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Top-down, bottom-up and across Borders**

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Formulation of East Asian Free Trade Agreements: Top-down, bottom-up and across Borders

Government-Private Sector Consultations and Business Lobbying in the Policymaking of Thai and Malaysian Bilateral Free Trade Agreements ¹

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Abstract

During the last decade, East Asia has become one of the most active sites of regionalism worldwide with close to 60 free trade agreements (FTAs) implemented, mostly as bilaterals. With the exception of Japan, the extant literature presents East Asian FTAs as driven primarily by political and security motivations and emerged from the political leadership with marginal involvement of the private sector. Instead, this paper contends that, compared to multilateral trade rounds, bilateral FTA negotiations entail greater sectoral and technical information demands on government officials that should encourage consultations with business associations. At the same time, clearer identification of impacts and greater chance to affect policymaking in bilateral FTAs should generate stronger incentives for businesses to lobby governments for their preferences. Trade officials are more likely to heed business associations that intermediate unified positions among members and assist them with technical information needed at negotiations. Lastly, the coordination and technical information demands engendered by successive bilateral FTAs should prompt government agencies and organized business to invest in their capacities, spurring institutional change and creation. To test these hypotheses, the policymaking of Thai and Malaysian bilateral FTAs was examined. It was found that, over time, government officials in both countries have intensified consultations with the private sector, not just to attend to their trade preferences but also to gather complex technical information needed for negotiations. FTAs have stimulated domestic and cross-border collective action and lobbying by the private sector that has become more pro-active, and, for some key partners, it has taken the initiative and pressed governments to establish certain FTAs. Iterative FTA negotiations have not only strengthened the technical and institutional capacities of government agencies and business associations but has also led to the emergence of new institutional structures for inter-agency coordination, private sector collective action and government-business intermediation.

¹ This working paper was originally written in March 2010. Tables 1 through 3 were recently updated to reflect new developments. The author wishes to acknowledge critical review of several drafts by Professor K. Shadlen. The paper also received review comments from Professor J. Ravenhill (Australian National University, Canberra, Australia) in February 17, 2011 and Professor M. Solis (Georgetown University, Washington University, USA) in February 2, 2011. All remaining errors are solely the responsibility of the author.

Abbreviations:

AFTA: ASEAN FTA

APEC: Asia Pacific Economic Cooperation

ASEAN: Association of South East Asian nations

FTA: Free trade agreement

FMM: Federation of Malaysian manufacturers

FTI: Federation of trade industries

JSCCIB: Joint Standing Committee of commerce, industry and banking

JTEPA: Japan-Thailand economic partnership Agreement

JTF: Japan Textile Federation

MEUFTA: Malaysia-European Union FTA

MFN: most-favored nation

MITI: Ministry of International Trade and Industry [of Malaysia]

MJEPA: Malaysia-Japan economic partnership Agreement

MOC: Ministry of Commerce [of Thailand]

MOI: Ministry of Industry [of Thailand]

MTMA: Malaysian textile manufacturers Association

MUSFTA: Malaysia-United States FTA

NGO: non-governmental organization

PCO: Preferential certificate of origin

ROO: Rules of origin

TAFTA: Thailand-Australia FTA

TCC: Thai chamber of commerce

TFFA: Thai frozen food Association

TFPA: Thai food processors' Association

TGMA: Thai garments manufacturers Association

TPP: Trans-Pacific Strategic Economic Partnership

TTMA: Thai textile manufacturers Association

TUSFTA: Thailand-United States FTA

WTO: World Trade Organization

1. Introduction

The proliferation of free trade agreements (FTAs) in East Asia since the turn of the century constitutes one of the most significant developments in the region's political economy during the last decade. 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, nowhere else has regionalism exploded so rapidly with close to 60 FTAs, mostly bilaterals, implemented since 2001.

Prevailing analyses of East Asian FTAs have downplayed their economic relevance and emphasized foreign relations and/or security motivations as their main thrust and rationale (e.g., Desker, 2004; Aggarwal and Urata, 2006; Dent, 2006; Dieter, 2007; Aggarwal and Koo, 2008a; Ravenhill, 2008a; Ravenhill, 2010; Aggarwal and Govella, 2013; Lee, 2013).² From a political economy perspective, and with the exception of Japan (see below), these narratives have portrayed FTAs in East Asia as driven by shared ideas and identities among political elites in the context of strong states, with interest groups being sidelined and “play[ing] a relatively minor role in the politics of new bilateralism” (Aggarwal and Koo, 2006:295; Lee 2006; Sally, 2006; Terada, 2009; Lee and Hooi, 2011). At the same time, and in line with low tariffs covering most intra-regional trade, surveys indicate little interest among East Asian firms to utilize existing FTAs (Ravenhill, 2010; Kawai and Wignaraja, 2009; Kawai and Wignaraja, 2011a).

Of note, although often overlooked in the literature, the initiative for some FTAs in Latin America is reported to have originated from governments that engaged business associations only at the implementation stage as to enroll their political support for the

² The primacy of security motivations in the FTA policy of the United States has also been the subject of intense debate (e.g., see Higgott, 2004 *versus* Phillips, 2007).

agreement (Schneider, 2004; Gardini, 2006; Fairbrother, 2007).³ This parallelism has also been recently detected by other scholars (Solis, 2013:93).

It will be contended here that many of these constructivism and security-based interpretations of East Asian FTAs have essentialized the role of autonomous states and politicians' ideas at the cost of a deeper analysis of private sector preferences. Instead, this paper will argue that, compared to other forms of liberalization, a number of specific features of bilateral FTAs should foster government-private sector consultations and increase incentives for business lobbying.

Formulation of bilateral FTAs imposes greater sectoral and technical information demands on government agencies and business associations than do multilateral rounds, and therefore necessitates of more intense consultations within and between both actors. At the same time, compared to unilateral and multilateral liberalization, bilateral FTAs allow for clearer identification of impacts, thus increasing incentives for interest groups to influence policymaking, and create favourable conditions for government-business consultation and lobbying across borders. Government officials are more likely to consult and heed the preferences of business associations that intermediate unified positions among their members and that assist them with technical information needed during bilateral FTA negotiations. These coordination and information demands placed on government and organized business during the course of successive FTAs should encourage all actors to invest in developing their capabilities, spurring institutional change and creation.

To test these hypotheses, I conducted an extensive process-tracing analysis of the bilateral FTAs negotiated by Thailand and Malaysia, the two developing countries in East

³ For instance, the integration accord between Brazil and Argentina that preceded Mercosur or Mexico's decision to seek an FTA with the United States were driven by their respective government elites without prior business consultation. Business in these countries initially reacted with indifference to the government proposal for market integration (Schneider, 2004, Gardini, 2006; Fairbrother 2007).

Asia that have implemented more FTAs.⁴ Thailand was one of the first and originally more prolific East Asian nations seeking FTAs, while Malaysia, initially reluctant to embark into bilateral FTAs, has later implemented a number of agreements. Empirical evidence confirmed my initial arguments revealing a more nuanced picture of the roles played by government and private sector in the formulation of East Asian FTAs than the one depicted in most of the extant literature. Despite different institutional and policymaking settings in Thailand and Malaysia, findings and conclusions in these case studies substantiate each other and, for the most part, evolution of FTA policymaking in both countries has followed a similar pattern.

