

Institutional Spillovers from the Negotiation and Formulation of East Asian Free Trade Agreements

Government-Business Relations in the Policymaking of Thai and Malaysian Bilateral Free Trade Agreements

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East Asian countries have implemented around 60 free trade agreements (FTAs), mostly bilateral, to become one of the most active sites of regionalism. The dominant analyses portray these FTAs as driven primarily by foreign policy motivations and promoted by political leaders with businesses marginally involved or interested. It is contended here that, compared to other forms of liberalization, bilateral FTA negotiations promote new institutional arrangements within government agencies and business associations and unique configurations of government-business relations. Formulation of FTAs imposes greater information demands on government officials, which should compel them to consult business associations. In turn, clearer identification of FTAs' impacts and greater chances to affect their formulation should increase business incentives to lobby for or against FTA liberalization domestically and across borders. Demands on officials and business associations upon successive FTAs should foster institutional change/creation to reduce information and coordination costs. These hypotheses were tested on the bilateral FTAs of Thailand and Malaysia. FTAs in these countries stimulated government-business consultations and lobbying by businesses that, for some key FTAs, took the initiative. Successive negotiations strengthened the technical capacities of officials and business associations and stimulated the emergence of new institutions, which may endure to provide similar functions for multilateral rounds.

Keywords: FTAs / International Trade / Government-business relations / Policymaking / International Political Economy / Trade negotiations / Southeast & East Asia

Running Title: Institutional Spillovers from Bilateral FTA Policymaking

1. Introduction

The proliferation of free trade agreements (FTAs) in East Asia is one of the most significant recent developments in the region's political economy. Except for the ASEAN (Association of Southeast Asian Nations) trade bloc, East Asia initially eschewed the global wave of FTAs that began in the mid-1990s. However, regionalism in East Asia has exploded rapidly with more than 60 FTAs—mostly bilateral—implemented since 2002.

The prevailing analyses have downplayed the economic relevance of East Asian FTAs, and have emphasized instead foreign policy motivations as their primary rationale (e.g., Desker, 2004; Aggarwal and Urata, 2006; Dent, 2006; Ravenhill, 2010; Aggarwal and Govella, 2013). From a political economy perspective, FTA policymaking is portrayed as top-down with interest groups playing a minor role (Aggarwal and Urata, 2006; Sally, 2006; Hoadley, 2008; Terada, 2009; Lee and Hooi, 2011). In addition, surveys indicate that firms have little interest in utilizing existing FTAs (Ravenhill, 2010; Kawai and Wignaraja, 2011).

It will be contended here that these interpretations of East Asian FTAs essentialize the role of autonomous states and politicians' ideas at the cost of a deeper analysis of private sector preferences. It will be argued here that, compared to other forms of liberalization, the formulation of bilateral FTAs imposes greater technical and sectoral information demands on government agencies and business associations than do multilateral rounds and therefore should necessitate more intense consultations within and between both actors. Government officials would be more likely to consult and heed the preferences of business associations that assist them with technical information. For businesses, and compared to unilateral and multilateral liberalization, bilateral FTAs enable clearer identification of impacts, and easier business collective

action and access to policymakers thus increasing incentives for interest groups for and against an FTA to influence its formulation. Bilateral FTAs create these favorable conditions for government-business consultation and business collective action and lobbying not only within each FTA partner but also across borders. Coordination and information demands on government and organized business over successive FTAs should encourage actors to develop their capabilities and spur institutional change and creation.

To test these hypotheses, this study conducted an extensive process-tracing analysis of the bilateral FTAs negotiated by Thailand and Malaysia, which until recently had more FTAs in force than any other developing country in East Asia.¹ This research found that although many Thai and Malaysian FTAs, especially earlier ones, may have primarily responded to government initiatives, all of them had an economic rationale (even if only narrowly sectoral), because whenever such a motivation was missing, negotiations eventually faltered. Over time and, more importantly, in FTAs with key partners, both governments intensified consultations with business associations, not only to attend to their preferences but also to access the complex technical information needed during negotiations. In turn, businesses have increased their awareness about the impacts of FTAs and have taken greater interest in influencing their policymaking for or against liberalization. In fact, for major trade partners, businesses affected from FTA liberalization took the initiative and pressed officials either to launch negotiations or to carve out their sectors, respectively. Bilateral FTAs created new configurations of government-business relations and of business collective action and lobbying. More intense interactions between and among government agencies and business associations

¹ The primary research involved 212 in-depth semi-structured interviews with government officials, private sector and civil society representatives during 2008 and 2009 and complemented with numerous personal communications and secondary research since then. The government officials interviewed included members of trade negotiation teams and officials at relevant ministries and technical supporting agencies. In the private sector, interviewees included peak and sectoral business associations as well as individual firms, local and foreign, across a wide range of sectors and levels within value chains.

in the context of FTA formulation have contributed to a better specification of actors' preferences, strengthened their technical capacities and institutionalized the consultative and lobbying process.

2. Government-business relations in the context of bilateral FTAs

The coexistence of multiple trade arrangements offers governments the possibility of forum shopping to address trade issues, whether is to settle disputes and/or to improve market access for exports. The selection by governments of a specific trade forum is influenced, *inter alia*, by international and domestic political economy dynamics (Pekkanen et al. 2007).²

The absence of institutional arrangements regulating reciprocal trade exchanges in East Asia before 2002 was not an obstacle for these countries to achieve significant economic integration through regional production networks.³ Thus, when East Asian countries began to establish FTAs, most analyses dismissed their economic rationale and highlighted their foreign policy and security dimensions.⁴ In line with the reported lack of economic foundation in these FTAs, narratives of East Asian regionalism have downplayed the involvement of the private sector—whether invited by the government or proactively on businesses' own initiative—in FTA formulation. Using Putnam's (1988) classic two-level game,⁵ interactions at level II seem to have been limited or missing in East Asian FTAs. FTAs are portrayed as being primarily driven by shared ideas among political elites in strong states, with low or no government engagement of

² Large developed economies have often used bilateral FTAs with developing nations to introduce disciplines beyond the World Trade Organization (WTO). Thus, developed countries face a trade-off between their maximization of economic gains (which are higher at WTO's rounds) and their capacity to control the agenda (higher in bilateral FTAs) (Pekkanen et al., 2007).

³ Although the ASEAN FTA (AFTA) was signed in 1992, it initially excluded sensitive sectors and it was not until 2003 that all intra-ASEAN tariffs were reduced to 0-5% (see below and Ravenhill, 2008).

⁴ According to Dent (2006), "*strengthening diplomatic relations*" or "*consolidating security alliances*" were Asian countries' (except for Japan) top motivations for entering FTAs. External shocks such as the end of the Cold War, the 1997 Asian crisis, September 11 or the Japan/China rivalry provided impetus for East Asian FTAs (Aggarwal and Koo, 2008).

⁵ A government's position in international negotiations is determined by the interplay between the stance of the counterpart government (level I) and its own strategic interaction with interest groups at home (level II).

the private sector in FTA policymaking.⁶ This has been compounded by businesses' own apathy toward FTAs, both during negotiations and after implementation. Only Japan departs from this regional trend—the Japanese private sector played a pro-active role and pressed its government to embrace regionalism (Solis, 2003; Manger, 2005; Yoshimatsu, 2005; Katada and Solis 2010; Manger, 2012).

Until 2006, Thailand ranked second in East Asia, after Singapore, in the number of FTAs negotiated. Thai bureaucrats have been reported as lacking sufficient expertise and shunning formal consultations with the private sector (Sally, 2006; Sally, 2007). Thai FTAs have been launched in a rush, without a clear economic strategy and with “foreign policy aspirations loom[ing] large” (Aggarwal and Urata, 2006; Sally, 2007:1606; Hoadley, 2008).⁷ In contrast, Malaysia was initially opposed to bilateralism and only began pursuing FTAs under the threat of trade diversion from other FTA blocs. This policy shift was linked to changes in the political leadership rather than to business pressures while their formulation has been reportedly confined to the top-ranking bureaucracy (Aggarwal and Urata, 2006; Hoadley, 2008).⁸

Of the two levels in Putnam's model (state-state and state-society), this study is interested in the latter, in how government-businesses win-sets for FTAs were formed. Postulating the prevalence of strong states to account for governments' low engagement of the private sector in FTA formulation overlooks how East Asian bureaucracies, including those in Thailand and Malaysia, engaged organized business in policymaking (Laothamatas, 1992; Laothamatas, 1995). For instance, business pressures were

⁶ For Aggarwal and Koo's (2006:292,295), the minor role accorded to interest groups is explained by East Asian countries' being “strong states relatively free from societal pressures”. In their analysis of the forces behind FTAs, “institutional setting” and “ideas” topped most countries, whereas “influence of interest groups” was the least important. South Korea's FTA policy was shaped by changes in the political leadership (Aggarwal and Urata, 2006) and FTAs in Singapore are defined as “almost entirely government-led and planned, [with] little concrete evidence on business pushing for or against FTAs” (Sally, 2006; Terada, 2009; Lee and Hooi 2011:125). In other Southeast Asian countries, interest group politics is not an important factor for the proliferation of FTAs in the region. (Sally, 2006; Hoadley, 2008; Terada, 2009). A similar pattern was found in Latin America where the integration accord between Brazil and Argentina that preceded Mercosur or Mexico's decision to seek an FTA with the United States were launched by their respective government elites without prior business consultation (Schneider, 2004, Gardini, 2006; Fairbrother 2007).

