

PERSPECTIVE

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Thailand's New CPTPP Opportunity

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EXECUTIVE SUMMARY

- Thailand originally missed the opportunity to join negotiations on the Trans-Pacific Partnership (TPP) because of domestic political turmoil.
- In April 2020, Thailand missed another opportunity after the sudden U-turn and retreat of Commerce Minister Jurin Laksanawisit from the idea of the country joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the agreement which emerged after the United States abandoned the TPP in early 2017.
- The coronavirus pandemic has wrecked Thailand's tourism sector, which is one of the most significant sectors in the country's economy. With the end of the pandemic not yet in sight, the revival of tourism in Thailand is not expected to happen anytime soon.
- Thailand needs to adopt a new strategy for economic recovery and to enhance its trade and investment competitiveness in the post-COVID-19 world.
- Returning to the path of economic multilateralism is one obvious solution. Thai political leaders should muster courage to pursue a full range of economic agreements and sell the CPTPP again to the sceptical Thai public.

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INTRODUCTION

Thailand's interest in the Trans-Pacific Partnership (TPP) at first appeared to have motives that were more strategic than economic. Bangkok wanted to maintain good relations with Washington, even as Thailand's economic ties with China grew significantly after the turn of the century.

After Vietnam joined the talks on the TPP in 2008 and Malaysia followed suit in 2010, Thailand's stakes in the regional competitiveness race increased. Should Thailand miss the TPP boat, it seemed, the country risked losing out to its two neighbours in this important undertaking captained by the US.

During the state visit of President Barack Obama to Thailand in November 2012, Prime Minister Yingluck Shinawatra officially informed him of Thailand's interest in joining TPP negotiations. Their joint press statement, issued in Bangkok on 18 November, mentioned in part that "President Obama welcomed Thailand's interest ..., and [the] two leaders looked forward to ... strengthen[ing] our trade ties and consult[ing] on the requirements for Thailand's eventual participation in high-standard agreements, including the TPP."¹

Unfortunately, the Yingluck administration did not take follow-up actions to fulfil domestic constitutional requirements for Thailand to join the TPP negotiations.² It was too preoccupied with the bloody struggle with its military-backed political opponents.

After the coup of 22 May 2014, Thailand's interest in the TPP diminished. The military junta led by General Prayut Chan-ocha turned inward in the face of Western criticism of its authoritarian rule.

In early 2017, President Donald Trump pulled the US out of the TPP, which had been signed in February 2016. Japan, which had joined negotiations on the TPP in 2013, took the lead in salvaging the situation with a new agreement among the remaining 11 signatory countries.³ The new Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) was signed in Santiago, Chile, on 8 March 2018. For the first six countries to ratify it (Australia, Canada, Japan, Mexico, New Zealand and Singapore), the agreement entered into force on 30 December 2018. Vietnam became the seventh country to ratify the agreement on 14 January 2019.

Early this year, Thailand's Ministry of Commerce resurrected the idea of joining the CPTPP. Deputy Prime Minister Dr Somkid Jatusripitak, who heads a national committee on international economic policy, endorsed the proposal for Thailand to begin consultations with CPTPP members. This proposal was scheduled for deliberation in the cabinet on 28 April 2020.

However, civil society organisations raised vehement objections to the idea of Thailand's accession to the CPTPP. The group FTA Watch organised an online mobilisation, urging its supporters to use the hashtag #NoCPTPP in their cyber networks to spread the protest alert. They attacked the Ministry of Commerce for allegedly failing to conduct public consultations, lacking transparency, and downplaying the negative implications of the CPTPP.

On the eve of the cabinet meeting, Commerce Minister Jurin Laksanawisit, the leader of the Democrat Party, abruptly withdrew the proposal on the CPTPP from the cabinet's agenda. He reasoned that the idea appeared too divisive at this critical time when Thai society needed to pull together to overcome the pandemic. His sudden U-turn surprised even those who opposed the idea of Thailand joining the CPTPP.

