

The Domestic Dynamics of Preferential Services Liberalization: The Experience of Australia and Thailand

Malcolm Bosworth and Ray Trewin¹

Both Australia and Thailand, the countries chosen for this comparative case study, have keenly pursued bilateral preferential trading agreements (PTAs) in recent years. These have covered services, though to varying degrees. Services, domestically important and in some areas sensitive to both economies, need to be liberalized like for goods as an important means of improving overall productivity and economic performance.

Given its development status, Thailand has been somewhat reserved in opening key sectors, such as distribution and financial services, in part due to the adverse effects of the Asian financial crisis. Consequently, liberalization has occurred largely on an *ad hoc* basis, either as default or as a 'last resort' strategy when the situation was considered to have deteriorated so much that changes were seen as necessary. Australia is keen to develop key service exports, such as education, financial services and telecommunications. On the other hand, like various developed countries, it is more cautious regarding mode 4 for supplying services (temporary movement of people), an area where Thailand and some other developing countries consider they have a comparative advantage and export potential.

This Chapter examines bilateral and multilateral commitments of Australia and Thailand, and attempts to identify the underlying economic and political economy factors that help understand why different outcomes have been achieved (or not) in various negotiating contexts, including through unilateral liberalization. In doing so, it addresses the extent to which GATS and PTAs have liberalized services in these countries. In that context, the Chapter draws a distinction between liberalizing commitments (i.e. 'on paper') and actual liberalization (i.e. 'on the ground'); the former on which negotiated forms of liberalization such as PTAs focus can be largely illusory in producing economic gains and, we argue, is far less significant. While the GATS also shares some of these weaknesses, it has nevertheless the major advantage of being non preferential, thereby not discriminating against certain trading partners. The Chapter examines Thailand's PTAs with Australia (TAFTA) and Japan (JTEPA), and for Australia, as well as TAFTA, the agreements with Singapore (SAFTA) and the US (AUSFTA).

The first section of the Chapter examines the importance of services and of trade liberalization. The following two sections discuss unilateral services liberalization in Australia and Thailand, and compare their PTA commitments with their GATS commitments and offers. The fourth section discusses the domestic political economy and other factors behind preferential

¹ Visiting Fellows, The Crawford School of Economics and Government, College of Asia and the Pacific, at the Australian National University, Canberra. The authors would like to especially thank Roy Clogstoun, First Secretary, Australian Embassy, Department of Foreign Affairs and Trade (DFAT), Kingdom of Saudi Arabia for assistance in his personal capacity. They would also like to thank Jane Drake-Brockman from the Australian Services Roundtable and Roy Nixon, Senior Adviser in the Foreign Investment and Trade Policy Division of the Department of the Treasury and the editors for their useful comments and suggestions, as well as officials and private sector representatives in Thailand and Australia, including from the Thai Ministry of Trade and DFAT, for useful discussions. The views expressed are the authors' and do not necessarily reflect those of the Thai or Australian Governments, including the Thai Ministry of Trade and DFAT. The authors bear full responsibility for the Chapter's accuracy.

and multilateral liberalization, in contrast to unilateral reforms. The final section draws main conclusions and suggests some ways forward for services liberalization in the two countries.

A. Trade in Services in Australia and Thailand

(i) The Importance of Services

Services dominate both economies. In Australia, they account for nearly two thirds of GDP and roughly three quarters of employment (WTO 2007a). Real estate and business, wholesale and retail trade, ownership of dwellings, and transport, storage, and communications services are the leading services activities in terms of their shares in GDP; other important activities are finance and insurance, health, and community services. Trade in services is an important component of Australia's total trade, with services exports (on a balance-of-payments basis) accounting for 21.4% of total exports in 2005/06. Australia's services trade continued to grow in 2005/06: exports rose by 5.7%, mainly driven by travel, and imports rose by 4.6%. Services trade recorded a surplus of A\$828 million, up from a surplus of A\$380 million in 2004/05.

In Thailand, the share of services to GDP stood at 44.7% in 2006, while services' contribution to total employment (mainly in trade, hotels and restaurants) reached 38.4% (WTO 2007b). The sector remains dominated by wholesale and retail trade, followed by transport, communication, hotels and restaurants, and financial intermediation. Between 2003 and 2006, exports of non-factor services rose by 51.8% to approximately US\$24 billion, which is around 19% of merchandise exports. However services imports over the same period grew more than 80% resulting in the services balance declining from US\$5.1 billion to US\$4.7 billion. Bilateral trade under TAFTA is relatively more important to Thailand and this applies in respect of services as well, with Australian imports from Thailand doubling its exports.

(ii) Some Key Aspects of Trade Liberalization

Liberalizing services to avoid discrimination against foreign suppliers necessitates removing both discriminatory restrictions as well as non-discriminatory quantitative restrictions. Empirical studies have shown that the major benefits to countries liberalizing services are likely to come from removing entry barriers, especially non-discriminatory ones since these most directly stifle or eliminate competition (e.g. state monopolies). Fostering competition, more than the degree of private or foreign ownership, generates greatest gains. Most trade liberalization occurring in developing countries in the 1980s, including in services, was undertaken unilaterally, in recognition that benefits accrued predominantly to the country undertaking the reforms.² While additional benefits occur if trading partners also reduce trade barriers, these are relatively small compared to the gains from a country's unilateral liberalization. Empirical work has consistently shown that countries can obtain the largest gains by liberalizing themselves, and that any gains from PTAs are comparatively small (e.g. Kommerskollegium National Board of Trade (2007)). This is to be expected since negotiated liberalization (either multilaterally or bilaterally) predominantly opens a country's trade in areas where it is most competitive and trade barriers already relatively low rather than liberalize protected 'sensitive' industries where most of the economic gains from improved resource-use efficiency must come.

While negotiated outcomes minimize the adjustment costs from associated liberalization and may achieve a satisfactory result politically, including in terms of gaining overseas market

² For the case of Indonesia, see Bird et al. (2007).

access, offering liberalizing measures that minimize domestic dislocation also implies few economic gains, the fundamental economic objective of a country's trade policy. Only by exposing inefficient industries to international competition and creating trade to drive domestic restructuring will a country gain from liberalization.

The share of benefits from unilateral reforms relative to negotiated outcomes is likely to be much higher in services than goods. In contrast to goods where PTAs negotiate reductions in applied tariffs (and even in the WTO negotiated reductions in bound tariff levels will eventually translate into real or 'on the ground' liberalization, services liberalization is more often negotiated bilaterally or multilaterally on 'paper', for example to bind existing levels of access, without actually removing applied barriers. Negotiating real liberalization in services seems to be more the exception than the rule, certainly for Australia and Thailand. Characteristics of services trade (e.g. the complexity of services barriers compared to tariffs), as well as different levels of governments and ministries involved may also complicate negotiations.

Within negotiated liberalization approaches, PTAs can be beneficial in getting trading partners to agree in areas that they would find difficult to address multilaterally, for example mutual recognition for professional services and other qualifications. Within PTAs, countries are also able to undertake commitments in areas not comprehensively dealt with at the WTO, such as government procurement, investment, and competition policy.

