible aspects of the trade-related agreements on intellectual property under the Patent Act to be applied to efficiently and reasonably solve the problem of access to medicines. Clause 5.1 of Strategy No. 5 states that free trade agreements must not bind the nation at an extent greater than the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) of 1994 does. Later the cabinet approved a proposed policy for the universal access to medicines of Thai people and assigned the National Pharmacy System Committee to take the leading role in the participatory development of the action plans that are in accordance with strategies for the universal access to medicines of Thai people. On September 2, 2010, the National Pharmacy System Committee approved policies and strategies for the development of the national pharmacy system that cover action plans under the strategies for the universal access to medicines of Thai people.

Regarding **Resolution No. 1.4 on Participation of the People's Sector in the Free Trade Agreement Policies**, the National Health Commission firstly set up a committee to study and follow up the international trade negotiations that have positive and negative impacts on health and health policies. The committee is working and receiving cooperation

from academic organizations including the Thailand Development Research Institute, the Health Consumer Protection Project, the Health Systems Research Institute and the International Health Policy Program of the Ministry of Public Health. Secondly, the National Health Commission promotes and supports public participation in proposing an amendment to Paragraph 5 of Section 190 of the Constitution of the Kingdom of Thailand for authorities to organize public hearings and consider proposals of the civil sector in the process of making international agreements.

2.4 The 2nd National Health Assembly (2009)

Regarding **Resolution No. 2.5 on National Alcohol Policy Strategies**, Strategy No. 5.5.4 is aimed at protecting alcohol-related policies from the impacts of free trade agreements. It requires the withdrawal of alcoholic beverages and related services from free trade negotiations at all levels. Besides, it supports transparency and widespread participation in free trade negotiations, especially those on alcoholic beverages, aims to reduce direct and indirect influences from the alcohol industry, and promotes public education on the impacts of free trade agreements on health-hazardous products. The cabinet endorsed the strategy on July 20, 2010.

2.5 National Strategic Plan for Tobacco Control from 2010 to 2014

Clause 3.4 on the reduction of tax privileges for tobacco products for the sake of tobacco control under Strategy No. 7 of the National Strategic Plan for Tobacco Control that the National Committee for Control of Tobacco approved on April 22, 2010, requires the exclusion of tobacco from free trade agreements (FTA).

3. Present situations of free trade negotiations of Thailand

Thailand has ratified many free trade agreements. It is negotiating such agreements with many countries and studying the possibility of bilateral negotiations on free trade with the European Union. Since early 2010, the Ministry of Commerce through the Department of Trade Negotiations has been working out a negotiation framework and organizing forums to gather opinions from people and stakeholders nationwide. It formed a committee and four subcommittees representing the government sector, the private sector, the agricultural sector and the civil sector. They have been compiling the opinions of all sectors nationwide on free trade between Thailand and the European Union since April 2010.

3.1 A case study on “alcoholic beverages in free trade negotiations between Thailand and the European Union”

Academic evidence has proved that Thai people's consumption of imported alcoholic beverages is increasing continuously. The import from Southeast Asian nations has been rising obviously since the ASEAN Free Trade Area took effect. Therefore, the civil sector and the health sector are asking if the products that are ruining the well-being and society of people such as alcoholic beverages should be among the general products that are allowed to enjoy free trade privileges like promotions, reduction in tariffs and fees, and free movements of related products, investment and services, and to have direct and indirect impacts on alcohol control policies, and if the alcohol industry should be able to pressure governments to lift the regulations that it considers as obstructing its business. Therefore, there are attempts to exclude alcoholic beverages and related services from free trade agreements.

The forums that the civil sector subcommittee organized conclude that alcoholic beverages should be excluded from free trade negotiations between Thailand and the European Union. This is in accordance with the above-mentioned Resolution No. 2.5 of the 2nd National Health Assembly (2009) but contradicts the demands of some local and overseas sectors. The Ministry of Commerce is thus organizing forums especially on alcoholic beverages. The collection of opinions on the matter is underway and a clear stance on the issue has not been concluded.

Alcoholic beverages have also been seriously discussed in other meetings including the meetings of the cabinet-appointed subcommittee supervising free trade negotiations, the meetings of the committee studying and monitoring the international trade negotiations that have impacts on health and health policies and the meetings that the Ministry of Finance organizes to study the free trade of alcoholic beverages. However, the meeting of the National Health Commission on a free trade agreement between Thailand and the European Union on alcoholic beverages and cigarettes on October 22, 2010, endorsed the resolution of the committee studying and monitoring the international trade negotiations that have impacts on health and health policies to exclude alcoholic beverages and cigarettes from the list of products under a free trade agreement with the European Union. The commission also decided to propose the resolution to the International Economic Policy Committee and the subcommittee supervising free trade negotiations to inform them of the concern of the National Health Commission which calls for the exclusion of alcoholic beverages and tobacco from the list of products under free trade agreements.