⁷ Thai FTAs are presented as “the result of tourism by Thai leaders” (Hoadley, 2008:111).

⁸ In fact, Malaysia's decision to launch its first FTA, with Japan, occurred during Prime Minister Mahathir's tenure.

instrumental in liberalization schemes in Southeast Asia during the 1980s and 1990s (Yoshimatsu, 2002). As elaborated below and compared to other trade liberalization fora, bilateral FTAs offer greater incentives for government and business groups to increase their interactions through consultations and lobbying.

2.1 Increasing government consultation with the private sector in bilateral FTAs

The expansion in the scope of the multilateral *World Trade Organization* (WTO) regime to areas beyond trade in goods has forced government officials to gain detailed knowledge in a number of new disciplines. This has led some to distinguish the classical *pressure lobbying* from a newer *regulatory lobbying*, in which officials engage business associations in formulating regulatory regimes in exchange for technical information that the government lacks (Woll, 2008). It is posited here that, compared to multilateral liberalization, bilateral FTA negotiations present officials with specific challenges related to technical complexity, issue coverage, timeframe, and potential bargaining asymmetries, all of which should encourage greater consultation with the private sector in order to gain access to sectoral information.

East Asian countries' bilateral FTAs—either among themselves or with outside partners other than the United States or the European Union—usually cover few disciplines beyond tariffs. Still, most East Asian FTAs include provisions on investment and complex regulatory frameworks (e.g., standard recognition agreements). Even in the case of FTAs that are mostly focused on tariff liberalization—and also departing from multilateral negotiations—FTAs establish rules of origin (ROOs)⁹, most often product-specific, that require a very precise understanding of the production process for each tariff line. All these features demand significant technical expertise from

⁹ The ROOs determine whether a product qualifies for preferential tariffs based on a minimum level of origin or transformation within the bloc. Although they are included in FTAs to avoid trade deflection, strict ROOs could have protectionist purposes.

negotiation teams, thus calling for the involvement by trade officials not only of government agencies previously alien to trade formulation but also of business associations. These information demands are compounded by the shorter timeframe of FTA negotiations compared to multilateral rounds. Lastly, in bilateral FTA talks, developing countries' officials face capacity asymmetries when confronting negotiation teams from the United States, the European Union or Japan.

Hypothesis 1: *Compared to other trade fora, government officials are compelled to involve the private sector more frequently and intensely in the formulation of bilateral FTAs—particularly with large developed partners—to fill gaps in their technical expertise*

2.2 Greater incentives for and effectiveness of business lobbying in bilateral FTAs

Business apathy towards the ASEAN FTA (AFTA) is reported to have extended to bilateral FTAs (Ravenhill, 2010). Geographical inconsistency between regional production networks and mostly bilateral FTAs, along with the prevalence of low applied tariffs covering most of East Asia's trade, have decreased business enthusiasm for FTAs as reflected by firm-level surveys showing low FTA utilization (Ravenhill, 2010, Kawai and Wignaraja, 2011).¹⁰

It is contended here that bilateral FTAs create greater incentives for businesses—both potential winners and losers—to influence FTA formulation than do other forms of liberalization. Bilateral FTAs allow for a clearer assessment of potential positive and negative impacts because only the comparative advantage of the partner—including the foreign firms established at the time of negotiations—is of concern.

¹⁰ Calculation of *real* FTA utilization requires compilation of Preferential Certificates of Origin (PCOs). Although not collected (or made public) by most East Asian countries, this study obtained PCOs for selected Thai and Malaysian FTAs.

Businesses also have a better opportunity to effectively affect the formulation of bilateral FTAs because their negotiations allow more readily access to fewer policymakers and are negotiated over a shorter time.

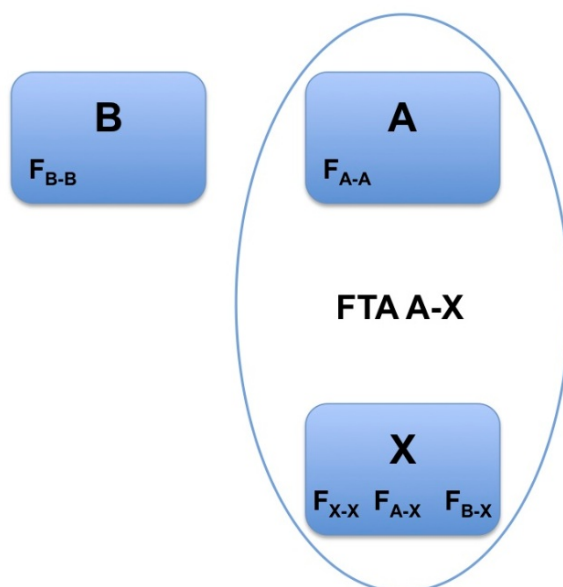


Figure 1 Firm F_A with production at home (F_{A-A}) and/or in country X (F_{A-X}) will favor a bilateral FTA A-X that eliminates trade barriers in X for products coming from A while discriminates against firms from country B that lacks an FTA with X. Compared to other forms of liberalization, a bilateral FTA A-X opens distinct possibilities for government-business consultations and business collective action and lobbying within each FTA partner and across borders. See text for details.

Interest groups are more likely to mobilize, either for or against, around reforms with clear and immediate impacts (Schneider, 2010). The gains for export-oriented firms from unilateral and multilateral liberalization are less certain and explicit than in bilateral FTAs. Consider a firm F_A from developed country A seeking to export a final product from its factory in A (F_{A-A}) to developing country X, which imposes high-tariffs on the product (Figure 1). In the context of global competition, gains to F_A from X's unilateral (or multilateral) liberalization are uncertain because F_A will have to vie with firms worldwide that also want to export perfect substitutes of the product to X. Meanwhile, an FTA between A and X will allow F_A to discriminate against exporters of

the product based outside the A-X FTA bloc. Consequently, bilateral FTAs generate greater incentives for exporters to influence their formulation than other forms of liberalization.

Unilateral and multilateral liberalization by X should primarily prompt the mobilization against it by less-competitive and protected sectors in X because reducing tariffs to every potential exporter worldwide is unambiguously negative for them. Instead, FTAs offer possibilities for selective liberalization coverage and sequencing, which are not granted under WTO's "single undertaking". FTAs allow countries, both developed and developing, to exclude from liberalization specific goods and disciplines where there is strong resistance by protectionist groups.¹¹ Likewise, FTAs permit differential tariff phase-outs, which are not always possible in multilateral liberalization.¹² These distinct features in FTAs are possible because of flexibilities and ambiguities in GATT's Article XXIV, which establishes that FTAs should liberalize "substantially all trade" between partners and "within a reasonable length of time". Although these requirements are usually interpreted as 90% of existing trade and 10 years, respectively, sensitive items in countless FTAs (between and among developed and developing economies) have been either liberalized over longer periods and/or excluded completely. Altogether, compared to other trade fora, bilateral FTAs generate gains for exporters that are more explicit while they could also accommodate long tariff phase-out periods—or even exclusions—for less-competitive and protected sectors.

¹¹ It has been argued that Japan and Korea began to pursue bilateral FTAs to carve out their sensitive agricultural sectors from liberalization accords (Pekkanen et al., 2007).

¹² The Doha Round proposes to reduce high tariffs more rapidly than lower tariffs, whereas in FTAs tariff peaks could be either reduced more slowly or simply excluded.

Hypothesis 2: *Clearer assessment of impacts and greater chances to affect policymaking along with more explicit gains for exporters and the possibility of excluding less competitive sectors in bilateral liberalization provide businesses, both winners and losers, with stronger incentives to influence the formulation of bilateral FTAs than in other forms of liberalization*

2.3 Bilateral FTAs provide unique opportunities for government consultation and business collective action and lobbying across borders

It is also contended here that, compared to other trade fora, bilateral FTAs create distinct possibilities for both business collective action and for channelling private sector inputs into policymaking across borders.

Unbundling and moving of production stages overseas, as part of production fragmentation, is a key driver not only of foreign direct investment and trade—and, consequently, of the emergence of production networks—but also of FTAs. Producers with unexploited economies of scale that have fragmented and relocated some production blocks to a third country and that are involved in vertical intra-industry/firm trade would support an FTA with that country (Chase, 2005; Kimura, 2006; Manger, 2012).

In Figure 1, under the multilateral regime, a firm F_A with production in A (plant F_{A-A}) that seeks to export its product to X could directly pressure X's government for a unilateral (or as part of a WTO round) and universal reduction of tariffs on that product, or could lobby X's government indirectly through its own government in A. In any case, it would be difficult for F_A to achieve collective action with firms across the globe to lobby X for tariff reduction on the product.

Firm F_A would favor and lobby for an FTA between A and X that reduces tariffs in X on final products from A while discriminating against firms outside the A-X bloc (Figure 1). Firm F_B from country B, which lacks an FTA with X, would lobby X's government (and potentially also indirectly through B's government) against any liberalization by X of final goods coming from A that are perfect substitutes for its own products, independent of whether F_B is based only in B (F_{B-B}) or has also production stages in X (subsidiary F_{B-X}).