While unilateral liberalization is economically the best approach, countries pursue negotiated liberalization, both bilaterally and multilaterally. However, as explained later, the essential contribution of unilateral liberalization needs to be far more appreciated in trade negotiations. This vital economic message seems to be quickly lost in the negotiations as trade diplomats and governments play the mercantilist 'game' and consider opening one's own market as a concession (cost) for achieving reciprocal opening in other markets, when in fact liberalizing one's own economy offers the main benefit from the negotiations.³ Flawed are mercantilist notions that exports are good but imports are bad and that countries should resist negotiating their own liberalization while trying to maximize opening abroad and avoiding unilateral liberalization because nothing is gained in return (Thirlwell 2004). Misguided mercantilist sentiments are often even stronger in PTAs than at the multilateral level because reciprocity is more direct, and often bilateral trade imbalances incorrectly become a focus of attention.

Australia's and Thailand's re-direction of trade policy towards PTAs is a major departure from multilateralism. Non-economic factors (e.g. political, defense and security goals) are undoubtedly important aspects of PTAs, as also shown by their global proliferation. PTAs are widely acknowledged, including by trade negotiators and other government officials to be more about politics than economics (Bhagwati 1999). The Australian and Thai Governments (prior to the current caretaker military rule) have undoubtedly raised their willingness to mix trade and non-trade, including foreign policy, objectives. This can be undesirable economically. Moreover, the greater attention given to PTAs has coincided with reduced unilateralism in both countries; this may not be purely coincidental since preferential or non-MFN liberalization is the antithesis of unilateral and multilateral liberalization, and requires (and develops) a different mindset to

³ The irony of trade negotiations is that governments are trying to persuade foreign governments to do something that is in their own best economic interests (i.e. trade liberalization) while in return minimizing their benefits by offering little trade liberalization. Thus, because the purpose of negotiated liberalization approaches in practice becomes achieving market access abroad rather than as a means of liberalizing at home, simply agreeing to bind measures 'on paper' at the *status quo* level are heavily resisted (unless an appropriate concession is received), even though doing so would support unilateral efforts.

trade reforms among politicians and officials. Many Australian economists believe that the focus on PTAs and negotiated preferential trade liberalization has undermined Australia's past successful MFN trade liberalization based on unilateralism, and that Australia's trade policy has gone backwards.⁴

The political attraction of PTAs is also their greatest economic weakness. Trade policy is a vital part of any country's domestic economic policy as it is the main policy instrument for ensuring economic efficiency, productivity and growth. Thus, negotiating trade policies carries with it similar dangers that negotiating macro-economic policies would entail. Using trade policy as a pawn or making it subservient to other factors in negotiations so as to achieve non-economic objectives seriously risks generating economically non-sensible outcomes. Non-trade issues, such as political alliances, are better handled separate of trade (CIE 2005).⁵ This Chapter therefore focuses on the economic implications of PTAs rather than the non-economic goals that they may serve. Since economists also place greater emphasis on liberalization domestically than abroad for achieving gains, it also examines Australia's and Thailand's negotiated commitments from this perspective to try and assess their liberalization impact at home.

However, despite the inherent weaknesses in negotiated approaches to liberalization, especially bilateralism, they may conceivably contribute to a country's trade reforms by providing standstill commitments that internationally 'lock in', either multilaterally or bilaterally, a country's unilateral liberalization and help prevent future policy backsliding. Thus, liberalization 'on paper' may have some value by preventing future protectionism. However, if commitments are below the *status quo*, the value of this 'lock in' effect is diminished. It would also seem far less effective in PTAs than multilaterally since it only covers a few trading partners. Governments could thus still raise barriers to other trading partners assuming, as seems most likely, that the measures in question can be implemented preferentially.

Further, in services, it can be difficult to actually liberalize as a direct consequence of PTA (or multilateral) negotiations given that services trade barriers involve behind-the-border measures that are generally part of domestic regulatory frameworks which are in place to meet diverse economic and non-economic objectives. This may nevertheless be a good outcome. Negotiating such regulatory policies as part of a PTA (and even multilaterally) is likely to become very messy and to generate uncertain outcomes economically. These policies should rather be based on economically sound unilateral regulatory practices. Setting trade policies by negotiation would seem to be a recipe for ad hoc policy making 'on the run'.

(iii) Qualifications to the Analytic Framework

Impediments to services trade are more difficult to measure than for goods, where tariffs or other border barriers predominate. Several researchers have recently attempted to quantify the extent of services liberalization in PTAs compared to GATS by examining the extent to which they broaden and/or deepen liberalization commitments.⁶ These studies generally agree that the PTAs that have liberalized most beyond the WTO, at least 'on paper', are those involving the US. Our analysis of the Australian and Thai agreements covered in this Chapter, using the Fink et al.

⁴ See : Carmichael (2005) ; Garnaut (2003) ; Garnaut (2005) ; Garnaut and Bhagwati (2003).

⁵ For example, AUSFTA seems to have been more about further cementing security and political ties. However, in selling AUSFTA to the public the Government gave most attention not to these purported benefits but to the substantial economic gains it claimed would accrue to Australia.

⁶ See : Dee (2005); Roy et al. (2006); Fink et al. (2007); Ochiai et al. (2007); Dee and Findlay (2007).

(2007) methodology, have found disappointing commitments, with only small improvements over their GATS commitments, themselves second-rate.⁷

Given lack of information, the studies mentioned above cannot detail the extent to which PTA commitments involve ‘real liberalization’, nor assess the degree to which any liberalizing commitments would actually increase trade. Quantifying the impact on trade of GATS+ commitments in PTAs would therefore seem like an almost impossible task.⁸ Furthermore, like for goods, the adverse effects of trade diversion from PTAs on national welfare also need to be taken into account since, although services involve no tariff revenue, preferential rent-creating measures can redistribute rents abroad just like tariffs, thereby adversely affecting welfare (Dee and Findlay 2007). For example, allowing foreign investment in a statutory monopoly could reduce the country’s national welfare by distributing rents overseas and to the preferential partner if done under a PTA. The adverse efficiency effects of providing preferential access through commercial presence can be substantial and long-term since the advantages of being ‘early into the market’ are significant in many major services sectors.

B. Services Liberalization in Australia

(i) Unilateral liberalization

Australia’s trade liberalization, including in services, has proceeded unilaterally based on the view that such openness is integral to good economic policy making. It has successfully unwound protection on goods since the mid-1980s using an ‘economic transparency model’ to unilaterally liberalize trade independent of multilateral developments (Banks and Carmichael 2007). In services, liberalization has, at least until recently, been similarly driven by domestic economic policy considerations, many pre-dating the Uruguay Round. Since the 1980’s, service sectors such as finance, communications, transport, higher education, and health have been liberalized based on comprehensive public inquiries into Australia’s diverse sectoral policies. This mainly involved reforming internal policies and regulations rather than border measures, although both are strongly related. Legal services have also been unilaterally liberalized.

Financial services liberalization, for example, started in the early 1990s when foreign institutions were allowed to enter following recommendations of the 1981 Campbell Committee Inquiry into the Australian financial system. FDI in banking was allowed from 1985 and the sector was further liberalized in 1992.⁹ Although the prohibition on foreign acquisition or takeover of any of the four major Australian banks was removed in April 1997, the foreign investment rules still apply and the ‘national interest’ provisions, whereby there can be no ‘large scale’ transfer to foreign ownership, must be met. The insurance market is also relatively open.