Although many Thai and Malaysian FTAs, especially earlier ones, may have responded to government initiatives, their economic rationale, even if only narrowly sectoral, has been essential because whenever this was missing, negotiations eventually faltered. Over time both governments intensified their consultations with the private sector during the formulation of FTAs, not just to attend to its preferences but also to access technical information needed at negotiations. In turn, organized business and individual firms have progressively taken greater interest in influencing FTA policymaking—whether in favor or against and to secure gains or reduce losses—to the point that, for some key partners, it was the private sector that took the initiative and pressed governments to launch FTA negotiations. As business associations in Thailand and Malaysia grew stronger during the 1980s and 1990s, formalized mechanisms were introduced to channel private sector inputs into policymaking (Laothamatas, 1992; Laothamatas, 1995). This research found that

⁴ Primary research for this project involved 212 in-depth semi-structured interviews with government officials, private sector and civil society representatives and academics in Thailand and Malaysia during two independent trips in 2008 and 2009 complemented and updated by numerous personal communications during 2010-2012 (see Appendix at the end of this dissertation). Among government officials, interviews were conducted with members of trade negotiation teams and officials at ministries and technical supporting agencies relevant to the study. Within the private sector, interviewees included peak and sectoral business associations as well as individual firms, both domestic and foreign, across a wide range of sectors and levels within the value chain.

bilateral FTAs created new configurations of business collective action and lobbying. More intense interactions between and among government agencies and business associations in the context of FTA formulation have contributed to better specification of actors' preferences, strengthened their technical capacities and institutionalized the consultative process.

The rest of the paper is organized as follows. Next section briefly outlines the current literature on East Asian FTA policymaking and develops the hypotheses. Sections three and four present empirical evidence of the evolution of FTA formulation in Thailand and Malaysia. Section five discusses findings and concludes.

2. Specific dynamics in government-business relations in the context of bilateral FTAs

Worldwide expansion of FTAs has been attributed, *inter alia*, to a number of systemic-level factors, such as the slow progress of multilateral talks at the World Trade Organization (WTO), or the need for countries to attract foreign investment (e.g., Fernandez and Portes, 1998; Ravenhill, 2003).⁵ FTAs have also proliferated on the so-called “domino” or “fear of exclusion” effects—the trade diversion engendered by an FTA prompts outside firms to lobby their governments to enter the FTA or create a new one (Baldwin, 1995; Shadlen, 2008).

The lack until recently of institutional arrangements regulating reciprocal trade relations in East Asia was not an obstacle for countries in the region to achieve significant economic integration through the development, since the mid-1990s, of sophisticated

⁵ In turn, WTO multilateral liberalization rounds prompts countries to form FTAs (Freund, 2000; Mansfield and Reinhardt, 2003).

regional production networks.⁶ Thus, when East Asian countries began to enter into FTAs from 2001 onwards, most scholarly analyses dismissed the economic dimensions of these FTAs and emphasized their foreign policy and security motivations (e.g., Desker, 2004; Aggarwal and Urata, 2006; Hoadley, 2007a; Aggarwal and Koo, 2008b; Ravenhill, 2008a; Ravenhill, 2009; Aggarwal and Lee, 2010; Ravenhill, 2010; Aggarwal and Govella, 2013; Lee, 2013).⁷ The “explosion [of FTAs in East Asia] has been driven by a ‘political domino effect’”, by “governments unhappy at the prospect of missing out on new diplomatic opportunities” (Ravenhill, 2010:199,200).

From a political economy perspective, and in line with the reported lack of economic rationale of East Asian FTAs, dominant narratives of East Asian regionalism outside Japan have downplayed the importance of business lobbying in FTA formation. In Putnam’s (1988) classic two-level game—establishing that a government’s position in international negotiations is determined by the interplay between the stance of the counterpart government (level I) and its strategic interaction with interest groups at home (level II)—, interactions at level II in East Asian FTAs have been limited or missing. FTAs in East Asia are portrayed as top-down deals, driven primarily by the constructivism forces of shared ideas and identities among political elites and with little involvement or interest on the part of business (e.g., Calder and Ye, 2004; Aggarwal and Urata, 2006; Aggarwal and Lee, 2010).⁸

⁶ The ASEAN FTA (AFTA), the only FTA in East Asia before the turn of the century, was signed in 1992 but implementation was poor and initially allowed exclusion of long lists of sensitive sectors (Yoshimatsu, 2006; Ravenhill, 2008b). Only in 2003 were intra-ASEAN tariffs capped at 5% (see below in Section 3).

⁷ In Dent (2006), “*strengthening diplomatic relations*” or “*consolidating security alliances*” ranked the highest among the motivations for entering FTAs in all five East Asian countries studied except for Japan. By enhancing economic ties among like-minded partners, FTAs set “the context for regional security institution building rather than the other way around” (Aggarwal and Koo, 2008b:302-303). External shocks like the end of the Cold War, the 1997 Asian crisis, September 11 or the Japan/China rivalry for regional hegemony have provided impetus for emerging East Asian economic institutionalization (Desker, 2004; Aggarwal and Koo, 2008a; Ravenhill, 2008a; Ravenhill, 2010; Lee, 2013).

⁸ Aggarwal and Koo’s (2006:292,295) analysis of the forces behind bilateral FTAs in seven East Asian countries found that “institutional setting” and “ideas” topped each country, except for China and Taiwan, while “influence of interest groups” scored among the lowest. Calder and Ye (2004) derive East Asia FTAs from decision-makers’ choices—autonomous from the institutional context—in the aftermath of the Asian crisis. Embracing of FTAs by the United States and the European Union would have helped to create a cognitive consensus

The minor role accorded to interest groups in the formulation of East Asian FTAs is interpreted as these countries' being "strong states relatively free from societal pressures" (Aggarwal and Koo, 2006:292,295). Thus, South Korea's shift toward FTAs was shaped by changes in the political leadership and bureaucracy rather than by economic actors (Koo, 2006). FTA policy in Singapore is defined as technocratic and "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). The influence of businesses on FTA formulation in other Southeast Asian countries was characterized as "limited or unidentified" (Nagai, 2003; Kiyota, 2006; Sally, 2006; Hoadley, 2007a; Hoadley, 2007b; Hoadley, 2008; Terada, 2009:165). As Terada summarized (2009:165): "interest group politics is neither necessarily an important factor for the proliferation of FTAs in Southeast Asia, nor directly relevant to the FTA diffusion in the region". This lack of engagement of the private sector by East Asian governments in FTA policymaking has been compounded by apathy of businesses toward FTAs, both during negotiations and after implementation. For Ravenhill (2003:303) "the supply or regionalism often exceeded the demand for it". Only Japan departs from this regional trend as evidence shows that the private sector took an active role and pressed the government to embrace regionalism and launch a number of FTAs (Solis, 2003; Manger, 2005; Yoshimatsu, 2005; Yoshimatsu, 2006; Solis and Urata, 2007; Manger, 2009; Katada and Solis 2010; Solis 2010).⁹

Until 2006, Thailand was second only to Singapore in East Asia in the number of FTAs negotiated. The extant literature presents Thai bureaucrats as lacking sufficient trade

among the East Asian leadership to accept regionalism as a complementary approach to unilateral and multilateral liberalization in the pursue of national interests.