If F_A has fragmented and relocated some production stages to X (F_{A-X}), F_A would also lobby for an FTA A-X that liberalizes tariffs in X on intermediate inputs coming from A (Figure 1). However, it is also argued that, paradoxically, F_B could also favor liberalization by X of intermediate inputs from A through FTA A-X if F_{B-X} happens to procure inputs from A.

In these scenarios, bilateral FTAs promote unique configurations of government-business consultation and business collective action and lobbying that are more difficult to realize in unilateral and multilateral liberalization. In addition to stronger incentives for business lobbying (for or against FTAs) at each level II (Hypothesis 2), compared to other trade fora, bilateral FTAs should also facilitate and foster relations *between* levels *across* borders. Namely, collective action between each country's levels II (e.g., between businesses in A and X, F_A and F_X , in Figure 1) as well as lobbying and consultation between level II in one country (businesses) and level I in the other (a government) (e.g., between F_A and X or between F_X and A). The likelihood that both governments (level I) will reach a deal increases when negotiators from both sides are presented with similar proposals from their respective levels II. Likewise, firms with a presence in both countries (e.g., F_A with plants F_{A-A} and F_{A-X}) would be able to present their preferences to governments in A and X. Thus, easier cross-border collective action

between businesses in A and X in bilateral FTAs should increase the possibility of both governments agreeing during negotiations. Cross-border business coordination and collective action could occur between firms not only in vertically integrated producer-driven industries but also in buyer-driven commodity chains.

Hypothesis 3: *Bilateral FTAs provide unique opportunities for governments and business in their relations across borders. Compared to other forms of liberalization, bilateral FTAs should encourage collective action between both countries' private sectors (both levels II) as well as consultation and lobbying between businesses and a government across borders (between level II in one country and level I in the other)*

2.4 Institutional change and creation through successive FTAs

By allowing businesses to participate in policymaking, governments create incentives for firms to organize, overcome collective action problems and invest in the institutional capacity of business associations (Schneider, 2010). In regulatory lobbying, business associations must compete in terms of their credibility as sources of knowledge for governments (Woll, 2008). Only associations with strong capabilities, which intermediate unified positions and that feed officials with technical expertise beyond particularistic interests would be reliable in consultations with their governments.

It is posited here that, as for government agencies, FTA negotiations generate greater technical information demands on business associations than do other trade fora. In unilateral and multilateral liberalization, less-competitive sectors simply lobby for sectoral exclusion. In FTA negotiations, however, these businesses need to learn about other restrictive measures available to them such as stringent ROOs, strict technical standards, etc. Likewise, in FTAs, exporters would not only lobby for tariff reductions

in the destination market but also will need to uncover existing regulatory obstacles and pressure for their removal and for the use of relaxed ROOs.

For government officials and the private sector alike, the negotiation of successive FTAs not only could result in better specification of their preferences and positions but also could strengthen their institutional capacities. Complex FTA negotiations provide trade officials with incentives to gain additional expertise and to improve their coordination skills in regard to consultations with other agencies and businesses. Likewise, FTAs should encourage business associations to improve their capabilities to coordinate members' inputs and fulfill information requests from governments. As these exercises are repeated over successive FTAs, the information and coordination costs entailed should spur institutional change and creation not only within government agencies and business associations but also in the communications channels between and among them.

Hypothesis 4: *Demands on governments and the private sector imposed by the negotiation of successive FTAs should improve their specification of preferences, generate incentives for both actors to invest in their capabilities and ultimately spur institutional change and creation*

3. Thailand's FTA policymaking

Trade policymaking in Thailand is fragmented across several agencies, the main being the *Ministries of Commerce, of Finance, of Industry and of Agriculture and Cooperatives*. The field research found that the Department of Trade Negotiations at the Ministry of Commerce tends to hold a liberal stance on liberalization, and it is the main focus of influence by foreign multinationals and Thai firms with international ties. In

turn, domestically oriented businesses find greater leverage in the Office of Industrial Economics within the Ministry of Industry.

The Ministry of Commerce negotiates market access for all trade accords and in most cases it also acts as the coordinating agency.¹³ The leading ministry commissions impact studies to other agencies and independent Thai think tanks. A cabinet-level *Committee on International Economic Relations Policy* provides guidelines on international economic issues and considers trade proposals before they Cabinet sanctions them. As discussed below, it is only since 2007 that a parliamentary approval is required before launching of negotiations and for final ratification of FTAs.

Since the 1980s, the strengthening of business associations has introduced formal mechanisms for government-business consultation and business influence (Laothamatas, 1992).¹⁴ Peak business associations in Thailand, namely, the *Federation of Thai Industries*, the *Thai Chamber of Commerce*, and the *Thai Bankers Association* participate in consultative committees at government agencies. The *Joint Public-Private Sectors Consultative Committee* is the highest-level government-business forum, but it has played a minor role since the mid-1990s.

The Thai position at the Uruguay Round that led to the creation of the WTO originated with top trade officials and with little business consultation. It was only in 1999 that peak associations established the *Joint WTO Committee* to coordinate private sector participation in multilateral negotiations. However, sluggish progress at the Doha Round has abated business interest in the WTO.

Thailand is a founding member of ASEAN, whose agenda, including the launch of AFTA, historically has been largely driven by high-level political summitry with

¹³ The *Minister of Foreign Affairs* represents Thailand in the Asia Pacific Economic Forum and was the leading agency for the FTAs with Japan and the United States.

¹⁴ Clientelistic networks have nevertheless persisted and many businesspersons are members of Parliament and the Cabinet.

limited business input (Ravenhill, 2008). During the 1990s, and especially following the 1997 Asian financial crisis, ASEAN governments accelerated liberalization in response to pressure from Japanese and Western firms (Yoshimatsu, 2008). However, it was only after 2003 that intra-ASEAN tariffs were significantly reduced and in 2010 that were eliminated. In Thailand, AFTA liberalization was supported by key exporting industries (e.g., automotive, food, and textiles and garments). Utilization of AFTA by Thai exporters during that period increased from 10.7% in 2002 to 31.5% in 2011 (data provided by Ministry of Commerce).

Slow progress at the WTO and AFTA prompted Singapore to embark upon bilateral FTAs, a move followed by Thailand, where many early initiatives were closely linked to the personalized decision-making style of Prime Minister Thaksin (2000-2006). As of October 2015, in addition to AFTA—and, as a member of ASEAN, of five ASEAN-centered regional FTAs—Thailand has implemented five bilateral agreements (Table 1).¹⁵

3.1 Early FTAs: small benefits and limited interest by a mostly reactive private sector

Before negotiating with larger trading partners, Thailand approached some small and distant economies such as Bahrain and Peru (Table 1). Research confirmed that proposals for these agreements originated from Prime Minister Thaksin and that, given their weak economic basis, negotiations proceeded with little involvement of or interest from businesses. Although Thai bureaucrats initially had little choice but to follow up on Thaksin's initiatives, interviews revealed that officials questioned certain FTA proposals and often succeeded in persuading Thaksin about their lack of economic

¹⁵ None of the FTAs explored by Thailand during the late 1990s at the initiative of the bureaucracy progressed to the negotiation stage. ASEAN has FTAs with China, Japan, Korea, Australia/New Zealand and India. These ASEAN-centered FTAs tend to be less comprehensive and provide for slower liberalization than their respective bilateral agreements.

rationale. Accordingly, some FTA proposals or even negotiations were postponed or abandoned altogether, like it happened in those with Bahrain and Peru.

Table 1: Thai Bilateral FTAs *

Official Name**	Coverage	Timeline	Status
Thailand-Bahrain CEPA	EHS: 626 HS6 lines CEPA: Trade in Goods	EHS: Negotiations: Started in early 2002. Signature/Implementation: Dec 2002. CEPA: Negotiations: started in 2003-suspended in 2005	EHS: Abandoned CEPA: Negotiations suspended
Thailand-China EHS	188 HS6 lines	Implementation: Oct 2003. Superseded by ASEAN-China FTA	Subsumed into ASEAN-China FTA
Thailand-India EHS & FTA	EHS: 84 HS6 lines FTA: Comprehensive	EHS: Feasibility Joint Study: May-Dec 2002. Negotiations: Dec 2002-Oct 2003. Implementation: Sept 2004 FTA: Negotiations: Abandoned/resumed several times. Resumption of talks about services liberalization in late 2013	EHS: Active. FTA: Abandoned/Resumed Under negotiation
Thailand-Australia FTA	Comprehensive	Feasibility Joint study: July 2001-May 2002. Negotiations: June 2002-Oct 2003. Implementation: Jan 2005	Active
Thailand-Peru CEPA	EHS: 4000 HS6 lines. CEPA: Comprehensive	EHS: Feasibility Joint Study: July 2002. Framework: signed in Oct 2003. Negotiations: Jan 2004-Nov 2005. Protocols on ROOs signed in Oct 2009 and 2010. EHS implemented in Jan 2012. CEPA: Negotiations concluded but not implemented yet	EHS: Abandoned between Nov 2005-Oct 2009. Active CEPA: concluded but not implemented
N. Zealand-Thailand CEPA	Comprehensive	Negotiations: April-Nov 2004. Implementation: July 2005	Active
Japan-Thailand EPA	Comprehensive	Feasibility Joint Study: Dec 2003. Negotiations: Feb 2004-Aug 2005. Implementation: Nov 2007	Active
Thailand EFTA FTA	Comprehensive	Negotiations: Oct 2005-Jan 2006. Abandoned	Abandoned
Thailand-United States FTA***	Comprehensive	Impact study: Oct 2003. Negotiations: July 2004-Jan 2006. Abandoned	Abandoned
Thailand-Chile FTA	Comprehensive	Feasibility study: March 2006. Negotiations: April 2011-Aug 2012. Signature: Oct 2013. Not implemented yet	Signed but not implemented
Thailand-European Union FTA ****	Comprehensive	Negotiations: Started in March 2013 (latest round: Sept 2013). Negotiations suspended after May 2014's coup d'état	Under negotiation (Suspended temporarily after the 2014's coup d'état)

Source: Interviews and governments' websites complemented with information from the local press (as of October 2015)

* Only bilateral FTAs that have reached the negotiation stage are included

** Abbreviations: CEPA: Closer Economic Partnership; EFTA: European Free Trade Association; EPA: Economic Partnership Agreement.