⁷ While the purpose of this chapter is not to present such quantitative analysis, the authors would like to thank Carsten Fink and Martin Molinuevo for assisting them in applying their methodology.

⁸ In addition, well known conceptual and data difficulties encountered in measuring services trade complicate the tasks of quantifying the impact of services liberalization. Some regulatory trade restrictions on services raise prices by creating scarcity thereby generating economic rents to producers while others increase the real cost of producing them (Dee and Findlay 2007). Although the impact of tariff changes on economic welfare, employment, etc., for example, can be assessed as variations in (relative) prices, service impediments must be converted to changes in productivity or costs. This is not easy, for example converting changes in equity thresholds or relaxed visa requirements. The Australian Productivity Commission (PC) has developed restrictiveness indexes for various services that can help estimate cost reductions from liberalization of services (see Findlay and Warren 2000 and CIE 2002).

⁹ For example, limitations on the number of foreign banks were removed and foreign banks were allowed to undertake wholesale activities through branches.

Foreigners can provide general insurance through subsidiaries or branches (represented by an Australian resident); foreign life insurance branches were prohibited in 1995, allegedly for prudential reasons, although grandfathering provisions enabled a few existing foreign branches to continue operations. Other restrictions include state government monopolies or state government-approved insurance companies providing workers' compensation insurance and third party motor vehicle insurance.

Other key sectors liberalized were audiovisual, telecommunications and air transport. Australia fully opened its telecom market in 1997, including the removal of foreign ownership restrictions on domestic carriers (subject to general FDI rules), except for the partially state-owned Telstra. The domestic air services market was fully liberalized in 1990 subject to foreign investment limits (Box 1). New media rules operative from 4 April 2007 replaced previous requirements for broadcasting and newspapers.¹⁰ All foreign direct (i.e. non-portfolio) proposals to invest in the media sector irrespective of size are now subject to prior approval. Proposals involving portfolio shareholdings of 5% or more must still be submitted for examination. No foreign equity restrictions exist on commercial radio.

Box 1: Selected Australian Foreign Equity Rules

Banking: Foreign investment in the banking sector needs to be consistent with the Banking Act 1959, the Financial Sector (Shareholdings) Act 1998 (FSSA) and banking policy, including prudential requirements. Any proposed foreign takeover or acquisition of an Australian bank will be considered on a case-by-case basis and judged on its merits.

Shipping: For a ship to be registered in Australia, it must be majority Australian-owned, unless the ship is a designated charter by an Australian operator.

Airlines: FDI in domestic airlines by foreign airlines is capped at 15% on an individual basis and 40% in aggregate, and is subject to the national interest provisions of the general FDI rules. Higher levels may be considered in special circumstances provided it is not contrary to the national interest. All other foreign investors can acquire up to 100% ownership of a domestic carrier. Foreign airlines can obtain up to 25% equity in an international airline (excluding Qantas) individually or up to 36% in aggregate. FDI in Qantas is limited to 15% individually and 49% in aggregate; aggregate ownership in Qantas by foreign airlines is capped at 35%. Leasing of Australian airports is limited to 49% foreign equity.

An important factor contributing to Australia's service openness (at least for commercial presence) are its relatively open foreign investment laws.¹¹ These govern all FDI, including in services subject to the above additional sectoral requirements (Box 1). Monetary thresholds exist below which the relevant provisions do not apply. Larger FDI proposals are screened by the Foreign Investment Review Board (FIRB) and approved unless found contrary to the national interest. FDI proposals subject to notification, screening and approval include: acquisitions of 'substantial interests' in an Australian business with assets exceeding \$100 million; new businesses above \$10 million; portfolio investments in the media of above 5% and all non-

¹⁰ These included a maximum aggregate FDI in national/metropolitan newspapers of 30% (or 25% individually) and less than 50% for provisional and suburban newspapers; foreign equity caps of 15% (individually) and 20% (in aggregate) in commercial television broadcasting; FDI caps of 20% (individually) and of 35% (in aggregate) for subscription television broadcasting licenses (Broadcasting Services Amendment (Media Ownership) Act 2006).

¹¹ The Foreign Acquisitions and Takeovers Act (FATA) 1975 and the Foreign Acquisitions and Takeovers Regulations 1989.

portfolio investments; all direct investments by foreign governments; and certain urban land acquisitions. Although the number of FDI proposals to have been deterred by the screening procedures is unknown, international criticisms would seem to exaggerate the extent of restrictiveness, except possibly as regards the purchase of residential real estate. Australia's screening regime has only resulted in one case being refused on national interest grounds in the past 10 years (Shell's takeover of Woodside Petroleum). No business applications have been rejected since 2001 (WTO 2007). It also seems that AUSFTA (along with TAFTA and SAFTA) has not increased investment from partner countries (WTO 2007a).

Outside mode 3 (commercial presence), the liberalization picture in other services sectors is less clear given the lack of information and the difficulties of identifying trade barriers in most services, many of which are regulatory 'behind-the-border' measures, often imposed by state governments. While the impression that many are open is probably correct (especially at the federal level), this is largely unsubstantiated empirically, especially at the state level. While preliminary research by the Australian Productivity Commission (PC) indicates that the distribution sector (retail and wholesale) is relatively open, other sectors (education and professional services) may be more restricted.

(ii) Negotiated Liberalization in PTAs

Until the late 1990s when PTAs have dominated, negotiated liberalization in Australia had been based on multilateral non-discriminatory (MFN) liberalization to support unilateral reforms.

Apart from the longstanding Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA), Australia's most liberalizing agreement to date is considered to be the AUSFTA, followed by SAFTA, and TAFTA. The first two of these, AUSFTA and SAFTA, use a negative-list for services liberalization, while TAFTA consists of a positive-list. While the policy of the Australian Department of Foreign Affairs and Trade (DFAT) is to negotiate PTAs on a negative-list basis as this is seen to be in practice more liberalizing, this policy is not strongly implemented and a number of the PTAs currently being negotiated adopt a positive-list.¹²

TAFTA

Australia made minimal additional commitments in services under TAFTA, which was signed in October 2003 and became operational from 2005. DFAT stated that it was essentially a standstill agreement whereby Australia's commitments did not actually reduce barriers to Thai service exports (CIE 2004b). Moreover, the commitments undertaken by Australia tend not to go beyond GATS, except in relation to e-commerce and mode 4 (movement of natural persons) where Australia selectively provided, for example, for the temporary entry of Thai contractual service suppliers for up to three years without labor market testing (WTO 2007a). Thai chiefs and masseurs were also provided special entry arrangements.

The ex-post DFAT-commissioned report to quantify the gains from TAFTA (CIE 2004b) attributed none of the estimated Australian benefits to services liberalization. Moreover, as Australia's commitments essentially duplicated its GATS commitments, the value of any additional 'lock-in' effects from TAFTA are negligible. In addition, Australia bound the general (MFN) threshold for FDI screening on substantial acquisitions at \$50 million, the level that

¹² For example the PTAs being negotiated with ASEAN and Gulf Cooperation Council (GCC) members.

existed at the time, such that the unilateral MFN increase to \$100 million in December 2006 is not guaranteed under TAFTA.

SAFTA

SAFTA, signed in February 2003 and operational since July 2003, has a comprehensive and transparent negative listing of services commitments. Financial and telecommunication services are covered by additional chapters, while air transport was largely carved out.