⁹ The leading role of Japanese businesses in Japan's FTA policy has been downplayed by Ravenhill (2010) that considers it rather as reactive.

negotiation expertise and to have eschewed formal consultations with the private sector during FTA formulation (Sally, 2006; Sally, 2007). Consequently, Thai FTAs have been launched in a rush, with no clear economic strategy but with “foreign policy aspirations loom[ing] large”, and are rather “the result of tourism by Thai leaders” and closely linked to the personalized decision-making style of Prime Minister Thaksin (Nagai, 2003; Kiyota, 2006; Hoadley, 2007a; Hoadley, 2007b; Sally, 2007:1606; Hoadley, 2008:111; Sally and Sen, 2011).¹⁰

Malaysia has taken a more cautious approach, being initially opposed to bilateralism and only jumping on the bandwagon under the threat of trade diversion from other FTAs (Okamoto, 2006). The driving force of Malaysian FTAs has also been linked to changes in the political leadership, namely the stepping down of Prime Minister Mahathir, while their formulation is reportedly confined to the top rank bureaucracy (Okamoto, 2006; Hoadley, 2008).¹¹

Of the two levels in Putnam’s model (state-state and state-society), this study of FTA policymaking in Thailand and Malaysia is particularly interested in the latter, how domestic win-sets for FTAs were formed in each country. However, postulating the existence of strong states to account for low involvement of the private sector in FTA formulation overlooks the different ways in which East Asian bureaucracies, including those in Thailand and Malaysia, have traditionally engaged organized business in policymaking (Laothamatas, 1995; MacIntyre, 1995; Doner and Schneider, 2000). In that line, unilateral liberalization in East Asia during the 1980s and 1990s, key in the emergence of production networks, was shaped

¹⁰ The 1997 Thai Constitution centralized power in the executive and away from the bureaucracy, which lost further influence over the allocation of rents after the 2002 bureaucratic reform that allowed Thaksin to appoint businessmen to senior bureaucratic posts (Ockey, 2004; Phongpaichi and Baker, 2004; Prasirtsuk, 2007; Chaiwat and Phongpaichit, 2008). See also footnote 22.

¹¹ In fact, it could be argued that Malaysia’s decision to launch her first and most important FTA so far, with Japan, occurred during Mahathir’s tenure (1991-2003) and his long-time trade minister Rafidah oversaw the negotiation and implementation of several FTAs until her removal from office in 2008.

by pressures from the private sector (Yoshimatsu, 2002; Baldwin, 2006).¹² In addition, as argued below and compared to other forms of liberalization, 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 FTAs

It is argued here that even when FTAs emerge from the initiative of governments, trade officials need to engage the private sector in their formulation, not only to gather business support for the country's trade policy or to heed its preferences, but also as a result of several features that are inherent to bilateral FTAs. As compared to unilateral or multilateral liberalization, bilateral FTA negotiations present government officials with specific challenges regarding issue coverage, technical complexity, timeframe, and potential bargaining asymmetries, all of which should encourage enhanced consultation with the private sector. Expansion of the WTO trade regime to areas beyond tariffs led some scholars to distinguish classical *pressure lobbying* from a new form referred as *regulatory lobbying* (Woll and Artigas, 2007; Woll, 2008) In the former, firms support governments with some reward in return for implementing trade policies that benefit them. Instead, in regulatory lobbying, governments engage businesses in the formulation of regulatory regimes in exchange for technical information.

Technical complexities and information demands are even greater in most bilateral FTAs as even less comprehensive ones bundle tariff reduction schedules with provisions covering areas beyond WTO's agenda. While East Asian FTAs with partners other than the

¹² Lobbying by Japanese and Western firms was key for the regional liberalization of electronics and information technology products (Baldwin, 2006) and of parts and components, mostly in the automotive industry, within Southeast Asia (Yoshimatsu, 2002; Yoshimatsu, 2008).

United States or the European Union tend to take on fewer disciplines, most include provisions on investment and complex regulatory frameworks (e.g., standards recognition, technical cooperation) requiring that negotiation teams have appropriate technical expertise. Even when FTAs are exclusively (or mostly) focused on tariff liberalization, broader product coverage in FTAs than in multilateral rounds calls for the involvement of government agencies that do not normally participate in trade formulation. Also departing from WTO, *all* FTAs establish rules of origin (ROOs) that in most bilateral FTAs are product-specific and therefore require from trade officials a very precise understanding of the production process for each tariff line.¹³ These sectoral and technical information demands are compounded by the reduced timeframe of FTA negotiations as compared to multilateral rounds. Finally, in the context of bilateral negotiations, developing countries face capacity asymmetries when confronting well-prepared teams of American, European or Japanese officials. Altogether, it could be argued that bilateral FTAs, more so than multilateral rounds, should induce government officials to seek more intense and frequent consultations with business representatives (Figure 1).¹⁴ The above arguments have been recently supported by Solis (2013) who posited that technical expertise by business associations constitutes an incentive for government-business consultations in FTA negotiations. Thus, it is argued (Solis, 2013:95) that features in FTAs, particularly ROOs, require from government officials in-depth knowledge of the production process of each sector and that, in line with Woll and Artigas (2007), government-business consultations in FTA negotiations have evolved toward regulatory lobbying.

¹³ ROOs determine where a product originates and, consequently, whether it qualifies for preferential tariffs based on compliance with a minimum level of transformation within the FTA bloc. Although included in FTAs to avoid trade deflection, strict ROOs could also be used for protectionist purposes. ASEAN-centered FTAs adopt universal ROOs across lines but most bilateral FTAs establish product-specific rules.

¹⁴ During the negotiation of bilateral FTAs, technical gaps in government officials' expertise should be more severe in disciplines outside the WTO where officials have less experience. Firms are also a key source of technical expertise in WTO antidumping disputes.

Hypothesis 1: *Compared to other forms of trade liberalization, government officials should be compelled to involve the private sector more frequently and intensely in the formulation of bilateral FTAs—especially with large developed partners—in order to fill gaps in their technical expertise.*

2.2 Greater incentives and effectiveness of business lobbying in bilateral FTAs

In certain circumstances, firms could favor FTAs over multilateral liberalization. Firms with unexploited economies of scale and that have fragmented and relocated their production overseas would support FTAs to reduce tariff barriers in the partner country or to introduce investment provisions outside WTO purview while discriminating against firms outside the FTA area (Milner, 1997; Chase, 2005).