ECONOMIC MODELLING

To prepare its submission to the cabinet, the Department of Trade Negotiations of the Commerce Ministry had done economic modelling of the overall annual impact of CPTPP membership on Thailand. Its findings showed that economic benefits would outweigh trade-off costs.⁴

While the COVID-19 pandemic and the disruptions that it has caused will require a fresh analysis of the impact of joining the CPTPP on Thailand's national interests, the modelling of Department of Trade Negotiation suggests that participation in the agreement will raise regulatory standards governing Thai trade and investment and improve the business environment. Thailand will also gain wider access to CPTPP members' markets, enabling it to become one of the world's top 10 exporters of several products.⁵

In addition, Thailand will be able to maintain and enhance its competitiveness in global supply chains and regional production networks. The World Economic Forum ranked Thailand fortieth among 141 economies in its 2019 Global Competitiveness Index.⁶ Singapore was ranked first, Malaysia twenty-seventh, Indonesia fiftieth, the Philippines sixty-fourth, and Vietnam sixty-seventh.

PAINFUL TRADE-OFFS IN RETURN FOR EXPECTED ECONOMIC BENEFITS

The expected economic benefits that will result from Thailand's joining the CPTPP are easy to see. But costly domestic adjustments will be required as trade-offs. The CPTPP is known as a "high standard" multilateral economic agreement. It requires commitments to liberalisation far beyond those that Thailand has already made, either in ASEAN or in its free trade agreements with trading partners such as China, Japan, the Republic of Korea, Australia, New Zealand and India.

The additional commitments under the CPTPP that will prove challenging and potentially troublesome for Thailand include those concerning the protection of pharmaceutical patents; patents on seeds, plants and vines; and the liberalisation of government procurement.

Pharmaceutical Patents

One silver lining in the withdrawal of the US from the TPP has been the suspension in the CPTPP of 20 commitments in the former agreement, including two rules on pharmaceutical patents. If they had remained in the CPTPP, these stringent provisions for the protection of intellectual property rights would have extended patents on many expensive life-saving drugs and prohibited signatories' production of generic versions for many years.

Thailand's success in containing the AIDS epidemic in the 2010s owed a great deal to the efficient distribution of low-cost pre-exposure prophylaxis (PrEP) drugs to members of high-risk groups. The Efavirenz drug produced by the Government Pharmaceutical Organisation (GPO) costs less than 20 per cent of the price of imports containing the same formulation.⁷

The PrEP drugs, coupled with the successful campaign to promote condom use and safe sex, have slowed down HIV transmission in Thailand. In 2018, Thailand recorded about 6,400 cases of new HIV infections, a remarkable improvement when compared to the 16,000 cases in 2010. More and more of the estimated 480,000 Thais with HIV can avoid premature death because of the availability of low-cost drugs. In 2018, there were 18,000 AIDS-related deaths in Thailand; in 2010 the annual death toll was 27,000.⁸

Other low-cost drugs, some produced by the GPO under compulsory licencing for public non-commercial use, have saved many Thais from death from cancer. Cancer continues to be the top killer in Thailand, taking 114,199 lives in 2018 according to the WHO's Global Cancer Observatory.⁹ A new concern among Thai civil society organisations relating to the fight against cancer is monopolistic foreign control of marijuana-derived drugs at a time when Thailand's experimentation with the medicinal use of marijuana for cancer treatment is only in its infant stage.

Thailand's frequent use of compulsory licencing has aroused the ire of influential pharmaceutical giants, above all in the US. For many years, Thailand languished on the "priority watch list" of the Office of the United States Trade Representative (USTR) for allegedly hurting the business interests of American pharmaceutical firms. Thailand's predicament eased somewhat in December 2017, when the USTR moved Thailand to the slightly less "watch list".¹⁰ Countries on the USTR's "watch list" stand a chance of normalising trade relations with the US if they continue to make what Washington deems to be improvements, while those on its "priority watch list" risk facing punitive trade sanctions.

Patents on Plants and Seeds

When the news broke that the Prayut government was thinking about joining the CPTPP, the loudest public outcry against the idea came from civil society organisations advocating protection of small farmers' right to use low-cost seeds. These organisations have long campaigned against the International Convention for the Protection of New Varieties of Plants of 1991 (UPOV91),¹¹ which they fear will increase foreign multinationals' control of the market in Thailand for seeds used to plant cash crops.

Under the UPOV91, farmers who have purchased and used commercial high-yield seeds may not save seeds from their own harvests for use in the next planting season. The firm that developed the seeds holds intellectual property rights to them for at least 20 years, which include exclusive rights to the multiplication of seeds. In the cases of trees and vines, the rights last for 25 years. If a government restricts a firm's rights, it must take all measures necessary to ensure that that breeder receives "equitable remuneration", according to Article 17 of the 1991 convention.