HS6: harmonized system code at 6 digit-level (around 5,700 items)

*** Thailand expressed interest in the Trans-Pacific Partnership (TPP) in December 2012 but has not joined it (see text for details)

**** Negotiations for an ASEAN-European Union FTA started in May 2007 but abandoned in early 2010 (see text for details).

In 2002, Thailand struck an Early Harvest Scheme (EHS)—initially liberalizing only a reduced number of items—with China with plans for a full-fledge FTA to follow. This EHS adversely impacted Thai farmers, who were not consulted on the deal, bringing FTAs into the public sphere for the first time and sparking the creation of *FTA*

Watch, a civil society coalition that has been instrumental in building opposition to FTAs in Thailand.

A year later, Thailand signed a bilateral EHS with India and began negotiations for a comprehensive FTA. Consultations with business were limited to the peak associations but interviews also uncovered proactive pressure by firms in the automotive and electrical appliance sectors. Over the last fifteen years, Thailand has become Southeast Asia's hub for multinational carmakers. The automotive industry is the country's second-largest source of export revenue and politically very influential. Toyota, which had recently built an engine plant in India, sought to integrate it into its Thai/ASEAN production network. Japanese producers of electrical appliances based in Thailand were eager to level the playing field with Korean firms in India. Reflecting these business interests, over 85% of the early utilization of the EHS by Thai importers was concentrated in automotive components, despite the fact that these items represent only 3% of those covered by the EHS. In turn, over 40% of the Thai exporters' EHS utilization corresponded to electrical appliances (data provided by the Ministry of Commerce). India's reluctance to liberalize other sectors has dampened Thai officials' and businesses' interest in concluding FTA negotiations, which have dragged on for more than a decade (Table 1).

Thaksin also approached the European Free Trade Association, but the marginal economic benefits to be realized resulted in the suspension of negotiations after only two rounds. In line with our initial argument, these FTAs indicate that political willingness, even at the highest level, is not a sufficient condition to conclude an FTA when it is not accompanied by clear economic impacts, even if such impacts are limited to a small number of economic sectors.

3.2 FTAs with Australia and Japan: pressure from sectoral business interests

The Thailand-Australia FTA (TAFTA) was Thailand's first comprehensive FTA with a developed nation and to include provisions on investment and services and product-specific ROOs. These features imposed previously unknown demands on Thai officials that, in line with Hypothesis 1, had to rely on expertise from business associations. Interviews found that the Federation of Thai Industries and the Thai Chamber of Commerce collected sectoral data on production structure to elaborate what later became the Thai proposal for ROOs.

As proposed by Hypothesis 2, sectors that anticipated large impacts from TAFTA, whether positive or negative, attempted to influence its formulation. TAFTA was expected to be detrimental to small Thai farmers, especially in the dairy industry, whose plea was taken up by FTA Watch, which mobilized against the deal. In turn, the proactive and well-organized Thai Textile and Thai Garment Manufacturers Associations lobbied in favor of TAFTA to alleviate strong competition in the Australian market. But TAFTA's key sponsor was the automotive industry. Historically, Australia has been the single largest market for Thai-made vehicles, representing a quarter of total Thai exports to that country at the time of negotiations. Production of vehicles and automotive parts in both countries is largely complementary, and a bilateral FTA would help Japanese and American carmakers with plants in both countries to rationalize procurement and production. This research found that even *before* negotiations started, automotive firms lobbied the Thai government in favor of TAFTA.¹⁶

With the automotive sector in both countries (both levels II), actually the same firms, pushing for TAFTA, negotiating teams (level I) found it easy to conclude an

¹⁶The Australian Ambassador to Thailand and the President of General Motors Thailand pressed the Thai Industry Minister for the opening of negotiations. Automotive associations in Thailand lobbied the Thai Ministry of Commerce and Thaksin himself for total and reciprocal liberalization.

agreement. The final treaty provided for the full and reciprocal liberalization of the two automotive industries. Thailand also obtained up to twenty years to fully open its dairy sector and gained improved access in Australia for its garments.

In contrast to the reported lack of interest in FTAs by Thailand's private sector, our analysis of official preferential trade records shows that overall utilization of TAFTA among exporters has been high from the start, averaging 62.3% for 2005-2013 (data provided by the Ministry of Commerce). The active role played by the automotive industry during negotiations is illustrated by the trebling of Thai-made vehicle exports to Australia and the high level of FTA utilization by this sector. In the early years, more than half of all Thai exports using TAFTA preferences were vehicles and automotive parts, for which utilization was virtually complete (data provided by the Ministry of Commerce).

Specific sectoral business interests also drove the Japan-Thailand Economic Partnership Agreement (JTEPA). As Thailand's main investor, its first source of imports and a major export destination, this FTA had a solid economic basis. The broad scope of the JTEPA required government agencies that had never been involved in multilateral rounds to participate in the negotiations. In line with Hypothesis 1, research found that the Thai government conducted more *ex-ante* impact studies and more frequent and effective consultations with peak and primary concerned business associations than in previous FTAs. Still, associations and individual firms seeking to influence JTEPA took a proactive role, preparing impact reports and using their contacts within ministries, and even the cabinet. As with TAFTA, the government depended on the information provided by Thai peak and sectoral associations to prepare its negotiation proposals for ROOs and for mutual recognition agreements to remove technical and standards barriers.

More substantial and efficient participation by the private sector during JTEPA negotiations was helped by improved capacity among government officials and business associations. In line with Hypothesis 4, after several FTAs both actors had upgraded their internal capabilities, and some channels of communication became institutionalized. For instance, in mid-2004, soon after the start of JTEPA negotiations, peak business associations established their respective *Committees on FTAs* along with a separate *Subcommittee on JTEPA* to coordinate inputs from members and serve as focal points for government officials. Sectoral associations also created their own FTA taskforces. In November 2004, in the midst of negotiations with Japan and just after the second round for the Thai-United States FTA, the Thai government established the cabinet-level *National Committee on FTA Strategy and Negotiations* to provide direction and coordination across FTAs.

In Thailand, JTEPA obtained the support of the influential textiles and garments, food, and jewelry industries and of Japanese carmakers. Japan has traditionally represented the second-largest market for Thai garments after the United States. The Japan Textile Federation favored FTAs with ASEAN countries as a way to break from their dependence on China. Japan is also one of the top destinations for the competitive Thai seafood and food processing sectors.¹⁷ Interviews found that the Thai associations representing these industries lobbied the Thai government for improved access in Japan not only through scheduled consultations but also proactively, via direct channels within the Ministry of Commerce and the Cabinet. However, as with TAFTA, business efforts to influence JTEPA were more public and intense in the automotive sector. Japanese carmakers sought to eliminate Thai tariffs on passenger cars, automotive parts and steel imported from Japan, liberalization that was strongly opposed by American and

¹⁷ At the time of negotiations in 2005, Japan was the first destination for Thai exports of fresh shellfish (30.4%) and processed meat and seafood (27.5%) and second for processed fruits and vegetables (10.6%).

European assemblers and automotive parts manufacturers from all origins based in Thailand.¹⁸ Notably, liberalization of automotive parts and steel also had the support of American assemblers, which import some of these inputs from Japan. Japanese and Western firms aired to the Thai media their strongest positions, and research found that some of them lobbied Cabinet ministers and even Prime Minister Thaksin himself.

In support of Hypothesis 3, JTEPA also illustrated possibilities in bilateral FTAs for business collective action and lobbying across borders. Even *before* the start of negotiations, the Japan Textile Federation dispatched representatives to Thailand to discuss tariffs and ROOs with their counterparts. Interestingly, Japanese government officials often participated in these meetings. Cross-border business collective action also occurred in the food sector, as Thai associations contacted trading companies in Japan to consolidate positions that were to be passed to their respective governments.

The Thai government was concerned that JTEPA could jeopardize existing or future investment in the automotive sector. Accordingly, Thailand accepted the progressive liberalization of automotive parts and steel from Japan but refused to liberalize vehicles, except for a small tariff reduction on cars with engines of more than 3000 cc, which represent less than 0.5% of the market. In turn, Japan reduced tariffs on garments and textiles, footwear, jewelry, and processed food. Signing of the treaty was postponed indefinitely due to political instability in Thailand that eventually led to the September 2006 coup d'état. When the post-coup interim government signalled that negotiation and/or signing of all pending FTAs would be put on hold until after elections—scheduled for one year later—Thai business associations publicly urged the

¹⁸ This study obtained access to letters addressed to the Thai Cabinet by American and European carmakers and by the European Union Representative in Thailand opposing the liberalization of the automotive sector in JTEPA (mimeo). Notably, JTEPA was also resisted by some small- and medium-size Japanese firms (e.g., automotive part manufacturers, services sector) that had moved to Thailand and feared that JTEPA would increase competition from other Japanese firms based in Japan.

government to resume existing FTA negotiations and to sign JTEPA, which was ratified six months later.