However, despite these improvements, the DFAT-commissioned report that assessed in advance the Australian economic gains from SAFTA attributed no benefits to the services liberalization (Access Economics 2001). Again Australia's commitments essentially provided for standstill and led to no new liberalization 'on the ground'. The study quantified small benefits from increased services exports to Singapore of \$8-20 million annually in financial services and of \$50 million in educational services, with possible, but non-quantified, higher exports in telecommunications and other professional services. In terms of Australia's own services liberalization, SAFTA's main contribution was to 'lock in' commitments, mainly for additional sectors not covered in GATS. However, the value of these commitments is limited since most were only partial rather than full commitments in modes 1 and 2 (often in services where such modes were not significant for services trade), while in mode 3 the large increase in sectors covered by partial commitments reflected the extension of Australia's FDI rules to sectors not included in Australia's GATS commitments.

AUSFTA

The economic effect for Australia of the AUSFTA, which was signed in May 2004 and became operational in 2005, depends primarily on the extent to which the increased screening thresholds offered to the US under Australia's FDI rules are regarded as liberalizing. These preferential measures for US investors consist of mainly of a higher threshold for acquiring a substantial interest in an Australian business, namely A\$871 million instead of A\$100 million for other foreign investors (except for sensitive sectors prescribed in AUSFTA¹³ or for investments by an entity controlled by the US government where the same threshold of A\$100 million applies).¹⁴ Proposals by US investors (except US Government-controlled entities) to establish new businesses do not require notification but are subject to other relevant policy requirements; those from non-US investors exceeding A\$10 million require prior approval. For takeovers of Australian offshore firms, the \$871 million threshold applies to US investors (A\$200 million for other foreign investors), except for takeovers involving prescribed sensitive sectors or a US Government controlled entity, for which the threshold is \$200 million. An \$871 million threshold also applies to developed non-residential commercial real estate (instead of A\$50 million), where the property is not subject to heritage listing.

The extent of the gains to Australia from bilaterally relaxing the FDI screening thresholds is very uncertain. The ex-post DFAT-commissioned report that quantified the economic benefits of the agreement to Australia (CIE 2004a) relied on large benefits being generated from reducing the risk premium for US investors and boosting investment through lowering Australia's cost of

¹³ The sensitive service sectors are media; telecommunications; transport; supply of training or human resources; the development, supply, or provision of services relating to encryption, security technologies and communications systems; and operation of nuclear power facilities.

¹⁴ \$831 million during the calendar year 2006. Thresholds under AUSFTA are indexed annually while others are not.

capital. These estimated gains represented 60% of the projected economic benefits to Australia from AUSFTA. Small gains were estimated from services trade liberalization in line with the minimal actual services liberalization resulting from AUSFTA.¹⁵

The DFAT-commissioned report has been heavily criticized for its content, including the modeling of the gains from the increased FDI screening thresholds, and questioned for its impartiality. It was conducted after the negotiations when the 'point of no return' politically had been reached, and concluding the AUSFTA had clearly become a high government priority.¹⁶

In services, Dee (2004) found that the AUSFTA was mainly a standstill agreement and that only a small but significant number of services went beyond GATS commitments. For example, Australia committed to allow the operation of life insurance branches. However, the liberalizing impact of this in practice seems relatively small since no US branch has so far located in Australia. This was substantially reduced by allowing foreign subsidiaries to operate unrestrictedly, subject to them meeting the same prudential requirements as Australian companies; several foreign, including American, companies operate subsidiaries in Australia.

(iii) Multilateral Negotiations under the GATS

Australia submitted its latest GATS offer under the Doha negotiations in May 2005. It proposed improving commitments in areas such as mode 4, professional services, telecommunications, environmental services, transport, and logistics services (WTO 2007a). More specifically, offers of additional sectoral bindings concerned mostly auxiliary maritime transport services, air transport, and some environmental services. Improvements to existing commitments were proposed in such sectors as basic telecommunications, legal, banking, maritime transport, and rail transport services. However, these provide for no substantial services liberalization 'on the ground' (CIE 2007). Further, Australia's audiovisual and postal-courier services remain uncommitted and limitations are scheduled for financial services.

Moreover, although not always the case, Australia's latest Doha offer was generally below commitments made in SAFTA and, especially, AUSFTA. Thus, Australia has seemingly not attempted to multilateralize its bilateral commitments. For example, the higher FDI screening levels and the permission to operate life insurance branches extended under AUSFTA are not included (nor apparently been offered to date in other PTA negotiations). While the Australian Department of Treasury would, for unilateral reasons, be expected to support the extension of the higher screening thresholds to all FDI source countries (i.e. their multilateralization) - and this would generally be supported by business - public opposition makes this politically sensitive. Lack of progress in Doha would appear a major reason for Australia not moving to multilateralize its SAFTA and AUSFTA commitments. For instance, the AUSFTA foreign investment thresholds are unlikely to be multilateralized without movement on agriculture in the WTO. While prohibiting life insurance branches in 1995 was done for prudential reasons, allowing US branches was not seen as undermining these requirements since they are soundly regulated at home. Any extension or multilateralization of this measure would thus require unilateral efforts at home to convince policymakers of their economic merit (subject to prudential concerns).

¹⁵ The study projected that the reduction from liberalization in Australia's services trade barriers, as measured by the cost reduction in supplying services, would rise only marginally from a very low 0.01% at AUSFTA's commencement to a maximum of 0.06% by 2011 (corresponding to a maximum of 8% of the total estimated gains). The CIE (2004a) concluded that there was no substantive change in Australia's barriers to services in other sectors, where traditionally low barriers remained.

¹⁶ See Garnaut (2004) and Dee (2004).

C. Services Liberalization in Thailand

Thailand's unilateral liberalization has until recently been the main driver of trade reforms, including in services. However, the impetus for liberalization has seemingly been driven by previous political leaders (to which the caretaker government distanced itself) rather than from developing a broad unilateral consensus based on transparency and public scrutiny in favor of reform. Past liberalization was also often based on external advice or occurred by default or as a 'last resort' to overcome critical problems (e.g. financial services liberalization following the Asian economic crisis). However, since 2002, Thailand's unilateral liberalization has been gradual and erratic as attention has shifted dramatically from WTO to PTA negotiations (Sally 2007).¹⁷ Worse still, there have been efforts to backtrack on some past liberalization measures as public opposition mounts against liberalization, especially of foreign investment. These rising national protectionist sentiments indicate lack of support for unilateral liberalization. One possible factor contributing to this has been the accelerating drift to PTAs, which emphasize discriminatory rather than non-discriminatory liberalization and fuels mercantilist tendencies.

Thailand's current policy on PTAs is unclear. The caretaker military government quickly announced that while it would no longer seek them it would meet existing commitments and continue participating in the ASEAN negotiations.¹⁸ It appears to have had no services liberalizing agenda, either unilaterally, multilaterally, regionally or bilaterally. It is unclear when the new civilian government, elected in late December 2007, will enter office and whether it will resume previous policies or continue with those of the military government. However, faced with the current liberalization backlash it seems likely that Thailand will continue its defensive and non-opening position in services negotiations. It could also mean continuation of preferential FDI and services policies in favour of the United States under the 1966 Treaty of Amity.¹⁹ This provides a good example of where bilateral initiatives, even if liberalizing, may not be multilateralized. Such policy is likely to divert Thailand's inward foreign investment and extending it to all foreign investors would seem economically desirable.