Low or no involvement of the private sector by East Asian governments in FTA formulation has reportedly been compounded by a limited interest for FTAs on the part of business. Thus, earlier apathy among businesses toward ASEAN FTA (AFTA) and other regional initiatives such as the Asia Pacific Economic Cooperation (APEC) (Okamoto, 2004; Ravenhill, 2008b; Yoshimatsu, 2008), seems to have also been mirrored in bilateral FTAs (Sally, 2006; Ravenhill, 2008a; Kawai and Wignaraja, 2011).¹⁵ Geographical inconsistency between regional production networks and (mostly bilaterals) FTAs, along with the prevalence of low tariffs and import duty exemptions schemes covering much of East Asian

¹⁵ Much of the driving force behind early ASEAN complementation programs and later of AFTA itself came from foreign firms rather than from indigenous businesses. The effectiveness of ASEAN-wide business organizations (ASEAN Chamber of Commerce and Industry, ASEAN Business Advisory Council) as interest groups was limited by their broad representation and modus operandi based on consensual decisions, when not by their cooptation by governments. This led former ASEAN Secretary General Severino to lament in 2002 that: “the call for regional economic integration has come particularly from the business sectors of Japan and the United States [...] what we need is pressure from the ASEAN business community [...]” (as quoted in Yoshimatsu, 2008:55). Nevertheless, our interviews found that some indigenous firms, like the influential Thai conglomerate Charoen Pokhand Group, has been a strong supporter of intra-ASEAN liberalization and of many other Thai bilateral FTAs (see footnote 30). As AFTA liberalization proceeded, its preferences have been used not only by foreign firms but also by ASEAN indigenous ones. See also working paper by this Author (also in this Working Paper series) entitled: “Utilization of Free Trade Agreements by Sectoral Interests and Binding of Unilateral Concessions”.

trade, have tamed down business enthusiasm for FTAs (Ravenhill, 2008a; Ravenhill, 2010). Such business indifference about FTAs has been correlated with, when not inferred from, firm-level surveys showing low utilization of existing East Asian FTAs (e.g., Haddad, 2007; JETRO, 2009; Kawai and Wignaraja, 2009; Wignaraja et al., 2010; Kawai and Wignaraja, 2011).¹⁶

Interest groups are more likely to mobilize, for or against, around reforms with clear and immediate impacts than on those that are diffuse, uncertain or longer-term (Schneider, 2010). First and foremost, unilateral and multilateral liberalization focuses the attention of import-competing sectors, because tariff reduction to every potential exporter in the world has unambiguously negative consequences for them. In contrast, in the context of global competition, gains for export-oriented firms from unilateral, multilateral, and even regional liberalization are uncertain at best, which reduces their incentive to lobby.

It is contended here that bilateral FTAs should attract greater interest from firms than do other forms of liberalization. Bilateral FTAs allow for a clearer identification and assessment of impacts, which should increase incentives for businesses, winners and losers, to influence their formulation. Compared to multilateral and regional liberalization, bilateral FTAs generate more explicit gains for exporters while they could accommodate long tariff phase-out periods or even exclusions for import-competing sectors.¹⁷ Additionally, firms have a greater chance to effectively affect policymaking in a bilateral context than in

¹⁶ These estimates and surveys are prone to misrepresent real FTA utilization. Calculation of *real* FTA utilization requires compilation of official records, known as Preferential Certificates of Origin (PCOs), certifying that the exported product complies with ROOs. Most East Asian countries do not collect PCOs but research for this project was able to obtain PCOs for selected FTAs and other preferential regimes in Thailand and Malaysia. See below and in the working paper referred in footnote 15.

¹⁷ In addition to discriminatory tariffs and ROOs, ambiguities in Article XXIV of the General Agreement on Tariffs and Trade—regulating FTAs involving at least one developed country—and flexibilities in the Enabling Clause—regulating FTAs among developing countries—leave room for governments to carve out from FTAs some sensitive sectors. FTAs should liberalize substantially all trade within a reasonable period. This has been most commonly interpreted as liberalizing at least 90% of existing trade within a maximum period of 10 years.

multilateral rounds.¹⁸ In sum, both exporters and import-competing sectors should have stronger incentives to lobby and assert their policy preferences in bilateral FTAs than in other forms of liberalization (Figure 1). In the same line of argument, Solis (2013:96) has also recently posited that realization by business groups seeking protection of the possibility in FTAs to carve out exclusions for sensitive items should prompt their mobilization against FTA liberalization.

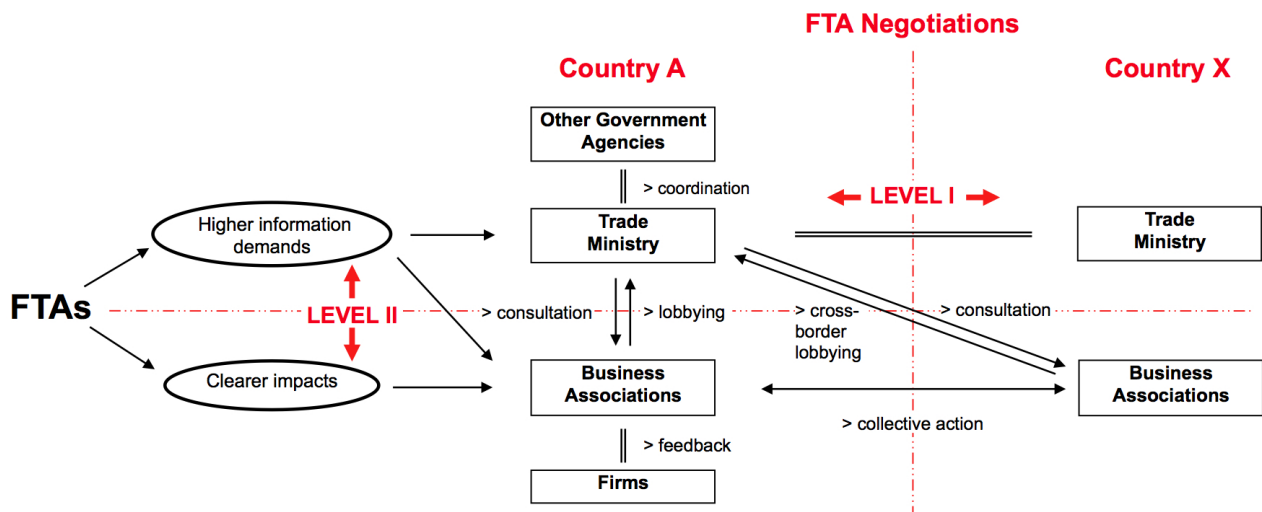


Figure 1: Policymaking of bilateral FTAs

Hypothesis 2: *Clearer assessment of impacts and the possibility of protecting sensitive items in bilateral liberalization provide both exporters and import-competing firms with stronger incentives to influence the formulation of bilateral FTAs than in other forms of liberalization.*

2.3 *Bilateral FTAs provide unique opportunities for consultation, collective action and lobbying within and across borders.*

¹⁸ Bilateral FTAs are negotiated over shorter time periods and, as elaborated below, provide firms more ready access to policymakers.