Since its implementation, Thai exporters' overall utilization of JTEPA has stood low (27.2% in 2013), which could be explained because more than half of Japanese tariffs were already at zero, and many items remain covered by long tariff phase-out periods.¹⁹ Low overall JTEPA utilization also hides significant sectoral variability; utilization by Thai exporters of processed food, jewelry and textiles and garments items, key supporters of the deal, exceeds 70% (data provided by the Ministry of Commerce).

Of note, collective action and lobbying across borders between the Thai and Japanese private sectors (Hypothesis 3) did not end with the enforcement of the agreement. Thai and Japanese peak associations met in February 2011 to publicly demand that both governments review JTEPA to accelerate schedules and expand product coverage.

3.3 Later FTAs with the largest partners: businesses taking the initiative

For decades and until 2010, the United States was the single largest market for Thai exports.²⁰ Establishing a bilateral Thailand-United States FTA (TUSFTA) was important not only to improve access for Thai agricultural products, processed food, garments, commercial vehicles and jewelry, but also to attract investment. In contrast to Australia or Japan, the United States' key interests in TUSFTA fell squarely around services liberalization and stricter intellectual property rights rather than on trade in goods liberalization.

¹⁹ When the use of JTEPA is calculated only for items for which JTEPA offers a tariff margin—the difference between the preferential and the most-favored nation tariff is higher than zero—JTEPA utilization for exports in 2013 increases to 79.0%.

²⁰ At the time of negotiations, the United States absorbed 15.5% of total Thai exports, including 49.7% of Thai garments, 34.5% of footwear, 29.5% of jewelry, and 26.6% of processed meat and fish.

Thai officials had to confront teams of experienced American negotiators, opening for discussion issues Thailand had never dealt with either at the WTO or in previous FTAs (e.g., labor and environmental standards, financial liberalization, government procurement, competition policy). This meant that some chapters of the negotiation were assigned to less trade-savvy ministries, although the newly established National Committee on FTA Strategy and Negotiations helped with overall coordination. As postulated by Hypotheses 1 and 4, the complexity of negotiations prompted the Thai government to consult frequently with concerned business associations, which in turn established dedicated TUSFTA committees to coordinate members' inputs and consultations with trade officials.

Importantly, interviews revealed that the American and Thai private sectors took the lead over their respective governments. Organizations representing American business interests in Thailand (e.g., the American Chamber of Commerce, the United States-ASEAN Business Council, and the Thailand-United States Business Council) mobilized promptly and commissioned an impact study in early 2003. In March 2004, before negotiations had started, the United States-ASEAN Business Council established the *United States-Thailand FTA Business Coalition* to lobby both governments for a comprehensive agreement. Likewise, key Thai-owned businesses potentially affected by TUSFTA acted proactively and lobbied for or against the deal. Thus, Thai associations for the garment, jewelry and processed food industries urged the government to open negotiations. In turn, TUSFTA was opposed by Thai firms in the banking, the generic drugs and the logistics sectors, although the lobbying stand of some of the associations representing them was less effective, reflecting limited leverage and/or problems organizing collective action.²¹ In any case, the most significant resistance came from

²¹ The Thai logistics sector was fragmented across three different associations.

civic groups. Of all of the Thai FTAs, it was TUSFTA that stirred the strongest civic mobilization, especially by groups working on intellectual property rights and access to medicines.²²

TUSFTA also supports Hypothesis 3. Even before talks had started, associations representing Thai garments and processed food producers directly lobbied American officials (interviews; official lobbying records).²³ In turn, American pharmaceuticals lobbied the Thai government for stricter intellectual property right provisions in TUSFTA. Interviews also revealed that the American and Thai negotiation teams met with key business associations during their respective visits to Thailand and the United States.

Although bilateral talks were suspended in early 2006 because of Thailand's continuing political instability, there were few prospects for an accord at the time due to a lack of progress on American demands. Nevertheless, interviews found that Thai businesses continued to lobby the post-coup interim government and successive elected governments to reopen talks with the United States.

In 2008, the United States discontinued its bilateral approach in Asia in favor of the *Trans-Pacific Strategic Economic Partnership* (TPP). Thai exporters to the United States preferred TUSFTA to the TPP because a bilateral agreement discriminates against competing firms established elsewhere in ASEAN. When Vietnam and Malaysia—direct Thai competitors in the American market, particularly for garments, footwear, furniture and/or rubber—joined the TPP negotiations in 2008 and 2010, respectively, Thai exporters in these sectors stepped up their pressure in favor of the

²² Opposition to TUSFTA was an important contributor to the political instability that eventually resulted in the September 2006 coup d'état.

²³ As early as June 2004 and throughout 2004-2006, the Thai Garment Manufacturers Association hired lobbying firms in the United States to pressure the United States Trade Representative in favor of TUSFTA. The Thai Food Processors' Association also hired American lobbyists during 2005-2006 for the same purpose (interviews; Clerk United States House of Representatives, <http://disclosures.house.gov/ld/ldsearch.aspx> and Office of Public Records, United States Senate, http://www.senate.gov/legislative/Public_Disclosure/LDA_reports.htm, accessed on August 29, 2009).

TPP. Japan's participation in the TPP will also negatively impact the powerful Thai rice sector.²⁴ As in TUSFTA, TPP is rejected by Thai firms in the services sector, generic drug producers, small farmers and health-related civic groups.

In November 2012, the Thai government issued an official statement indicating interest in the TPP which entry was conditioned on its undertaking of required domestic procedures.²⁵ Nonetheless, Thailand did not enter the TPP talks before these concluded in October 2015. Pending on the formal ratification by each of countries party of the agreement, the TPP is expected to be implemented in 2017. Thailand will need to overcome first significant obstacles before it can consider joining the TPP bloc (see below).

In 2007, the European Union proposed an FTA with ASEAN. As a group, the European Union is a major market for Thai exports, and interviews found that concerned Thai business associations pressed their government to negotiate improved market access.²⁶ However, three years later, the European Union abandoned its regional approach and commenced bilateral FTA negotiations with selected ASEAN countries, beginning with Singapore (already implemented), Malaysia and Vietnam.²⁷ Earlier preferential access by these countries could put Thai exporters at a disadvantage, especially as Thailand lost preferential treatment under the European Union's Generalized System of Preferences in January 2015. Thai and European business associations have publicly urged both sides to reach a deal, even after the European Commission suspended the negotiations following the May 2014 coup d'état in Thailand (*The Nation*, January 22, 2015).

²⁴ In 2014, the United States supplied 58.9% of Japan's rice imports followed by Thailand with 33.3%..

²⁵ [https://www.whitehouse.gov/the-press-office/2012/11/18/joint-press-statement-between-president-barack-obama-and-prime-minister-](https://www.whitehouse.gov/the-press-office/2012/11/18/joint-press-statement-between-president-barack-obama-and-prime-minister) (accessed December 18, 2012) and *The Nation*, November 20, 2012

²⁶ At the time, Thailand exported to the European Union 41.4% of its global exports of garments, 40.6% of its footwear, 25.6% of its processed meat and fish, 23.2% of its pickup trucks and 20.7% of its jewelry.

²⁷ For the same reasons that in TUSFTA, Thai exporters favored a bilateral FTA with the European Union over an ASEAN-European Union FTA. The European Union abandoned talks for an FTA with ASEAN because of the lack of progress in negotiations locked around the minimum common denominator of the less developed ASEAN countries. Nevertheless, in April 2015, the European Union expressed interest in resuming talks with ASEAN as a group.

The slowdown in Thailand's FTA activity since the 2006 coup d'état is related not only to persistent political instability but also to the procedural changes introduced by the 2007 Thai Constitution. Under Article 190, drafted by civic groups to restrain the proliferation of FTAs, international agreements with a significant economic or social impact must obtain parliamentary approval before the start of negotiations and for final ratification, and the government is obliged to consult all stakeholders, including the general public. The Thai private sector repeatedly requested the repeal of Article 190. Although this requirement has slow down Thailand's negotiation and signing of new FTAs respect to neighbouring countries, it has also improved accountability in the policymaking process. Article 190 has not prevented the ratification of several ASEAN-centered FTAs. However, given political fragmentation and a highly mobilized civil society, Article 190 hampered progress for FTAs that contain WTO-plus provisions, such as the ongoing Thai-European Union FTA or the TPP. In any case, for the interim government formed after the 2014 coup, the negotiation of controversial FTAs is a low priority, and it remains to be seen whether the constitution now being elaborated includes any provision similar to Article 190.

Before the launching of bilateral talks with the European Union, and following Article 190's mandate, the Ministry of Commerce established an unprecedented process of consultations, whose conclusions were then forwarded to the Cabinet and the Parliament.²⁸ In line with Hypothesis 1, government agencies at these hearings acknowledged the need to obtain detailed information about production processes from business associations before negotiating ROOs.