(i) Unilateral Liberalization

While unilateral services liberalization has trailed that for goods, it has progressed in some key areas, especially financial services and, to a lesser extent, telecoms (WTO 2007b). Thailand relaxed for 10 years from 1997 the 25% foreign equity limits to allow up to 100% in financial institutions, and a new foreign equity limit of 49% is being introduced, subject to 'grandfathering' provisions. Foreign banks can now establish a Thai subsidiary, engage in the same activities as Thai commercial banks and open up to four branches plus the head office. Foreign equity limits also apply to other financial services, including 25% for insurance (subject

¹⁷ In addition to ASEAN and BIMSTEC (Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation or Bangladesh-India-Myanmar-Sri Lanka-Thailand economic cooperation regional trade agreement) and the bilateral PTAs examined in this Chapter, Thailand has bilateral PTAs with Bahrain, India, New Zealand and Peru, and is negotiating additional agreements with the US (currently suspended) and EFTA.

¹⁸ It is generally regarded that progress under the ASEAN Framework Agreement on Services (AFAS), which like GATS has a positive list, has been slow. While Thailand has made commitments in seven priority sectors, they do not go much beyond GATS commitments and generally do not entail any actual liberalization (Sally 2007).

¹⁹ It provides preferential access to US investors by extending national treatment, thereby exempting them from most FDI restrictions. Thailand can, however, restrict access in communications, transport, banking, exploitation of land or other natural resources, and domestic trade in agricultural products.

to 'grandfathering' provisions when introduced in 1992); this is expected to be increased to 49% shortly.

Telecom remains a *de facto* duopoly of state-owned enterprises. Maximum foreign equity limits, which were reduced from 49% to 25% in 2001, were later raised to 49% and then to 100%, depending on business type, in November 2005. Thai flagged vessels engaged in coastal shipping under cabotage arrangements must have a minimum of 70% Thai equity. Education services are limited to 49% foreign equity.

The Foreign Business Act 1999 also sets equity limits for certain listed services that require government approval. List I services, especially media, cannot have more than 49% foreign equity. List II services (e.g. domestic land, water or air transportation) allow foreign equity up to 60% and on a case-by-case basis up to 75%. List III services (e.g. accounting, legal, architectural, engineering, most construction and brokerage or agent business, retailing, wholesaling, guided tours, most other categories of other business services) are normally capped at 49% unless the Ministry of Commerce authorizes higher levels. However, despite these limits to majority foreign ownership, nominees are widely used as a loophole to allow foreign investors to operate legally in Thailand with much higher foreign equity. The caretaker government has sought to plug this loophole by amending the Foreign Business Act to change the legal definition of 'foreigner' by including voting rights as a criterion.

(ii) PTAs

Like in Australia, Thailand's quest for PTAs appears to be based on mercantilism, which virtually guarantees minimal liberalization. PTA priorities have also diverted policy attention and negotiating resources from the WTO, with little political guidance given from Bangkok for the Doha negotiations (Sally 2007). Bilateral negotiations were centre stage of trade policies under the Thaksin Government. The Prime Minister (forming a new Committee on FTA Strategy and Negotiations in 2004 to report directly to him) and the Ministry of Foreign Affairs pushed for PTAs, supported by the Ministry of Commerce. This push largely reflected a politicization and centralization of economic power, including over trade policy, that allowed vested interests to become major players in setting them (Sally 2007). Thailand was also motivated by a desire to avoid marginalization as major Asian countries sought PTAs with other ASEAN members (Bonapace et al. 2006). The Thai Ministry of Foreign Affairs became very active and assertive in PTAs (providing the chief negotiators for the Japan and USA agreements) as foreign policy issues started dominating trade policy. This enhanced the role of PTAs in meeting the Government's foreign policy aspirations, including strengthening political alliances and commercial links with major countries (Sally 2007). Thailand, as in the WTO, has used its PTAs negotiations very defensively on services. Differences in Thailand's services commitments across PTAs largely reflected what the trading partners saw as their key sectors and the importance Thailand attached to concessions offered in goods trade.

TAFTA

Interviews suggest services were included in TAFTA at Australia's behest. Both countries perceived their main gains to be in goods. Thailand reportedly found it difficult to bind existing access in many sectors for the same reasons it is pursuing emergency safeguard measures (ESMs) for services in the WTO, namely a concern about insufficient means for the government to protect developing sectors facing extensive foreign competition from liberalization.²⁰

²⁰ See Clogstoun, Bosworth and Trewin (2006), who question the economic rationale of ESMs.

Thailand's services and investment commitments, like Australia's, essentially duplicate WTO commitments. The share of sectors unbound was only marginally reduced, including partial commitments for modes 3 and 4 on distribution and education services. Deepening of commitments (all partial improvements) occurred in only a few sectors, mostly in modes 3 and 4. These covered mainly construction, tourism, and recreational, cultural and sporting services. TAFTA involved minimal liberalization; in order to meet ambitious political timetables the 'clock was stopped' to conclude the negotiations, which became the main objective.

Most services liberalization by Thailand was limited to foreign ownership and the movement of natural persons (CIE 2004b). It committed to higher foreign ownership from 49% to 60% in a very small number of sectors.²¹ It also agreed to increase the duration of visas and work permits from 1 to 5 years for Australian citizens transferred to Thailand, and to raise duration of work permits for contractual suppliers from one to three years. However, the DFAT-commissioned study (CIE 2004b) concluded that due to the relatively small liberalization of services in practice, the average cost of Thai services would only be lowered by 0.18%, thereby generating minimal welfare gains.

JTEPA

Thailand's services commitments with Japan essentially duplicate WTO commitments. JTEPA is a standstill agreement that entailed negligible liberalization 'on the ground'. Although sector coverage was increased, these essentially involved partial commitments, mainly in modes 2 and 3 (e.g. distribution, education, environmental and business services); full commitments were only made in mode 2 in education services. Deepening of GATS commitments was very limited, covering mainly modes 3 and 4, especially for education, and to a much lesser extent communication and business services.

(iii) Multilateral

Thailand's GATS commitments are limited and its revised Doha offer proposed minimal improvements. Coverage was broadened only slightly, with the proportion of sub-sectors bound going from about 49% to 55%. Additional sectoral bindings were offered in such areas as auxiliary maritime transport services, and certain air transport services, although with a number of limitations. A few improvements were also proposed to sectors already committed, such as telecoms or road transport. It also offered to expand its horizontal commitments on mode 4 to 'contractual service suppliers', although this is limited to only a few sectors (e.g., computer services) and subject to restrictions such as quotas. Significantly, Thailand's WTO offers contain no commitments on health and postal-courier services, only limited commitments on distribution services, 'unbound' commitments under mode 1 in such sectors as professional and computer services, various limitations on financial services, and a horizontal foreign equity limit of 49%. Thailand's Doha offer, as for its ASEAN partners (excluding Singapore), is conditional on the creation of an emergency safeguard mechanism under GATS, even though its revised multilateral offer proposes commitments that are below those of its PTAs, which also do not have ESMs.²²

C. Some Implications of the Australian and Thai Experiences

²¹ For these sectors, TAFTA's main benefit was to make the 60% investment cap automatic and not subject to approval. At the time of writing, only one Australian FDI application had been made under TAFTA.