Participation in the CPTPP requires every member country to align its domestic laws with the UPOV91. New Zealand has asked for three years to amend its law on plant variety rights. Two other signatories to the CPTPP, Malaysia and Vietnam, have not yet joined the UPOV91.

Protecting SMEs in Government Procurement

CPTPP members are negotiating to improve transparency, integrity and fair competition in government procurement. Most probably, they will build on existing commitments in the World Trade Organization's 2012 Revised Agreement on Government Procurement, of which Australia, Canada, Japan, New Zealand, and Singapore are members and Chile, Malaysia and Vietnam observers. Among CPTPP members, Brunei Darussalam, Mexico and Peru are neither members nor observers of the 2012 Revised Agreement.

Thailand has been an observer of the 2012 Revised Agreement since June 2015. But government procurement is a very sensitive area, one that Thailand is still reluctant to open to increased international competition.

Major Thai construction firms may not worry much about foreign competitors vying for lucrative government infrastructure projects in Thailand, because most of them have political connections which give them invisible but real advantages. Some of them are competitive enough to win tenders for projects in other ASEAN countries.

However, a large number of Thai SMEs survive essentially by selling goods and services to government agencies. These small local suppliers would need protection from foreign competitors in the Thai market; otherwise, they could be driven out of business by foreign bidders for Thai government contracts.

As a developing economy, Thailand may be able to request a longer grace period before fully opening its government procurement market under the terms of the CPTPP. But prolonging protection in government procurement will continue to breed corruption and spoil the business environment.

COMPETITION IN ASEAN

Thailand has been trying to catch up with Malaysia in economic development and competitiveness. But it lags behind its neighbour to the south in their shared quest to escape from the middle income trap. The gap will only widen further if and when Malaysia ratifies the CPTPP.

Bangkok is now counting heavily on its Eastern Economic Corridor (EEC) scheme as the centrepiece of a strategy to revitalise the Thai economy. The strategy will feature generous investment promotion for ten targeted industries. The EEC will also create a new regional growth hub centred in the three eastern provinces of Chachoengsao, Chonburi and Rayong and linking the Mekong sub-region with China and India.¹²

The EEC can help Thailand catch up with Malaysia, or at least stay ahead of Vietnam. Thailand and Vietnam compete as exporters of rice, electrical appliances and apparel. Vietnam's competitiveness is likely to improve because of its early ratification of the CPTPP agreement, coupled with its FTAs with the Eurasian Economic Union (EEU)¹³ and the European Union (EU).¹⁴

Thailand has merely entered into exploratory consultations with the EEU. The EU suspended negotiations with Thailand on an FTA following the Thai coup of May 2014. The bloc is Thailand's third largest trading partner, after China and Japan.

Thailand and the EU had been preparing to resume their FTA talks in mid-2020. However, its recently aborted push on the CPTPP front may dampen the Thai government's enthusiasm for those talks and further delay their resumption. After all, entering into an FTA with the EU and joining the CPTPP would entail similarly painful domestic adjustments as trade-offs in exchange for benefits.

Thailand has also entered FTA talks with the European Free Trade Association (EFTA), which groups Iceland, Liechtenstein, Norway and Switzerland — none of which is a member of the EU.

TOURISM WRECKED BY COVID-19

In 2019, about 18 per cent of Thailand's GDP came from tourism. Tourism generated about 3,010 billion baht in income. About 1,080 billion baht arose from 166 million trips on the part of Thais visiting domestic tourist destinations, while about 1,930 billion baht came from the 39.8 million foreign tourists who visited the country.¹⁵

Thailand had hoped to see the number of foreign tourists entering the country exceed 40 million for the first time in 2020, but the ongoing COVID-19 pandemic has severely disrupted tourism everywhere. In Thailand, the focus is now on the survival of the tourism sector rather than on its growth.

In the first three months of 2020, Thailand saw a drop of 35 per cent in the number of foreign tourist arrivals to 6.6 million. In April, the COVID-19 disruption intensified. Very few foreign tourists entered Thailand in April because of a suspension of normal commercial flights and a 14-day compulsory quarantine for arriving travellers. Drastic social distancing measures — including cancellation of Songkran Festival, a national state of emergency, a night-time curfew, the closure of entertainment places and a lockdown of businesses — practically wrecked the entire tourism sector.