Several FTA negotiations with smaller trading partners remain in limbo at different stages in light of their lack of substantial economic rationale, whereas others

²⁸ Opinions were collected from 161 business associations, 455 small farmers groups, 445 civic associations and 80 government agencies (mimeo).

have been abandoned (Table 1). Of note, increased commercial exchanges prompted some Thai export-oriented sectors to push for reconsidering older proposals such as the Thai-Peru FTA.²⁹

4. Malaysia's FTA policymaking

By developing country standards, Malaysia has a liberal trade and investment regime outside of the sectors related to the promotion of the ethnic-Malay/Bumiputera population, such as government procurement, strategic services and some manufacturing industries, notably the automotive industry. International trade policy proposals emerge primarily from the Prime Minister's department and are formulated by the bureaucratic elite at the *Ministry of International Trade and Industry*, before they are returned to the Cabinet for its sanction. The Ministry of International Trade and Industry also coordinates inputs from other agencies and the private sector. In contrast to Thailand, impact studies conducted or commissioned by the government are usually not disclosed to the public.

Peak business associations comprise the *Federation of Malaysian Manufacturers* and the three smaller Malay, Indian and Chinese *Chambers of Commerce*, which are represented on the advisory boards of government agencies.³⁰ Interviews attested to the strong secretariat and reliability in terms of technical intelligence of the Federation of Malaysian Manufacturers. In line with the more centralized and behind doors Malaysian policymaking process, consultations with the private sector in the context of FTA formulation remain closely guarded. In turn, business associations rarely use the media to pressure or praise the government on specific policies, as Thai associations do.

²⁹ Following an 800% surge in automotive exports to Peru during 2004-2008, carmakers in Thailand lobbied to resume Thai-Peru FTA negotiations.

³⁰ Since the 1980s, Malaysia has endorsed government-business collaboration in economic policymaking, although this has often blurred the boundaries between the private sector, the state and the ruling party (Gomez, 2009).

Field research found that during WTO rounds government consultations with the private sector or proactive participation by the latter have been limited. Until recently, Malaysia was a laggard within ASEAN as it resisted early programs for intra-regional liberalization and, for several years following the 1997 Asian crisis, excluded the automotive sector from its AFTA schedules (Postigo, 2014). Although initially reluctant, fear of exclusion from competing nations' FTAs prompted Malaysia to start negotiating its own FTAs. In addition to five regional ASEAN+1 FTAs, as of September 2015, Malaysia has implemented seven bilateral FTAs (Table 2).

Table 2: Malaysian Bilateral FTAs*

Official Name**	Coverage	Timeline	Status
Malaysia-Japan EPA	Comprehensive	Feasibility Joint Study: Feb-Dec 2003. Negotiations: Jan 2004-May 2005. Implementation: July 2006	Active
Malaysia-Pakistan CEPA	<u>EHS</u> : 125 HS6 lines <u>CEPA</u> : comprehensive	<u>EHS</u> : Signature: Dec 2005. Implementation: Jan 2006. <u>CEPA</u> : Negotiations: April 2005-Sept 2007. Signature: Nov 2007. Implementation: Jan 2008	<u>EHS</u> : Superseded by the CEPA <u>CEPA</u> : Active
Malaysia-New Zealand FTA	Comprehensive	Negotiations: May 2005-May 2009. Implementation: Aug 2010	Active
Malaysia India CECA	Comprehensive	Feasibility Joint Study: Jan 2007. Negotiations: 2008-2010. Implementation: July 2011	Active
Malaysia-Chile FTA	Trade in Goods	Negotiations: June 2007-May 2010. Implementation: Feb 2012	Active
Malaysia-Australia FTA	Comprehensive	Negotiations: April 2005-March 2012. Implementation: Jan 2013	Active
Malaysia-Turkey FTA	Trade in goods	Negotiations: May 2010-Jan 2014. Implementation: Aug 2015	Active
Malaysia-United States FTA & TPP ***	<u>Bilateral FTA</u> : comprehensive <u>TPP</u> : comprehensive	<u>Bilateral FTA</u> : Negotiations: June 2006-July 2008. Abandoned <u>TPP</u> : Negotiations: Joined in Oct 2010. Agreement reached in October 2015	<u>Bilateral FTA</u> : Abandoned <u>TPP</u> : Agreement on final text. Pending ratification and implementation
Malaysia-European Union FTA ****	Comprehensive	Negotiations: Started in Dec 2010. Latest round in Aug 2013	Under negotiation

Source: Governments' websites complemented with information in the local press (as of October 2015)

* Only bilateral FTAs that have reached the negotiation stage are included

** Abbreviations: CECA: Comprehensive Economic Cooperation Agreement; CEPA: Closer Economic Partnership; EHS: Early Harvest Scheme; EPA: Economic Partnership Agreement; HS6: harmonized system code at 6 digit-level (around 5,700 items); TPP: Trans-Pacific Partnership Agreement

*** Although the TPP is not a bilateral FTA is included here for completeness because it superseded negotiations for a bilateral Malaysia-United States FTA

**** Negotiations for an ASEAN-European Union FTA started in May 2007 but abandoned in early 2010 (see text for details).

4.1 Early FTAs: top-down policymaking and sectoral interests by a mostly reactive private sector

Malaysia negotiated its first bilateral FTA with Japan, one of its largest trading partners, and, unlike Thailand, it did not have the opportunity to hone its negotiating skills with smaller partners. Although the initiative in Malaysia for the *Malaysia-Japan Economic Partnership Agreement* (MJEPA) rested with the political leadership and top bureaucratic ranks, interviews indicated that business consultations were broader than for the ASEAN-China FTA implemented a year earlier, and that trade officials gathered technical intelligence from peak business associations.

Outside of a few sectors, MJEPA elicited limited enthusiasm among a mostly defensive Malaysian business community. Support for MJEPA came primarily from the wood products, plastics, garments and palm oil industries that were more dependent on the Japanese market.³¹ Although the Malaysian textiles and garments sector had lost much of its previous capacity, it played a proactive role in favor of MJEPA because it faced relatively higher tariffs (up to 11%) than did other industries. Malaysian opposition to the deal came mainly from the Malaysian national carmakers, automotive part manufacturers and firms in the services sector (see below). The Malaysian Iron and Steel Industry Federation, which learned from its exclusion during the formulation of the ASEAN-China FTA, pressured the government to adopt its position on MJEPA. For their part, Japanese businesses' interest on MJEPA related to the elimination of tariffs on automobiles, iron and steel, and textiles along with easing restrictions on services and government procurement.³²

³¹ At the time of negotiations in 2004, Malaysia sent to Japan 28.9% of its total exports of wood products, 11.3% of its plastics, 5.6% of its garments and 4.6% of its palm oil.

³² Before negotiations started, automotive and steel and iron products jointly represented more than 19.5% of Japan's exports to Malaysia.

In line with Hypothesis 3, MJEPA fostered cross-border business collective action and lobbying. As in Thailand, even *before* negotiations had started, representatives from the Japan Textile Federation met with the Malaysian Textile Manufacturers Association to discuss a common proposal. Japanese officials often attended these meetings. Interviews also discovered that the Japan Iron and Steel Federation contacted its Malaysian partner to find areas of agreement. Japanese steel producers lobbied for liberalization in Malaysia not only their government but also directly the Malaysian government. Interestingly, Japanese officials also contacted the Malaysian Iron and Steel Industry Federation and offered their support in pushing for domestic reforms.

Negotiations stumbled over liberalization of the highly protected Malaysian automotive sector. In the 1980s and 1990s, the Malaysian government launched several national automotive brands, which it has sheltered from competition ever since. Interviews found that the Malaysian government consulted not only with national carmakers but also with individual Japanese and Western firms and the Malaysian Automotive Association, which encompasses the assemblers and distributors of foreign automotive brands. In some instances, these consultations involved even the trade Minister and Prime Minister Abdullah himself. Japanese carmakers threatened to move all of their assembly to Thailand if liberalization demands were not met. Ultimately, Malaysia agreed to fully open its automotive and steel sectors to Japan by 2015 but did not exceed existing multilateral concessions on investment and services. The Malaysian government accepted to liberalize its automotive industry because Japanese models can enter Malaysia tariff-free from Thailand anyway through AFTA (Postigo, 2014). On its part, Japan eliminated tariffs on chemicals, plastics, palm oil, wood items, and textiles and garments.

Overall, Malaysia exporters' use of MJEPA remains low, at approximately 12% of total exports. However, reflecting initial lobbying interests, half of all Malaysian exports under MJEPA correspond to palm oil and plastics that, like the garment sector, make close to 100% utilization of preferences (data provided by the Ministry of International Trade and Industry). Malaysian imports of Japanese complete knock-down cars, the main import item under MJEPA, have increased by 460% through 2014.

After MJEPA, Malaysia increased its FTA activity and entertained proposals with smaller trading partners that originated more often from the initiative of these countries than from either the Malaysian government or businesses (Table 2). In line with our initial argument, the limited economic benefits of and private sector interest in some of these FTAs have dragged on negotiations. In 2007, Malaysia signed an FTA with Pakistan, the third-largest market for Malaysian palm oil in 2000-2005, which accounted for 65% of Malaysia's total exports to that country during that period. Consultation with the Malaysian private sector was limited to peak associations and the Palm Oil Board and Council. The Malaysia-India FTA has primarily benefited influential infrastructure firms and palm oil producers that lobbied for the agreement. Expertise gained during previous negotiations helped trade officials deal with technical issues and beyond-border disciplines in FTAs with New Zealand, Chile, Australia and Turkey.