Although clientelist channels persist, strengthening of business associations in Thailand and Malaysia during the 1980s introduced formal and cooperative mechanisms for government-business consultation and lobbying in both countries (Laothamatas, 1988; Laothamatas, 1995; Doner and Schneider, 2000).

A major contention of this paper is that FTAs create different possibilities for business collective action and influence than unilateral or multilateral liberalization. Consider a firm F_A from country A seeking to export a final product from its factory in A (F_{A-A}) to country X, which imposes high-tariffs on the product (Figure 2). Under the multilateral regime, F_A could pressure the government in X for unilateral and universal reduction of most-favored nation (MFN) tariffs on that product in X and could lobby either directly or indirectly through its own government in A. However, as argued above, in the context of global competition, gains to F_A from unilateral or multilateral liberalization by X are uncertain. In addition, it would be difficult for F_A to organize other firms to take collective action and lobby the government of X when firms are dispersed across multiple countries. As per Chase (2005), independently of whether F_A produces only at its factory in A (F_{A-A}) or has fragmented production and relocated some stages to X (subsidiary plant F_{A-X}), F_A would favor an FTA between A and X that reduces all tariffs in X (on both final and intermediate inputs coming from A) and, at the same time, discriminates against firms outside the A-X bloc. Arguably, a firm F_B from country B would oppose any liberalization by X of final goods coming from A that are perfect substitutes for its own products (Figure 2). This opposition by F_B to FTA A-X would occur independently of whether F_B is based only in B (plant F_{B-B}) or also has production stages in X (subsidiary plant F_{B-X}). However, if F_{B-X}

procures inputs from A, F_B could potentially favor—and even jointly lobby with F_A —for liberalization by X of intermediate inputs coming from A through FTA A-X.

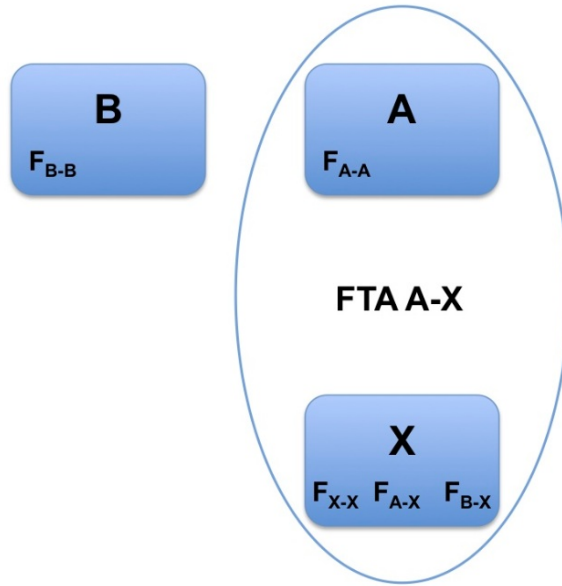


Figure 2: A bilateral FTA between A and X opens distinct possibilities for collective action and lobbying than multilateral liberalization and which would depend on the organization of production among firms (see main text for details).

In these scenarios, FTAs provide for different configurations of business collective action and influence than multilateral or unilateral liberalization. In addition to stronger incentives for business lobbying at each level II (Hypothesis 2), bilateral FTAs should also foster business collective action and lobbying *between* levels *across* borders, namely, between levels II of each country and between level II in one country and level I in the other (Figures 1 and 2).

The possibility that both governments (level I) reach a deal increases when negotiators at both sides are presented with similar proposals from their respective levels II. Cross-border coordination of positions between businesses in A and X (e.g., input suppliers

in A and producers of final goods in X) would therefore improve the possibility of both governments agreeing during negotiations. Likewise, firms with a presence in both countries [e.g., F_A with plants in A (F_{A-A}) and X (F_{A-X})] would be able to present their preferences from levels II in both A and X.

Of note, joint lobbying by businesses at both levels II could occur not only in vertically integrated producer-driven industries but also through collective action between producers and buyers in buyer-driven commodity chains—e.g., textile and garment producers in country X and wholesale buyers and trading companies in country A. Lastly, compared to unilateral and multilateral liberalization, bilateral FTAs could also encourage a government to consult with private sector actors in the partner country (between levels I and II but across borders) to find out about positions and potentially to seek alliances.

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

2.4 Government and business capacity building and institutional creation by iterative FTAs

Regulatory lobbying depends on government officials soliciting information from private sector representatives (Woll, 2008). 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, 2004; Schneider, 2010). To get invited by the government in consultations, business associations have to compete in credibility as sources of knowledge to the government.

Cohesion is required for business associations to achieve collective action in pressure lobbying. As illustrated by the case studies below, in regulatory lobbying only associations with strong technical capabilities and that contribute to the public good beyond particularistic interests intermediating unified positions of their members would be reliable for the government. Solis (2013:96-100,106-113) has recently modeled the effectiveness of business lobbying in the policymaking of Asian FTAs with a focus on Japanese FTAs. In line with the arguments presented here, she concluded that “the ability to mediate the preferences of its members and the degree of technical expertise are key for business associations to emerge as reliable partners of government in trade negotiations” (Solis, 2013:106).

This paper argues that, as for government agencies, FTAs—and particularly bilateral FTAs—generate greater information demands on business associations than do multilateral negotiations. If in the context of unilateral and multilateral liberalization, import-competing industries simply lobby for sectoral exclusion, in FTA negotiations they need to learn about additional restrictive measures available to them, such as stringent ROOs or long tariff phase out periods. Likewise, exporters would not only lobby for tariff reductions in the FTA partner, but they would also need to make themselves aware of existing regulatory obstacles in the destination market and pressure trade officials for their removal and for the use of relaxed ROOs.

Negotiation and formulation of successive and simultaneous FTAs constitutes a learning process for officials and the private sector alike. At the least, FTAs contribute to a

better specification of preferences and positions by actors but, potentially, could also strengthen their respective institutional capacities. For trade officials, complex FTA negotiations should provide incentives to gain further expertise, to coordinate inputs from other agencies and consult more often with business. In turn, FTAs should encourage business associations to improve their capabilities to fulfill government's information requests. As these exercises are repeated over time with successive FTAs, the information and coordination costs entailed should spur institutional change and creation within government agencies and business associations as well as in the channels of communication among them (Figure 1).

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

These four hypotheses will be tested empirically in the FTAs negotiated by Thailand and Malaysia describe in turn below. Findings confirmed the initial arguments and show that government-business consultations and lobbying in the context of FTA policymaking in both countries have evolved in similar manner, serving as further corroboration of the hypotheses.