With the end of the pandemic still not in sight, the Thai tourism sector faces bleak prospects throughout the rest of this year. The Prayut government therefore needs a new contingency plan to mitigate the impact of the collapse of tourism.

RETHINKING THAILAND'S STRATEGY

Thailand has already taken a gigantic step in the right direction with the EEC initiative.

Thailand's success in containing the COVID-19 will further enhance the reputation of the Thai public health system. This will give additional assurance to foreign tourists, and also boost the attractiveness of medical tourism in Thailand. One of the 10 targeted industries in the EEC scheme is health services and medical equipment — meant to create a medical hub.

As an export-led developing economy, Thailand needs to further expand its external trade links with key trading partners. In ASEAN, Thailand has been an active proponent of the Regional Comprehensive Economic Partnership (RCEP) meant to link the members of ASEAN and their six FTA partners: China, Japan, the Republic of Korea, Australia, New Zealand and India. Even though India has pulled out of the partnership, it is in Thailand's interest to help see to it that the RCEP is finalised this year and implemented as soon as possible.

At the same time, Thailand cannot afford to remain outside the CPTPP much longer. When practicable, public hearings on the pros and cons of joining the CPTPP should be undertaken. Thai businesses and industries that can benefit from the CPTPP should be encouraged to speak out.

Commerce Minister Jurin may, in fact, have had little to do with the revival of the CPTPP idea. The failed push is most likely to have come from Dr Somkid, the man responsible for trade negotiations and investment promotion in the current government.

When the political heat increased as a result of the outcry from civil society organisations, Jurin suddenly backed down because he wanted to avoid further damage to his reputation. The leader of the Democrat Party had already faced considerable criticism for failing to relieve the shortage of face masks and hand sanitisers at the time of COVID-19 outbreak earlier this year.

Among the other trading partners with whom Thailand ought to expand its links, the United Kingdom holds promising opportunities. Speeding up its FTA talks with the UK will help Thailand improve its trade position. Following Brexit, the UK has shown an interest in economic agreements with ASEAN and its members. It hopes to become a new ASEAN dialogue partner. And Thailand is in a position to help promote ASEAN-UK relations, while the UK can reciprocate by moving faster on its FTA talks with Thailand.

In addition, and crucially, progress in the Thailand-UK FTA talks will improve the Thai hand in the Thailand-EFTA FTA talks as well as in the stalled Thailand-EU FTA talks. The latter has much more economic importance: the EU is Thailand's third largest trading partner, while UK is Thailand's twenty-first most important trading partner. Thai exports to

the EU amounted to 777 billion baht in 2019, with a trade surplus of 116 billion baht for Thailand.¹⁶ Thai exports to the UK in 2019 amounted to only 119 billion baht, with a trade surplus of only 44 billion baht for Thailand.¹⁷

Therefore, it is imperative for Thailand to make headway when the FTA talks with the EU resume.

Finally, Thailand can try, once again, to explore prospects for starting FTA talks with the US. The US has long been one of the top five trading partners of Thailand. American corporations have technologies and capital needed in Thailand's EEC scheme. US strategic interest in keeping Thailand as its ally can lead to more serious consideration in Washington on starting Thailand-US FTA talks.

CONCLUSION

Thailand's U-turn last April from pursuing participation in the CPTPP was a costly missed opportunity. The country has to return to the path of economic multilateralism in order to cope with acute economic uncertainties in general, and to mitigate the impact of the collapse of its tourism sector in particular.

The RCEP is on the cards for 2020, and the Thailand-UK FTA talks look promising. This year may also bring revival of the Thailand-EU FTA talks.

Thailand cannot afford to miss any more opportunities to enhance its trade and investment competitiveness. Thai political leaders must be courageous in pursuing all economic agreements, including reselling the CPTPP to the sceptical Thai public. Thailand's economic recovery in the post-COVID-19 world is at stake.

¹ "Joint Press Statement between President Barack Obama and Prime Minister Yingluck Shinawatra", Bangkok, 18 November 2012 (https://www.thaiembassy.sg/press_media/news-highlights/joint-press-statement-between-president-barack-obama-and-prime-minister-, accessed 1 May 2020).

² Section 190 of the 2007 Constitution required the cabinet to, among other things, provide information to the public, conduct public consultations, declare details to the parliament, and "submit a negotiation framework" to the parliament for approval. Similar requirements now appear in Section 178 of the 2017 Constitution.