4.2 FTAs with the largest partners: businesses taking the initiative

Until 2008, the United States was Malaysia's largest export market and source of foreign investment. Malaysia's main exports include electronics, wood and rubber products and garments.³³ A bilateral Malaysia-United States FTA (MUSFTA) was

³³ At the start of bilateral negotiations in 2006, the United States absorbed 21.3% of Malaysian exports and some of them faced high import duties: up to 30.7% on footwear, up to 28.2% on garments and up to 14.9% on textiles.

therefore important for all these sectors. MUSFTA was opposed by Malaysian firms in the generic drugs and services sectors, and some civic groups. American businesses sought a comprehensive FTA to liberalize services and government procurement and introduce labor and environmental standards and stricter competition and intellectual property rights provisions.

Malaysia was not longer novice at FTAs but interviews found that the complexity entailed in MUSFTA compelled trade officials to conduct more impact analyses and consultations with the private sector and other government agencies, some of which had not been involved in previous FTAs (Hypothesis 1).

As anticipated by our theoretical framework, the relevance of the United States market meant that the push for MUSFTA in Malaysia emerged not from the government but from the private sector itself (Hypothesis 2). In fact, the Malaysian government was reluctant to open negotiations on government procurement and other politically sensitive sectors related to ethnic Malay/Bumiputera firms. Interviews found that the Federation of Malaysian Manufacturers and the Malaysian Textiles Manufacturers Association, concerned about other ASEAN countries' negotiations with the United States, urged the Malaysian government to launch its own FTA. The Federation of Malaysian Manufacturers, which traditionally maintains a discrete lobbying approach, took an unprecedented active and public position in the media in favor of MUSFTA. At the time, the United States accounted for two-thirds of all Malaysian garment exports, and accordingly, the Malaysian Textiles Manufacturers Association also took a proactive position in favor of MUSFTA.

On December 2005, before negotiations began, American multinationals who were members of the United States-ASEAN Business Council created the *United States-Malaysia FTA Business Coalition*, which along the American Chamber of

Commerce and other business pressure groups lobbied the United States Congress and the American Trade Representative for a comprehensive MUSFTA deal.

Field research found that MUSFTA fostered business relations across borders (Hypothesis 3). As early as July 2006, the Malaysian Textiles Manufacturers Association hired lobbying firms in the United States to pressure the American Trade Representative in favor of MUSFTA's liberalization of garments (interviews; official lobbying records).³⁴ In turn, American business groups pressured Malaysian officials for the liberalization of services and government procurement. Field interviews also revealed that business communities from both countries arranged *ad-hoc* bilateral meetings (between both levels II).

As Malaysia embarked upon increasingly relevant FTAs, the private sector created institutions to reduce transaction costs in collective action and lobbying (Hypothesis 4). Coinciding with the beginning of MUSFTA negotiations, the Federation of Malaysian Manufacturers led the creation of the *Private Sector Task Force on FTAs*, to coordinate positions across business associations and to provide feedback to government officials, who also attend these meetings.

MUSFTA negotiations stalled in July 2008 because of Malaysia's resistance to the liberalization of government procurement and services and the change in American policy in favor of the TPP. However, interviews found that the Malaysian private sector continued to lobby both governments in favor of MUSFTA until late 2009. The Malaysian peak and textiles and garments business associations favored MUSFTA over the TPP because the former enhanced their leverage during negotiations and discriminated against their ASEAN competitors. However, once the United States conclusively ruled out the bilateral path, both associations began to lobby the Malaysian

³⁴ Clerk of the United States House of Representatives, <http://disclosures.house.gov/ld/ldsearch.aspx>, Office of Public Records, United States Senate, http://www.senate.gov/legislative/Public_Disclosure/LDA_reports.htm, accessed on August 29, 2009).

government to join TPP talks, which eventually occurred in October 2010.³⁵ In another rare public stand, the Malaysian peak association expressed support for the speedy conclusion of TPP negotiations.³⁶ Like in MUSFTA, the TPP has been endorsed by Malaysian associations in the textiles and garments, wood, rubber, and ceramics industries (interviews; *The Star*, July 25, 2013). Also as in MUSTFA, the TPP has encountered resistance from trade unions, certain service subsectors, generic drug producers and some civic groups.

The TPP negotiations have also fostered government-business consultation across borders (Hypotheses 3). In a visit to Malaysia, the American Trade Representative met not only with Malaysian officials and American firms in Malaysia but also with the Federation of Malaysian Manufacturers.

The European Union is also a key destination for Malaysian exporters, who also favored a bilateral FTA over an ASEAN-centered agreement to discriminate against competing firms based elsewhere in ASEAN (interviews). Business associations welcomed the European Union's abandonment of a deal with ASEAN as a bloc in favor of separate bilateral FTAs. Instead, the government preferred an ASEAN-European Union FTA that would be more amenable to the exclusion of the sensitive automotive and services sectors.

The primary beneficiaries and supporters in Malaysia of the Malaysia-European Union FTA (MEUFTA) are palm oil producers and the machinery, electrical appliances, rubber, garments, wood, and plastics industries.³⁷ Malaysian peak and sectoral business associations have pushed the government to accelerate negotiations, especially because

³⁵ In February 2010, at a meeting between Malaysian businesses and the American Deputy Trade Representative, the Federation of Malaysian Manufacturers admitted "to be in a position to push the [Malaysian] government toward participation in the TPP" (leaked cable from the United States Embassy in Malaysia: <http://wikileaks.org/cable/2010/02/10KUALALUMPUR96.html>, accessed on November 25, 2011).

³⁶ http://www.fmm.org.my/Press_Releases-@-Importance_of_FTAs_and_the_early_conclusion_of_the_TPP.aspx (accessed August 15, 2013).

³⁷ At the start of bilateral negotiations in 2010, Malaysia exported to the European Union, 28.2% of its total exports of rubber gloves, 19.5% of its garments, 16.7% of its wood items, 11.0% of its plastics and 10.5% of its palm oil.

Thailand and Indonesia are lagging behind in their own deals. National and Japanese carmakers and firms that could be adversely affected by the liberalization of government procurement and services have opposed MEUFTA.

5. Discussion

Realist renderings contend that systemic constraints and power asymmetries at the international level push developing countries to enter bilateral FTAs with developed nations. This unidirectional determination of national strategies has often come at the cost of overlooking endogenous sources of trade preferences in developing countries. Under the legacy of statist models and regional political-military rivalries, common understandings of East Asian regionalism have portrayed recent bilateral FTAs as launched primarily because of foreign policy and security motivations rather than economic ones. Accordingly, except for Japan, these FTAs have been presented as driven by political elites and with scant participation or interest by the private sector in the formulation of FTAs and their utilization.

This study was intended to examine the evolution of FTA policymaking in the two most FTA-active middle-income countries in ASEAN—Thailand and Malaysia—and to analyze how FTAs have shaped government-business relations. It is contended that compared to multilateral liberalization, specific information demands posed by bilateral FTA negotiations prompt trade officials to intensify consultations with the private sector to fill gaps in expertise (Hypothesis 1). Simultaneously, easier assessment of impacts and greater opportunities to affect policymaking in bilateral FTAs generates stronger incentives for firms, either for or against liberalization, to influence their formulation (Hypothesis 2). Bilateral FTAs also engender unique configurations of government-business relations and greater chances for business consultation, collective

action and lobbying across borders (Hypothesis 3). Information and coordination demands by successive FTAs on government agencies and business associations encourage both actors to invest in their trade expertise and create new institutions to reduce transaction costs in FTA formulation (Hypothesis 4).

The empirical evidence obtained supported these hypotheses. Despite differences in their institutional frameworks, the evolution of FTA policymaking in Thailand and Malaysia has followed relatively similar patterns. Although the initiative of some FTAs, particularly early ones, may indeed have originated from their political leadership, neither constructivism nor foreign policy and security arguments provide a sufficient model to explain variability in sectoral liberalization either within or across FTAs. In fact, it was found that whenever the economic rationale of an FTA was unclear, negotiations dragged on or were eventually abandoned. This is not to say that the preferences of the private sector have exclusively determined FTA policymaking or that the political and institutional configurations in these countries have not played a role. On the contrary, as in other areas of policymaking, the translation of firms' generic preferences (e.g., liberalization or protection) into particular policy choices (e.g., specific levels of tariffs and/or ROOs) is influenced by factors beyond firms such as the institutional setting, which does not simply accept or reject preferences but also determines what options are available, thus influencing firms' policy choices in the first place (Crystal, 2003). Indeed, the institutional framework and the contextual interactions between government and businesses have shaped FTA policymaking in both countries. For instance, a more direct policymaking process, a more subdued style of business lobbying and a lower civil society contestation against FTAs in Malaysia, has placed this country ahead of Thailand in its FTA negotiations with the European Union and the TPP blocs.

Our case studies also illustrate Schneider's (2004) argument about how businesses' collective action and mobilization are influenced by the different ways governments engage the private sector in policymaking, namely, exclusion, conflict or cooperation. Exclusion of the private sector in the formulation of early FTAs incited affected businesses associations, especially more efficient ones, to organize and mobilize—, either reactively or proactively—, in subsequent FTAs (e.g., Malaysian Iron and Steel Industry Federation's exclusion in the formulation of the ASEAN-China FTA prompted this association to take a more active stand in MJEPA). Conflict between the Thai government and carmakers around automotive liberalization in JTEPA increased mobilization by the latter. Likewise, the cooperation of Thai and Malaysian officials with business associations during FTA formulation strengthened and consolidated the consultation process in both countries.