3. Thailand FTA policymaking

Trade policymaking in Thailand is fragmented across several agencies but the main actors are the Ministries of Commerce (MOC), of Finance, of Industry (MOI) and of Agriculture.¹⁹

At the cabinet level, the Committee on International Economic Relations Policy provides guidelines on international trade and investment.²⁰ Peak business associations in Thailand, namely, the Federation of Thai Industries (FTI), the Thai Chamber of Commerce/Board of Trade (TCC), and the Thai Bankers Association, are collectively represented by the *Joint Standing Committee of Commerce, Industry and Banking* (JSCCIB) and all four participate in consultative committees within government agencies.²¹ The *Joint Public-Private Sectors Consultative Committee* is the highest-level government-business forum, but it has played a lesser role since the mid-1990s.²²

The participation of Thailand at the Uruguay Round, that led to the creation of the WTO, and at APEC's most important attempt of sectoral liberalization in 1998 was hampered by the limited expertise of Thai officials and the low capability and interest of the private sector (Okamoto, 2004; Sally, 2004; Rothgeb and Benjamas, 2007; Yoshimatsu, 2008; interviews). Thai positions originated from MOC senior officials who barely consulted businesses, apart from for peak and a few other well-organized associations. It was only in 1999 that the JSCCIB established the *Joint WTO Committee* to organize private sector

¹⁹ Our field research found evidence that, in broad terms, the MOC's Department of Trade Negotiations holds a liberal stance on trade liberalization, and it is the main focus of influence by foreign multinationals and Thai companies with international ties. Meanwhile, domestically-oriented manufacturers find greater leverage within MOI's Office of Industrial Economics.

²⁰ In 2002, a Trade Representative Office was created directly under the Primer Minister Office to promote trade opportunities abroad. The Office has not played a major role in the formulation of most Thai FTAs except in the ongoing Thailand-European Union FTA, where it is leading the Thai negotiation team.

²¹ In addition to its function as peak association, FTI serves as umbrella to 40 sectoral associations ("Clubs") spanning all industrial sectors. The TCC encompasses about 100 associations in the primary sector, services but also some manufacturing industries.

²² An analysis of the political leadership and the bureaucracy in Thailand and Malaysia is outside the scope of this project. Thai policymaking before 1973 has been described as a bureaucratic polity, where macroeconomic policy was controlled by an autonomous bureaucratic elite (Laothamatas, 1988; Ockey 2004). Business associations started emerging as influential policy actors in the 1980s and the creation of the Joint Public-Private Sectors Consultative Committee in 1981 has been hailed as the beginning of a new era of group-based business lobbying and corporatist policymaking in Thailand (Laothamatas, 1988; Laothamatas, 1992; Laothamatas, 1995). Nevertheless, clientelistic networks persisted and during Thaksin's tenure many business tycoons enter politics as members of parliament or the Cabinet (Prasirtsuk, 2007; Bowornwathana, 2011). See also footnote 10.

participation in multilateral negotiations. However, sluggish progress at the Doha Round has slowed down government's involvement in WTO matters and abated business interest.²³

Thailand is founding member of ASEAN, whose agenda, including launching of the AFTA, has historically been largely driven by high-level political summitry with limited business input (Ravenhill, 2008b). During the 1990s, and especially after the 1997 Asian financial crisis, ASEAN governments accelerated liberalization in response to pressure from Japanese and Western firms established in the region (Yoshimatsu, 2002; Yoshimatsu, 2008). However, it was only after 2003 that intra-AFTA tariff barriers were significantly reduced and eventually eliminated in 2010.²⁴ In Thailand, AFTA liberalization has been supported, and to a significant extent driven, by key benefiting sectors like automotive, food, and textiles and garments. Utilization of AFTA by Thai exporters increased from 10.7% in 2002 to 31.5% in 2010 (data provided by MOC).

None of the FTAs explored by Thailand immediately after the Asian crisis at the initiative of the bureaucracy progressed into negotiations. Slow progress at WTO and AFTA prompted Singapore to embark on bilateral FTAs after 2000, a move followed by Thailand where much of the initiative came from Prime Minister Thaksin (2000-2006) himself.²⁵ As of August 2013, in addition to AFTA and five bilateral agreements analyzed below, as member of ASEAN, Thailand is also party to five ASEAN-centered (also known as ASEAN+1) regional FTAs (Table 1).²⁶

²³ Involvement of Thai businesses in WTO issues is greater in the context of litigations, where the private sector not only often exceeds in expertise to officials' but also hires foreign legal experts (Rothgeb and Benjamas, 2007; interviews).

²⁴ AFTA was replaced in 2010 by the ASEAN trade in Goods Agreement. Full implementation of the Agreement in the less developed ASEAN countries (Cambodia, Myanmar, Laos and Vietnam) will occur in 2015, when ASEAN countries have scheduled the creation of the ASEAN Economic Community with the goal of achieving full economic integration.

²⁵ FTAs assumed a central position in Thai economic policy during Thaksin's tenure, being associated with his highly personalized decision-making style, often proposed in the context of state visits and summits (Hoadley, 2008).

²⁶ ASEAN has FTAs with China, Japan, Korea, Australia/New Zealand and India. The bilateral early harvest agreement between Thailand and China was subsumed into the ASEAN-China FTA. Thailand also participates of the Bay of Bengal Initiative for Multi-Sectoral, Technical and Economic Cooperation FTA. As for other ASEAN members, Thai bilateral FTAs tend to be more comprehensive and provide for faster liberalization than their respective ASEAN-centered FTAs that have aroused limited interest by business in Thailand.

Table 1: Thai Bilateral FTAs *

Official Name**	Coverage***	Timeline	Status
Thailand-Bahrain CEPA	EHS of 626 lines at HS6	Negotiations started in early 2002. EHS signature and implementation: Dec 02. FTA Negotiations: started in 2003-suspended in 2005	Abandoned
Thailand-China EHS	EHS of 188 agricultural lines at HS6	EHS implementation: Oct 2003. Superseded by ASEAN-China FTA	Bilateral FTA Subsumed into ASEAN-China FTA
Thailand-India EHS & FTA	EHS for 84 lines at HS6	Joint Study: May-Dec 2002. EHS negotiations: Dec 2002-Oct 2003. EHS signature: Oct 2003. Implementation: Sept 2004. FTA negotiations: abandoned and resumed several times. Possible resumption of talks in late 2013	EHS active. Bilateral FTA abandoned. Resumption of talks expected for late 2013
Thailand-Peru CEPA	EHS/FTA on 4000 lines at HS6	Joint Study: July 2002. Framework signed in Oct 2003. Negotiations: Jan 2004-Nov 2005. Protocols on ROOs signed in Oct 2009 and 2010. Implementation: Jan 2012	Abandoned between Nov 2005-Oct 2009 Active
Thailand-Australia FTA	Comprehensive	Joint study: July 2001-May 2002. Negotiations: June 2002-Oct 2003. Signature: July 2004. Implementation: Jan 2005	Active
N. Zealand-Thailand CEPA	Comprehensive	Negotiations: April-Nov 2004. Signature: April 2005. Implementation: July 2005	Active
Japan-Thailand EPA	Comprehensive but with some exclusions	Joint Study: Dec 2003. Negotiations: Feb 2004-Aug 2005. Signature: April 2007. Implementation: Nov 2007	Active
Thailand EFTA FTA	Comprehensive	Negotiations: Oct 2005-Jan 2006. Abandoned	Abandoned
Thailand-US FTA & TPP	Comprehensive	Proposal: Oct 2002. Impact study: Oct 2003. Negotiations: July 2004-Jan 2006. Abandoned Government expressed interest in TPP in Dec 2012	Bilateral FTA abandoned Pending decision by Parliament on TPP
Thailand-Chile FTA	Comprehensive	Impact study: March 2006. Negotiations: April 2011-Aug 2012. Signing: expected late 2012. Endorsed by the Thai Parliament in May 2013. Implementation: expected for Oct 2013.	Pending signing and implementation, expected for Oct 2013
Thailand-EU FTA	Comprehensive	Negotiations for ASEAN-EU FTA started in May 2007 and abandoned in early 2010. Bilateral Thailand-EU negotiations were endorsed by the Cabinet (December 2012) and Parliament (January 2013). Negotiations launched in March 2013. First round in May-June 2013	Regional FTA abandoned Bilateral FTA under negotiation