3.2 A case study on the impacts of free trade on tobacco products

A study on the impacts of free trade agreements shows that they promote competition in the tobacco industry. Consequently, a greater diversity of marketing strategies is being

applied, including transnational advertisements and sponsorships, and they increase tobacco consumption and damage health, the national economy and society.

A case study on opposition to the import of flavored cigarettes to Thailand in mid 2006 raises the concern that the import of flavored cigarettes such as those with chocolate, vanilla and mint flavors can increase smoking among children and the youth. The Ministry of Public Health proposed the Ministry of Finance ban the production, sales and import of flavored cigarettes. The Excise Department opposed the ban and reasoned that the World Trade Organization pointed out that the action might be considered as a trade barrier because Thailand also produces and sells cigarettes. However, many sectors collectively and successfully pressed for the ban for the sake of children and the youth.

3.3 A case study on impacts on access to medicines that may result from the free trade negotiations that exceed the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)

A study on the possible impacts of the US-Thailand Free Trade Agreement in the next 20 years (2027) on access to medicines² regarding the prices of medicines, spending on medicines and market shares in the medicine industry finds that patent term extension, a delay in the introduction of medicines with generic names and a monopoly on medicines due to data exclusivity or test data exclusivity have significant impacts on Thai people's access to medicines. If Thailand accepts the three demands at the maximum extent (extending the patent term from 20 years by 10 years, delaying the introduction of medicines with generic names for five years due to relation between medicine registration and the status of medicine patents, and permitting a 10-year monopoly due to the data exclusivity), the prices of medicines will soar by 67%, spending on medicines will rise by 799,887.56 million baht from normal spending, patients will have poorer quality of life and smaller access to medicines, and overseas drug companies will expand their monopolies.

4. Lessons from gaps in the process to prevent the impacts of free trade agreements on well-being and society

The process to prevent impacts on well-being and society as mentioned in Clause 2 results from the Constitution of the Kingdom of Thailand of 2007 and the resolutions of the

² Nusaraporn Kessomboon et al. (2010). Impact on Access to Medicines from TRIPS-PLUS: a case study of Thai-US FTA. Southeast Asian J Trop Med Public Health. Vol.41(3) May 2010

National Health Commission in response to planned free trade negotiation between Thailand and the European Union.

However, the process includes many gaps that are obstacles and limitations obstructing the achievement of the goals of the National Health Commission. The gaps are as follows.

4.1 Past discussions on the impacts of the free trade of products, services, investment, intellectual property and others on well-being and society were based on each product item, each responsibility of concerned organizations or each free trade agreement. That caused delay and lack of transparency and integration.

4.2 Most discussions were not based on knowledge but on speculation about possible impacts. The discussions did not address academic knowledge in comprehensive dimensions including social and health dimensions. Consequently, the discussions were narrow and ineffective and hardly led to a conclusion.

4.3 Brainstorming participants still failed to push for a compromise when there are serious conflicts. For example, the businessmen who are likely to lose their interest tried strongly to protect their business gains as opposed to the stances of the civil sector.

4.4 Resolution No. 1.4 of the 1st National Health Assembly demonstrates the following limitations.

4.4.1 It emphasizes the development of mechanisms to enable all sectors to study and follow up negotiations and examine the impacts of free trade negotiations but fails to promote the use of knowledge and academic information in participatory processes and the swift application of knowledge and academic information.

4.4.2 Although there are a committee to develop systems and mechanisms to assess health impacts and the committee to study and follow up the international trade negotiations that have positive and negative impacts on health and health policies, they have not covered many health-hazardous aspects of negotiations for the liberalization of products, services, investment, intellectual property and others. This may weaken control policies and solutions in the long run.

4.5 Regarding control on alcoholic beverages, although Resolution No. 2.5 of the 2nd National Health Assembly in 2010 won recognition from the cabinet, it has not been translated into action while informal negotiations on free trade have begun.

5. Solutions

The prevention of the impacts of free trade on well-being should be based on six principles as follows:

1. widespread participation, transparency and no business protection that have impacts on the public;
2. the general application of academic knowledge plus mechanisms to promote the development, dissemination and use of academic knowledge;
3. overall integration plus long-term mechanisms that cover all products and negotiations instead of individual products or negotiations;
4. the precautionary principle that is suitable for the free trade negotiations in which there is limited academic information about negative impacts on well-being and society;
5. the maximum use of available mechanisms, instruments and innovations including health impact assessment mechanisms under **National Health Assembly Resolution No. 1.11 on the System and Mechanism for Health Impact Assessment in Thai Society** that promotes health impact assessment (HIA); and
6. studies on ways to reform existing rehabilitation funds, especially on the sources of the funds that come from the parties that benefit from negotiations on the free trade that affects well-being and society and on the efficient management of funds for the sake of affected parties.

Topic for consideration by the National Health Assembly

The National Health Assembly is requested to consider National Health Assembly Document No. 3/Draft Resolution No. 9.