³ The 11 members of the CPTPP are Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, New Zealand, Peru, Singapore and Vietnam.

⁴ "พาณิชย์ยืนยันเข้าร่วม CPTPP ไม่กระทบเข้าถึงยา การคุ้มครองพันธุ์พืช และการเปิดตลาดจัดซื้อจัดจ้าง" [Commerce Ministry affirms CPTPP participation will not affect access to medicine, protection of seeds and opening the market for government procurement], *Krungthep thurakit*, 27 April 2020

(www.bangkokbiznews.com/news/detail/878002, accessed 2 May 2020). The report of the Department of Trade Negotiations on its global trend analysis of eight scenarios of the CPTPP is available at www.api.dtn.go.th/files/v3/5e2516efef4140f97040bcf8/download (accessed 10 May 2020).

⁵ *Ibid.* Thailand's top exports include processed chicken, sugar, rice, seafood, fresh and dried fruit, automobiles and automobile parts, rubber, electrical appliances, air-conditioners, and apparel.

⁶ The World Economic Forum, "2019 Global Competitiveness Index 4.0" (www.reports.weforum.org/global-competitiveness-report-2019/competitiveness-rankings/, accessed 1 May 2020).

⁷ "WHO certifies Thai anti-HIV drug", *Bangkok Post*, 2 November 2019 (www.bangkokpost.com/thailand/general/1569274, accessed 10 May 2020).

⁸ UNAIDS data for 2019 (www.unaids.org/sites/default/files/media_asset/2019_unaids_data_en.pdf/ page 202, accessed 8 May 2020).

⁹ WHO Global Cancer Observatory data for 2018 (www.gco.iarc.fr/today/data/factsheets/populations/764-thailand-fact-sheets.pdf/, published May 2019 and accessed 8 May 2020). Top five cancers in Thailand were lung cancer, liver cancer, breast cancer, colorectal cancer and gallbladder cancer.

¹⁰ Office of the United States Trade Representative, "2018 Special 301 Report" (www.ustr.gov/sites/default/files/files/Press/Reports/2018%20Special%20301.pdf/, accessed 10 May 2020). In addition to Thailand, the "watch list" included Vietnam, Pakistan, and Mexico. On the "priority watch list" were, for example, China, Indonesia, India, and Russia.

¹¹ UPOV91 refers to the *Union internationale pour la protection des obtentions végétales* or the International Union for the Protection of New Varieties of Plants, whose current act was signed in Geneva on 19 March 1991; its English-language text is available at <https://www.upov.int/upovlex/en/conventions/1991/content.html> (accessed 14 May 2020).

¹² Sihasak Phuangketkeow, "Thailand's Eastern Economic Corridor: A Bold Strategic Move", *ISEAS Perspective Issue* 2020/13, 4 March 2020 (www.iseas.edu.sg/wp-content/uploads/2015/11/ISEAS_Perspective_2020_13.pdf, accessed 11 May 2020). The ten targeted industries are the next-generation automotive sector; intelligent electronics; advanced agri- and bio-tech; food processing; tourism; digital, robotics and automation; biofuel and biochemicals; aviation and logistics; high-tech industries; and the medical hub.

¹³ The Vietnam-EEU FTA entered into effect in 2016. The EEU consists of Armenia, Belarus, Russia, Kazakhstan and Kyrgyzstan.

¹⁴ Vietnam and the EU signed a free trade agreement and an agreement on investment protection in Hanoi on 30 June 2019. The two agreements are expected to enter into effect in 2020.

¹⁵ "นักท่องเที่ยวต่างชาติปี 62 โต 4.2% จีนเข้าไทยเฉียด 11 ล้านคน" [Foreign tourism in Thailand in 2019 grew 4.2%, almost 11 million Chinese entered Thailand], *Isra News*

Agency, 23 January 2020 (www.isranews.org/isranews-short-news/84811-tourism.html/, accessed 6 May 2020).

¹⁶ European Commission, “Countries and Regions”, n.d.

(www.ec.europa.eu/trade/policy/countries-and-regions/thailand/, accessed 12 May 2020).

¹⁷ “Thailand preparing to cash in on trade ties with UK after Brexit”, *The Nation*, 3

February 2020 (www.nationalthailand.com/business/30381459/, accessed 12 May 2020).

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