Source: Governments' websites complemented with information in local press (updated as of August 2013)

* Only bilateral FTAs that have reached negotiation status are included

** Abbreviations in this Table: CEPA: Closer Economic Partnership; EHS: Early Harvest Scheme; EFTA: European Free Trade Association (Switzerland, Norway, Iceland, Liechtenstein); EPA: Economic Partnership Agreement; TPP: Trans-Pacific Partnership

*** HS6 level refers to the 6-digit level of specification under the Harmonized Commodity Description and Coding System, which is the international nomenclature for goods developed by the World Customs Organization. HS6 includes around 5,500 items.

3.1 Early FTAs: marginal economic benefits and little interest by a mostly reactive private sector

Before negotiating with its larger partners, Thailand approached some small and distant economies such as Bahrain or Peru (Table 1). Research for this paper confirmed that

proposals for these early agreements originated from Thaksin himself and that, given their weak economic basis, negotiations proceeded with little involvement or interest by the private sector. In line with the existing literature (Sally, 2007; Phongpaichit and Baker, 2004), it was also found that Thai bureaucrats initially had little choice but to follow on Thaksin's initiatives. However, interviews also revealed that, despite their declined policymaking power, trade officials questioned certain FTA proposals and often succeeded in persuading Thaksin about their lack of economic rationale so some proposals or even negotiations, such as those with Bahrain and Peru, were postponed or abandoned altogether.²⁷

In November 2002, ASEAN and China signed an FTA to be realized over eight years but Thaksin, eager to gain a first-mover advantage in China, struck a separate bilateral Early Harvest Scheme (EHS) covering fruits and vegetables with plans for a fully-fledge Thailand-China FTA to follow. The import surge of produce from China prompted by the EHS adversely impacted Thai farmers, who had not been consulted on the deal (interviews). The EHS brought FTAs into the public eye for the first time and sparked the creation of *FTA Watch*, a coalition of NGOs that has become instrumental in channeling civic opposition to FTAs.²⁸

Likewise, ahead of FTA negotiations between ASEAN and India, Thailand signed a bilateral EHS with India and started negotiations for a comprehensive FTA. Research for this research project confirmed that overall consultation with organized business in this EHS was superficial, mostly at the peak level. However, interviews uncovered evidence that some

²⁷ Thailand and Bahrain signed an Early Harvest Scheme—liberalizing from the start a reduced number of items—but negotiations for the full-fledge FTA were eventually abandoned. Thailand and Peru agreed on an FTA in 2005 but it was never implemented and it was only in 2009, because of the renewed interest of some sectors, that talks were resumed (see below).

²⁸ FTA Watch claimed that the EHS benefited contract-farming operators like the Charoen Pokhand Group (*Bangkok Post*, August 13 2006; interviews), with links within Thaksin's cabinets like Wattana Muangsuk, then Minister of Industry and Commerce (interviews).

firms in the automotive and electronics sectors strongly supported the EHS. Over the last decade, Thailand has become the hub for multinational carmakers in Southeast Asia and beyond. The automotive industry is the country's second largest source of export revenue and, consequently, politically very influential. Some carmakers based in Thailand lobbied for the EHS as to integrate India into their Thai/ASEAN procurement network.²⁹ Japanese producers of consumer electronics were keen to level the playing field with Korean firms established in India. Reflecting these business interests, over 85% of the early utilization of EHS by Thai importers was concentrated in automotive components, despite representing only 3% of the items included in the EHS. In turn, over 40% of the EHS utilization by Thai exporters corresponded to electrical appliances (data provided by MOC). Persisting reluctance by India to liberalize other sectors has damped the interest of Thai officials and businesses in concluding FTA negotiations, which have dragged on for over a decade (Table 1).

Having failed to engage the European Union in a bilateral FTA, Thaksin approached the smaller European Free Trade Association (Table 1). The marginal economic benefits to be realized in this FTA and the opposition by FTA Watch to WTO-plus provisions on intellectual property rights resulted in the suspension of negotiations after only two rounds.

In line with my initial arguments, these early FTAs demonstrate that political willingness, even at the highest level, is not a sufficient condition to conclude an FTA when it is not accompanied by clear and certain economic impacts, even if these are limited to a small number of economic sectors.

²⁹ Toyota, which accounts for 40% of Thai automotive production, lobbied for the EHS that eliminated import duties on components from a factory it had established in India a year earlier.

3.2 FTAs with Australia and Japan: push 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 posed unprecedented demands on Thai officials that, as revealed by interviews and in line with Hypothesis 1, had to rely on technical expertise from business associations. The FTI and the TCC collected highly detailed sectoral data on the production structure in Thailand and elaborated the Thai proposal regarding ROOs in TAFTA. To agree on particular tariff and ROO levels, peak and sectoral associations also had to coordinate the often-opposing positions of upstream and downstream producers within and across sectors. In turn, FTI clubs, TCC and many individual sectoral associations had the chance to present their preferences to trade officials although smaller groupings could not participate on equal terms.³⁰

As advanced by Hypothesis 2, sectors anticipating large impacts from TAFTA tried to influence its formulation.³¹ At the time, Thai textiles and garments faced strong competition in Australia from producers of other developing countries. Accordingly, the proactive and well-organized textile (TTMA) and garment (TGMA) manufacturers associations lobbied in favor of Australian liberalization of their sector in the agreement. But the key sponsor of TAFTA was the automotive industry. International carmakers based in Thailand have always opposed any unilateral or multilateral liberalization that would expose them to competition from outside ASEAN. However, a bilateral FTA with Australia—historically, the single largest market for Thailand-made vehicles, which accounted for over a quarter of total

³⁰ A number of sectoral associations outside the FTI complained that they were not given enough time by trade officials to consult back with their members while other lacked the expertise required to participate efficiently (interviews). FTA Watch criticized TAFTA negotiations for their lack of transparency and the alleged collusion of interests of some cabinet members (*The Nation*, July 12, 2004 and February 1, 2005; interviews).