²² See Bosworth and Narjoko 2006.

These two case studies demonstrate that negotiated liberalization, either bilaterally or multilaterally, has not significantly opened their service industries, thereby generating few economic benefits. PTAs have been no more successful than the GATS in promoting liberalization ‘on the ground’, and hence have not been, at least for Australia or Thailand, stepping stones for multilateral liberalization of services. In both cases PTAs have generally disappointed in terms of liberalizing sensitive sectors or modes of supply.

The real impetus for reforms must be unilateral based on sound economic policy decision-making aimed at promoting economic efficiency and improving national welfare.²³ Unilateral liberalization must lead reforms to be successful and sustainable. Negotiated commitments are, at best, likely to lag and reflect domestic reforms. Unilateralism, for example, would seem to offer the best possibility for reforming non-discriminatory regulatory market access barriers (e.g. state monopolies that prevent entry by both domestic and foreign firms). Trade negotiations are not well equipped to tackle these measures since they focus on national treatment limitations that directly discriminate against imports, which empirically have been found to be the least restrictive barriers to trade in services and thereby to generate the smallest gains.²⁴ Moreover, to the extent that PTAs try to tackle discriminatory market access barriers such as foreign equity caps, they are likely to end up with different caps across foreign investors; this is likely to divert investment and be economically undesirable. Even if such measures were eventually multilateralized (and the Thai and Australian evidence suggests this to be unlikely), the head start given to foreign investors from certain countries in establishing commercial presence in key services may itself be sufficient to restrict operations of future foreign entrants.

Rather than promoting actual liberalization in services, the main economic role that GATS and PTAs could play is to ‘lock in’ existing arrangements and reforms. In this context, Australia’s GATS and PTA commitments have generally tried to guarantee the *status quo*, albeit to varying degrees. This coverage has been generally poor in agreements based on positive lists (e.g. GATS, Thailand’s PTAs examined here, including TAFTA). Also, although it is difficult to assess, it seems that in some areas Australia’s and Thailand’s negotiated commitments are below the *status quo*, thereby reducing the value of the ‘lock in’ effect.

Moreover, the value of this ‘lock in’ effect itself can be exaggerated. Reliance on international commitments in future to limit resurging protectionism implies lost unilateral support for maintaining open policies. Without regaining it, governments are unlikely to yield to international pressure and will find other ways to close markets, either by finding loopholes in trade agreements or by adopting measures that while conforming with trade obligations could be economically more harmful. Ensuring continued to unilaterally support of the economic benefits of open markets is the best means of countering backsliding.

Another reason diminishing the ‘lock in’ value of negotiated commitments is that even where reflecting the *status quo* (i.e. measures currently applied) on signing, they can quickly fall

²³ For a discussion of the crucial importance of unilateralism in trade liberalization and the limitations of negotiated liberalization approaches, including in the US, see Ikenson (2006, 2007) and Hoekman and Messerlin (2000).

²⁴ Studies of PTAs on services have found that even where they have gone further than the GATS ‘on paper’ they have tended to be preferential (even where providing such measures non-preferentially would make good sense) or have targeted those provisions that explicitly discriminate against foreigners (Dee and Findlay 2007). This latter feature is hardly surprising since in negotiating PTAs the only provisions that can feasibly be liberalized preferentially are those that discriminate against foreigners. While this bias on national treatment rather than market access liberalization also exists in multilateral negotiations it is possibly more likely in PTAs (Ochiai et al. 2007).

below the *status quo* if unilateral liberalization occurs unless (i) sectors are fully liberalized or (ii) a ratchet mechanism is included that automatically binds any future liberalization of existing non-conforming measures listed, such as in negative-list PTAs like the AUSFTA. This widening gap continues until the agreements are subsequently re-negotiated when, at best after substantial negotiating efforts, *status quo* commitments may again be re-established, only to again become outdated. This reduces the relevance of negotiated commitments to market realities and makes it more difficult to impact on actual policies.

In Australia and Thailand there have been no coordinated domestic attempts to multilateralize improved bilateral commitments or to offer the best agreed commitments in subsequent agreements. For example, Australia's negotiation of higher FDI screening thresholds for US investors and access for US insurance branches is probably the closest to an Australian FTA initiative liberalizing existing policies, although the extent of the preferential economic gains is questionable. Australia did not seem to condition these on receiving any particular concessions from the US, but rather saw them as a political necessity to secure the agreement. Australia agreed to meet these two key US demands largely for political rather than economic reasons because it was committed to achieving a PTA with the US; rejecting these demands was politically difficult and Australia saw these concessions as acceptable largely because of their minimal economic impact.

While relaxing FDI screening thresholds is good economic policy in principle, doing so on a preferential manner in a PTA minimizes the benefits and risks diverting Australia's FDI patterns sufficiently to undo these gains. Australia has not unilaterally extended these investment screening thresholds to all foreign investors, nor has it so far offered to multilateralize this in its Doha offer or to extend it in other PTAs being negotiated, despite other trading partners, such as Japan, no doubt keen to receive the same treatment. Unilateral investment reforms that lifted the screening thresholds for all foreign investors would have made more economic sense, as was recognized in the DFAT-commissioned report (CIE 2004a). It concluded that extending the higher threshold investment barriers on an MFN basis would provide benefits four times larger than from preferentially lifting them under AUSFTA.

D. Dynamic Factors Driving Services Liberalization in Australia and Thailand

If unilateral services reforms are so beneficial for countries undertaking them then why are governments often reluctant to embrace them? Public choice theory recognizes the importance of politics in real world outcomes, explaining the behavior of voters, politicians and bureaucrats as self-interested agents and providing a comprehensive explanation of why policies are chosen that favor certain groups over more efficient policies for society as a whole. While most leaders, negotiators and policy makers know that unilateral trade liberalization makes sense, they are constrained by the political system in what they can do; removing trade protection is a political problem at home (CIE 2007).

(i) Political Economy Aspects and Other Factors

As pointed out by the Productivity Commission (PC 2003), determining what factors explain differences in commitments and whether PTAs are building or stumbling blocks towards WTO-consistent integration requires a political economy perspective. A number of other factors have been mentioned as possible explanations of differences between commitments made in different negotiations, emphasizing for example the importance of regional interests such as production networks, or motivations relating to fears of trade diversion from other regional PTAs. Suggestions that regionalism is quicker, more efficient or a more certain route to free trade than

multilateral negotiations are non-convincing, and having big players extracting concessions from smaller trading partners in PTAs might not be in the world's best interests (Bhagwati 1999).

It is generally recognized that trade liberalization in general is largely about managing the domestic political economy factors so as to build a broad consensus among stakeholders in favor of liberalization as a means of advancing national welfare. This is important since while the overall economy will benefit from trade liberalization, some segments in the short term will be adversely affected. Negative attitudes advanced by the 'losers' usually receive strong political support due to the inherent bias against liberalization; the benefits are longer term and the beneficiaries dispersed, invisible and poorly organized while the losses are usually immediate, concentrated, visible, and those suffering them well organized. It is important that the political and bureaucratic bias encountered against liberalization and national welfare due to political economy factors be countered. It is often advanced that negotiated liberalization, especially at the WTO, can help muster the broad support at home by building coalitions among groups in favor of liberalization. For example, negotiated liberalization enables exporters that are likely to benefit from improved market access abroad to coalesce as an effective counter at home to those opposing liberalization, and to help politicians sell the reforms domestically.