In some instances, as many as 4-5 bilateral and regional FTAs were negotiated simultaneously forcing business associations to collect and coordinate their members' positions very often. Associations with strong secretariats and technical capabilities and that are able to achieve internal collective action to deliver consensual positions (e.g., in Thailand, both peak associations and the textiles and garments and processed food associations and, in Malaysia, the peak and the textile associations) had greater opportunities to be heeded by governments.

Independent of the original motivation for an FTA proposal, its text specifies the trade barriers to be removed or maintained, arguably eliciting firms' preferences for or against. The private sector in Thailand and Malaysia had been mostly unenthusiastic about previous multilateral and regional liberalization rounds. However, a clearer *ex-ante* assessment of impacts and greater opportunities to influence formulation in bilateral FTA liberalization fostered an interest in FTA policymaking by business

associations and firms that remained passive in other trade fora. The Thai and Malaysian private sectors participated not only through the invited consultation process but also—for the most influential and capable associations and firms—proactively. For some sectors and high-impact FTAs, the initiative did not originate from the political leadership, but instead, from businesses that pushed governments to initiate (or not) and speed up (or delay and suspend) talks.

Nevertheless, interviews also found that not all sectors were able to participate and not all associations consulted took part on an equal footing. Small and medium firms, farmers and some services subsectors often lacked representation, either independently or within peak associations, and/or did not have the organization, expertise or influence to affect policymaking. Research found that some small firms were unaware of the potential benefits of FTAs because either their associations did not inform them or found FTAs to be too complex. Whether due to uninterested members, insufficient time for internal consultations, a lack of coordination capabilities or the capture by the most influential firms, interviews showed that in some instances business associations' position on FTAs may have mainly reflected the views of their executive committees.

Field research found that Thai and Malaysian FTAs have largely responded to sectoral, even firm-specific, economic interests. As East Asian production networks have expanded and deepened, export-oriented multinationals based in Thailand and Malaysia and operating within those networks have pressed host governments for specific bilateral FTAs that suit their procurement and export patterns (e.g., automotive firms in the Thailand-India EHS and in the TAFTA, Japanese carmakers in the JTEPA and the MJEP). In turn, multinationals in those production networks that expected to lose from a particular FTA also proactively lobbied governments and often succeeded in

having their sectors excluded (e.g., Western carmakers in the JTEPA). However, much of the push for FTAs has originated from domestic exporters involved in traditional one-way horizontal trade (e.g., processed food and palm oil in Thai and Malaysian FTAs, respectively).

Increasing private sector interest in influencing FTA formulation over time does not necessarily mean that businesses will now mobilize for any future FTA as demonstrated by the limited enthusiasm inspired by some recent proposals with small partners. Nevertheless, firms have become increasingly aware of FTAs' impacts and the institutional setting for business collective action and government-business relations related to FTA policymaking is already in place. Therefore, it can be expected that businesses potentially affected by prospective FTAs will mobilize, either for or against, to influence their formulation.

The case studies also showed that bilateral FTAs generate configurations of relations between and among government agencies and businesses that are different from those present in multilateral rounds, not only domestically (Hypothesis 1 and 2) but also across borders (Hypothesis 3) (Table 3).

FTAs have also fed back into the institutional setting. As more FTAs were negotiated, government-business consultations became not only more frequent and intense but also formalized, developing even into a constitutional mandate in Thailand. Evidence indicated that successive FTA negotiations have been formative experiences for politicians, bureaucracies and businesses. At minimum, FTA negotiations have enhanced the technical trade expertise and institutional capacity of government agencies and organized business. However, as more FTAs were pursued, the information, consultation and coordination costs entailed in such iterative process have spurred the creation of *ad-hoc* and/or permanent institutions for government inter-agency

coordination, private sector collective action and government-business intermediation (Hypothesis 4) (Table 4).

Table 3: Business collective action and lobbying and government-business consultations across borders (Hypothesis 3)

Selected FTAs *	Relationship Type **	Example	Period***
JTEPA	I & III	Meetings between the Japanese and Thai textiles/garments associations to find common points for lobbying. Meetings participated by Japanese officials	Before and during of negotiations
JTEPA	I	Meetings between Thai processed food associations and Japanese wholesale buyers and trading companies to find common points for lobbying	Before and during negotiations
JTEPA	II	Japanese automotive firms lobbied Thai trade officials and cabinet members	Before and during negotiations
JTEPA	I & II	Meetings between the Thai and Japanese peak business associations demanding both governments to expand JTEPA coverage and accelerate liberalization schedules	After implementation (February 2011)****
TUSFTA	I & II	United States-Thailand Business Coalition lobbied both governments for a comprehensive FTA	Before and during negotiations
TUSFTA	II	Thai garment and processed food associations contracted lobbyists in the United States to pressure the United States Trade Representative for American liberalization of their sectors	Before and during negotiations. Continued after negotiations stalled
TUSFTA	III	Meetings between the United States' negotiation team and Thai business associations during visits to Thailand	During negotiations
MJEPA	I & III	Meetings between the Japanese and Malaysian textiles/garments associations to find common points for lobbying. Meetings participated by Japanese officials	Before and during of negotiations
MJEPA	I	Meetings between the Japanese and Malaysian iron and steel associations to find common points for lobbying	Before the start of negotiations
MJEPA	II	Japanese Steel and Iron Federation lobbied Malaysian trade officials	During negotiations
MJEPA	III	Meetings between Japanese officials and the Malaysian Iron and Steel Association during visits to Malaysia. Japanese officials offered the Malaysian association support in pushing for domestic reforms	During negotiations
MUSFTA	I	Meetings between the Malaysian and American business communities to find common points for lobbying	Before and during of negotiations
MUSFTA	I & II	United States-Malaysia FTA Business Coalition lobbied both governments for a comprehensive FTA	Before and during of negotiations
MUSFTA	II	Malaysian textiles and garments producers contracted lobbyists in the United States to pressure the United States Trade Representative for American liberalization of their sectors	Before and during negotiations. Continued after negotiations stalled
MUSFTA	II	American interest groups based in Malaysia lobbied Malaysian officials for comprehensive liberalization by Malaysia in MUSFTA	Before and during of negotiations

Source: Field research interviews except for ****

* Only selected FTAs are included. Cross-border business collective action and lobbying and government-business consultations across borders also occurred in other FTAs. See text for details.

** Relationship Type: Type I: Business collective action across borders (between both levels II); Type II: Business lobbying across borders (level II in a country lobbying level I in the partner); Type III: Cross-border government-business consultation (between level I in a country and level II in the other). Levels I and II as defined by Putnam (1998) (see footnote 5). See text for details.

*** Evidence obtained for the indicated period. It cannot be ruled out that these relationships also occurred before and/or after the indicated periods

**** *Bangkok Post*, February 19, 2011

Table 4: Institutional creation and change by iterative FTAs (Hypothesis 4)

Selected FTAs *	Sponsor	Institution	Functions Served	Period
JTEPA and successive FTAs	Thai peak and sectoral business associations	Overarching Committee on FTAs Dedicated subcommittees on JTEPA and later FTAs	* Collect and coordinate inputs from members for business collective action * Coordinate positions with other associations in Thailand and/or in FTA partners for domestic and/or cross-border business collective action * Focal point for consultations with Thai and FTA partner government officials * Lobbying Thai and FTA partner governments	Mid-2004 onwards
JTEPA and successive FTAs	Thai Cabinet	National Committee on FTA Strategy and Negotiations	* Collect and coordinate inputs from government agencies involved in FTA policymaking * Provide guidance and coordination among government agencies and across multiple FTAs	November 2004 onwards
Thai FTAs launched after 2007	Sponsored by <i>FTA Watch</i> and adopted by the Thai interim government and constituent parliament	Institutionalization of consultations with business and civil society in Thai FTAs: Article 190 of the 2007 Thai Constitution	* Establish mandatory consultations by the government with business groups and the civil society about international agreements with significant economic and/or social impact * Establish mandatory approval by the Thai Parliament before launching of FTA negotiations and ratification of the final agreement. * Establish mandatory compensation of sectors negatively affected by FTAs	2007 onwards
Malaysian FTAs after mid-2006	Federation of Malaysian Manufacturers and key Malaysia sectoral business associations	Private Sector Task Force on FTAs	* Coordinate positions across business associations in Malaysia for business collective action * Focal point for consultations with Malaysian government officials * Feedback to and lobbying government officials that also attend meetings	Mid-2006 onwards

Source: Field research interviews

* Only selected FTAs are included. Institutional creation and change also occurred in other FTAs. See text for details

Broader and more frequent consultations by trade officials with stakeholders—primarily businesses but also civic groups—during FTAs negotiations have helped government and firms in both countries to better define their preferences and has also resulted in a more accountable trade policymaking process. More importantly, the strengthening of the technical capacities of all actors and the institutional structures created for FTA formulation may not only be transferred to other areas of policymaking, but they could also endure to provide similar functions during WTO rounds.

6. References

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7. Disclosure Statement

No potential conflict of interest was reported by the author