However, while these arguments have merit in principle, the Thai and Australian cases do not support this outcome. These countries' trade negotiations, especially PTAs, have not advanced services liberalization. This is largely because such negotiations are based on mercantilism, whereby all parties are more interested in obtaining market access abroad rather than opening their own economies, mistakenly believing that the gains to their economies come from what others bring to the table rather than what they themselves bring. Thus, negotiated liberalization, especially PTAs, suffer from weaknesses and develop their own political economy factors that can work strongly against liberalization. For example, if exporters coalesce thinking that market access abroad is where the main national welfare benefits come from they are likely to resist unilateral liberalization in an attempt to preserve the country's 'negotiating coin' in future negotiations. The evidence from Australia and Thailand suggest that PTAs are no more and probably less successful at generating effective domestic coalitions in support of trade liberalization. While the lie of negotiated approaches to liberalization that the gains from trade reforms come from greater market access abroad rather than from access to imports was perhaps fruitful in advancing global liberalization, its value may have outlived its usefulness as governments have started to believe their own mercantilist propaganda (Crook 2006). Reciprocity negotiations 'mis-inform and mis-educate everyone (including trade officials) about the basic argument for liberal trade' (Viravan 1987). Moreover, while gaining preferential access to overseas markets can result in rents being earned by exporters, who may hence strongly support such arrangements as a form of 'indirect' export assistance, this need not amount to improved national welfare if it results in expansion of inefficient exporters that rely on such preferential access to succeed.

Part of the bureaucratic bias against unilateral liberalization stems from the political economy factors operating at home in favour of negotiated liberalization. Trade and foreign affairs departments are attracted to negotiated liberalization rather than supporting unilateral liberalization, often rejecting the latter as a means of maintaining 'negotiating coin', a risky economic approach, especially for smaller countries like Australia and Thailand. While DFAT now generally strongly supports Australia's unilateral trade reforms, when Australia first embarked on this route the Department of Trade was one of the major areas within the bureaucracy to resist such reforms, arguing in favor of negotiated multilateral liberalization. Despite its changed attitude, however, DFAT's *modus operandi* in the negotiations, including of PTAs, largely prevent it from moving away from misguided mercantilism. For example, it is well

known that in the Uruguay Round Australia was prepared politically to offer more liberal commitments (at least on 'paper') in some areas, but did not to keep them in reserve for future negotiations. Trade officials also have a vested interest in rejecting unilateral liberalization since it reduces their role and influence.²⁵ In that context, it is hardly surprising that both Australia's and Thailand's trade departments and governments have embraced PTAs so vigorously, even at the expense, although never conceded, of multilateralism.²⁶ This bias towards negotiated liberalization is entrenched politically by having trade ministers with mercantilist responsibilities, whose mandate is to obtain overseas market access improvements while granting minimal concessions. Given that all countries approach negotiations in a similar fashion, it is not surprising that they take a long time and generally achieve minimal liberalization (even on 'paper').

In Australia, such bias is evident from the way that DFAT consults with domestic service suppliers, representative bodies and various levels of governments. It seeks input from them on overseas barriers restricting their market access so that it can compile its requests for multilateral and bilateral trade negotiations; there is no attempt to coordinate such negotiations with efforts to offer unilateral liberalization initiatives. Thus, armed with these requests, DFAT approaches the negotiations with a one-sided position aimed at making minimal concessions in areas where these are likely to have minimal liberalizing impact. This usually transforms to offering below the *status quo* where possible and using offers up to the *status quo* as a bargaining chip to obtain better offers from trading partners. In services, the involvement of more government departments, as well as state governments, further complicates policy-making.

Moreover, once negotiations have started, despite possible best intentions at the outset, mercantilist dynamics inevitably generate trade-light liberalization PTAs that governments having devoted so much political capital at home during the negotiations cannot easily walk away from; once started, signing is almost inevitable despite achieving limited results. For example, Australia signed AUSFTA despite limited concessions by the US on agricultural liberalization (but with the inducement of future concessions), which was regarded by Australia as a crucial requirement for the agreement. Its eventual signing was controversial; despite government announcements that had general public support, for example, that sugar would have to be included in AUSFTA, the negotiations were concluded at the last minute without sugar being included when Trade Minister and Australian negotiators were overridden, obviously at the highest levels of the Howard Government. It was sold to the public based on the large economic benefits identified in the DFAT-commissioned study; these later questioned as being seriously overstated in a report prepared for the Senate Select Committee (Dee 2004).²⁷

'Competitive regionalism', where countries fear losing market shares abroad as they see others getting into preferential agreements, was a factor for both Australia and Thailand focusing

²⁵ These sentiments were strongly voiced by non-trade officials during interviews.

²⁶ Indeed the change in Australia's and DFAT's trade policy stance over the past decade from rejecting to embracing PTAs is startling. The former Prime Minister and his Cabinet appear to have been instrumental in the Government's policy re-direction in late 2000 when it decided to seek an FTA with the US. Initially this re-direction was justified based on the US's importance to Australia's international economic importance but when found to be false it was then justified on the basis of Australia needing to join the global proliferation of FTAs (Garnaut 2004a). This shift supports the view that Australia's FTA focus reflected predominantly political concerns. It will be interesting to see whether the recent change in government will bring some re-balancing of Australia's trade policies, including efforts to ensure that PTAs (and WTO negotiations) are better coordinated to support renewed unilateral reforms driven by a domestic economic agenda.

²⁷ It estimated maximum benefits to Australia from the AUSFTA to be a paltry US\$53 million.

on PTAs. From a political economy standpoint, this suggests countries entering a ‘whirlwind’ of PTAs in response to their global proliferation so as to protect market interests and counter the political diversion effects. For example, at the time Australia entered the AUSFTA, many commentators were voicing concerns that this would deliver the wrong political and trade messages to China (Garnaut 2004). Indeed, as soon as Australia signed with the US, it quickly moved for political reasons to commence negotiations with China and other Asian neighbours.

The best means of countering opposition to trade liberalization, including of services, is therefore to build a consensus on the economic benefits of unilateral liberalization. This requires domestic transparency to expose the vested interests of protection and the national welfare benefits from liberalization. Such transparency would facilitate the formation of coalitions around the real benefits of trade reforms to help resist the vested interests that gain from protectionism. In Thailand, no similar institutional set up exists to promote such domestic transparency and to ensure public scrutiny of the government’s trade policies in terms of national welfare. Australia, on the other hand, has built up a tradition of domestic transparency with the work of the Productivity Commission (and its predecessors) that has helped successfully transform Australia from a closed economy up until the 1980s into a relatively open one. Transparency has greatly facilitated the advancement of the economic reform agenda, much of it involving unilateral trade liberalization (WTO 2007a).

Having successfully applied the unilateral transparency approach to reform trade policies and actively participated in the WTO to press for global reforms and to more or less ‘lock in’ some of its reforms with international commitments, there are signs that Australia is now less committed to this economic reform path. It is essential that the new focus on PTAs does not lead to a lower priority being given to unilateral reforms. These, however, have largely stalled, including in services (this also seems to have been the case in Thailand). While both forms of negotiated liberalization suffer from weaknesses, PTAs are far worse because they are based on discriminatory liberalization, which generates at best ambiguous gains and at worse may reduce national welfare when trade and investment diversion are taken into account. Some studies conclude, for example, that the AUSFTA would reduce Australia’s national welfare (Parliament of Australia Senate 2004).²⁸ Discriminatory liberalization is the nemesis of unilateral liberalization since the latter is based on non-discriminatory liberalization to ensure that the most efficient exporters and investors access markets. Multilateral liberalization, the cornerstone of the WTO though its MFN rule, is therefore likely to be more attuned to unilateral initiatives.

While unilateral liberalization is transparent, PTAs (and to a lesser extent multilateral negotiations) are generally implemented less transparently; this is the case in Australia and seemingly was also the case in Thailand. Decisions about negotiations are made behind Cabinet secrecy. Examination by the Joint Steering Committee on Treaties and a parliamentary vote on the implementing legislation only takes place after the deal is done (Ranald 2006). This could be improved in Australia by referring PTA outcomes to the Productivity Commission for public assessment instead of using solely DFAT quasi-independent studies.²⁹ Allowing the PC to publicly assess WTO outcomes would also improve transparency and evaluation of gains to Australia. In the future, Thai PTAs will, it seems, require parliamentary scrutiny and approval.

²⁸ See also: Banks (2003); PC (2003); and Dee (2003).

²⁹ This does not mean that government-commissioned studies are necessarily bad or lack credibility. Indeed, these are an important source of sound independent advice to governments. However, it is in the area of quantifying PTA gains where doubts arise, given that DFAT’s commissioning of such studies strongly signal government intent and that the negotiations lack public scrutiny.

This brings in a different constituency. While this should increase transparency, it will only work effectively if accompanied by mechanisms and procedures for providing independent advice.

Aspects of the political economy framework set out above were evident from interviews and relevant research in both Australia and Thailand. In Australia, business does not want liberalization driven by foreign agreements, which it sees more for policy dialogue or technical assistance. This fits DFAT's approach of going into PTAs by only agreeing to aspects that will not cause major changes in Australia. In Thailand, it was mentioned in a number of interviews that the former Prime Minister was a deal-maker and led a government that was strongly supportive of TAFTA-type arrangements. This situation points to the dangers of having trade liberalization led by personalities or single institutions rather than a coalition of liberalizers. There indeed seems to be substantial uncertainty about the winners and losers of trade liberalization, or of the overall economic benefits to Thailand; achieving meaningful services liberalization in this environment will be difficult unless corrected unilaterally.

Thailand does not have an institution like Australia's PC that analyses such aspects, nor does it have related processes of formal submissions, transparent assessments, or supporting policies like competition policy. It does have the Thailand Development Research Institute (TDRI) which can undertake commissioned studies but, although independent, it is outside of government and this can restrict the uptake of such recommendations. Having no forum for rational debate of trade liberalization leaves open the threat of such issues being driven by vested interests (Banks and Carmichael 2007). Further, the services industry in Thailand seems to be less well organized as there is no equivalent to the Australian Services Roundtable, which forms part of an international network, to help government set a policy reform agenda.

E. Way Forward and Conclusions

These case studies show that, for Australia and Thailand, negotiated liberalization has achieved little real liberalization, focusing instead on liberalizing on 'paper', i.e., bindings which at best attempt to ensure that existing levels of openness are maintained. While it is generally acknowledged that the GATS - with few exceptions, such as in telecommunications and commitments of certain countries negotiating WTO accession - has performed little actual liberalization, this Chapter also suggests, based on these case studies, that PTAs suffer to a greater degree from the same weaknesses. Further, their preferential nature carries additional risks of poor economic policy outcomes. PTAs are not the solution, but part of the problem.

In order to achieve economically sensible services liberalization, there needs to be enhanced unilateralism in support of comprehensive trade reforms, including for sensitive sectors. In Thailand, a clear and persuasive case needs to be made for new unilateral reforms (Sally 2007). However, this would largely be something new for this country; previous unilateral reforms have mainly been based on external institutional advice or domestic 'last resort' strategies rather than home-grown unilateralism. There is no institutional mechanism for building home-grown unilateral support for services reforms. While the economic ministries, such as finance, and other regulatory bodies, such as the central bank, may be committed to unilateral liberalization, this is not done in the transparent manner needed to publicly scrutinize trade policies and to build a wide consensus in support of reforms.

In Australia, it seems that despite a longstanding and successful record of promoting unilateral reforms such efforts have waned. Now, instead of doing so unilaterally, it relaxed FDI screening thresholds as a result of negotiating pressures in a PTA, and this substantially diminished any potential benefits from what may have resulted if implemented multilaterally.

Thus, there is a need to rejuvenate the commitment to unilateral reform. An important first step would be to subject any future PTA studies to reviews by the statutory independent Productivity Commission. Another major ingredient would be for the government to have the PC assess the protection currently granted to Australia's services industries. Some research has been done in these areas, but it needs to be expanded, e.g. a major stocktaking exercise similar to what was done in manufacturing as a pre-requisite for the liberalization that subsequently occurred.

Given the primary role that unilateralism must play in trade liberalization, it is important to ensure that negotiated forms of liberalization are undertaken in a way that supports such initiatives. The multilateral system offers the best prospects for doing so; PTAs are far more out of tune and also risk undermining multilateralism. Negotiated liberalization must fit better with unilateral reforms, but doing so successfully requires changing trade policy mandates and the mindsets of trade negotiators. A far more effective means than PTAs of encouraging trading partners to liberalize their economy would be for Australia to support domestic reform in key emerging markets, like Thailand and other ASEAN members, through genuine reform partnerships. These would be aimed at enhancing policy-makers' understanding of what makes sound trade and investment regimes and how their current strategies compare with best practice. Such efforts would attempt to delve into reforming behind-the-border measures so as to remove obstacles to greater competition for both domestic and foreign suppliers.

However, promoting unilateral reforms will be a major challenge and will occur slowly. In the meantime, there is a need to ensure that negotiated agreements themselves are more in tune and coordinated with unilateral reforms. This could be done by negotiating a clause in GATS and PTAs that would require countries to commit at the *status quo* level, and for a ratcheting mechanism to be put in place to ensure that commitments automatically bind unilateral reforms. PTAs could be further enhanced to support unilateral liberalization of services by adding an MFN clause providing for the automatic extension of more liberal commitments negotiated within future PTAs to other PTA parties. Ensuring PTAs are subject to non-exclusivity clauses that ensure admission of new members on equal terms would also be beneficial. While these features would reduce the attractiveness of negotiated liberalization for those adhering to mercantilism, it would boost support to unilateral reforms, thereby promoting a more liberal global economy. It may also help stem the proliferation of PTAs. However, the MFN clause would only extend the commitments to countries with which one already has a PTA, not to all WTO Members. This approach would suggest that it would be more efficient to avoid PTAs and focus on the WTO negotiations. However, given the political factors contributing to the universal popularity of PTAs, it is most unlikely governments would agree to this. Therefore, the best practical means of strengthening the multilateral trading system, that has an invaluable role to play, is to establish strong unilateral pressures for services trade reforms across Members, including Australia and Thailand. Services liberalization, perhaps even more than for goods, is less about trade negotiations and more about good domestic economic policy reforms.

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