³¹ Although small-scale farmers and dairy producers in Thailand were projected to lose from TAFTA, they lacked the needed organization and leverage, and their interests were defended by FTA Watch (interviews).

exports—would help many Japanese and American carmakers with plants in both countries to rationalize their procurement and production activities. Indeed, my research found that automotive firms lobbied the Thai government in favor of TAFTA as soon as both countries launched a joint feasibility study. The Australian Ambassador to Thailand and the President of General Motors (GM) Thailand paid a visit to the Thai Industry Minister and pressed for the speedy opening of negotiations. The Automotive Industry Club at FTI—representing all carmakers—and the two auto-parts manufacturers’ associations in Thailand lobbied the MOC and Thaksin himself for total and reciprocal liberalization of vehicles and auto-parts. In Australia, carmakers also made submissions to the government in support of the deal (Parliament of Australia, 2004).³² 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 the agreement. The final treaty provided for the full and reciprocal opening of the Thai and Australian automotive industries—the first and only time Thailand has done so outside ASEAN (DFAT, undated). Thailand also gained improved access in Australia for its textiles and garments.³³

In contrast to the reported lack of interest on FTAs by the private sector in Thailand, my analysis of official preferential trade records shows that overall utilization of TAFTA among exporters has been high from the start, averaging 62.3% in 2005-2011 (data provided by MOC). The active role played by the automotive industry in the formulation of TAFTA is illustrated by its disaggregated sectoral utilization. In early years, well over half of all Thai exports using TAFTA preferences were vehicles and automotive parts, for which utilization

³² Production of vehicles and automotive parts in both countries were largely complementary and the Australian Federal Chamber of Automotive Industries supported the agreement ([sic], www.aph.gov.au/hansard/joint/commtee/J7814.pdf, accessed on July 25, 2009; not longer accessible at that link but available upon request).

³³ See Table 3 in another working paper by the author (also in this Working Paper series) entitled “Negotiating Protection under overlapping Free Trade Agreements” for details on Thai and Australian concessions in the automotive sector. Thailand obtained up to twenty years to liberalize its dairy sector.

is virtually complete (data provided by MOC).³⁴ Within days of concluding TAFTA negotiations, Thailand started talks with New Zealand, eager to cancel out trade diversion of its dairy industry by TAFTA. Interest on the Thailand-New Zealand FTA among businesses in Thailand was much reduced compared to TAFTA although preferences were distributed along similar sectoral lines. Eventually, concessions in this FTA closely followed those in TAFTA.³⁵

Specific sectoral business interests also drove the Japan-Thailand Economic Partnership Agreement (JTEPA). As the main investor, first source of imports and a major export destination, Japan was a natural FTA partner for Thailand.³⁶ According to my interviews, the main goals in JTEPA for Thai businesses were improving access in Japan to food, and textile and garment products and attracting further investment. JTEPA also ranked as one of the most sought-after FTAs for Japanese firms that hoped to reduce Thai tariffs on automobiles and steel, better integrate Japanese and Thai/ASEAN textile and garment producer chains and extract Thai concessions in investment and services (MOFA-JTEPA 2003; interviews).

Negotiation teams for JTEPA aimed not only at the liberalization of bilateral goods trade but also of investment and services and to incorporate in the agreement sectoral cooperation. The broader scope of the agreement with respect to previous FTAs meant the participation at JTEPA negotiations of government agencies that are not normally involved in

³⁴ Since implementation, exports of Thailand-made vehicles have trebled. As TAFTA preferential tariffs have been progressively reduced and eliminated in most sectors, the relative share of automotive products in total exports under TAFTA have slightly declined. Nonetheless, utilization of TAFTA for Thai exports of vehicles continues to be close to 100%.

³⁵ There are no data on the utilization of the Thailand-New Zealand FTA utilization because application for certificates of origin is not required.

³⁶ At the start of negotiations and until 2009, Japan was the second export market for Thai products after the United States. Since 2009, continues to occupy the second position but behind China (Trade Map database).

multilateral rounds.³⁷ In line with Hypothesis 1, field research found that during the formulation of JTEPA the government conducted more *ex-ante* impact studies and more frequent and effective consultations with the private sector than in previous FTAs. As in TAFTA, JTEPA establishes product-specific ROOs and the government depended again on the information provided by FTI and TCC to prepare a proposal. Likewise, formulation of mutual recognition agreements for the removal of the technical and standards barriers faced in Japan by key Thai exports (e.g., electrical appliances, food products), required detailed feedback from business associations and, in turn, from their members. The peak and main concerned business associations were engaged throughout JTEPA negotiation rounds and inter-round meetings.³⁸ Still, sectoral associations or individual firms seeking to secure their influence on JTEPA formulation had to take a proactive role, preparing impact reports and using their contacts within peak associations, ministries, or even the cabinet.

Greater and more efficient participation by the private sector during JTEPA negotiations was helped by improved capacity among officials and business associations. As contended by Hypothesis 4, after several FTAs both actors had improved their internal capabilities and some channels of communication became institutionalized (see Table 4 in the Discussion). Thus, in mid-2004, soon after the start of JTEPA negotiations, FTI and TCC established their respective *Committee on FTAs* as well as a separate *Subcommittee on JTEPA* (and on other ongoing FTAs at the time) to coordinate inputs from members and

³⁷ Agencies like the Ministry of Education, of Science and Technology, and of Information and Communications also participated in JTEPA. Talks were led and coordinated by the JTEPA Office at the Ministry of Foreign Affairs but negotiations around market access were responsibility of the MOC.

³⁸ Nevertheless, some smaller associations interviewed indicated that consultations with them were part of cross-sectoral and mostly informative gatherings and lamented the lack of time to prepare positions and/or of government receptiveness to them. FTA Watch recognized that, compared to previous FTA negotiations, consultations with businesses and civil society increased in JTEPA but the civic grouping declined to attend some of these meetings arguing that the government only sought to get the NGO stamp of approval (interviews). The private sector is not allowed to attend official FTA negotiations but our interviews found that representatives from peak and key sectoral associations but also some influential individual firms were present in the “next room” (a common phenomenon in trade negotiations; Jordana and Ramio, 2003) and consulted along the process when needed, even travelling with Thai negotiators when rounds took place in Japan (interviews). FTA Watch claimed that while negotiations were kept outside the scrutiny of the Thai Parliament, representatives from some firms were occasionally embedded within the Thai negotiation team (interviews).

serve as focal points for government officials. Individual FTI clubs and sectoral associations also created their own *FTA Taskforces*. A few months later, in November 2004, in the midst of negotiations with Japan and just after the second round of 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 multiple FTAs.

In Thailand, JTEPA got the support of the influential textile and garment, food, and jewelry industries and of Japanese carmakers. For Thai garment manufacturers, Japan has traditionally represented the second largest market after the United States and their associations lobbied to improve market access to their products in Japan via JTEPA. On its part, the Japan textile Federation (JTF) favored the establishment of FTAs with ASEAN members as a way to break Japanese dependence on Chinese imports. Japan is also one of the top destinations for the competitive Thai food processing industry. Interviews found that the Thai frozen food (TFFA) and food processors producers (TFPA) associations pressed the Thai government to negotiate the elimination of barriers in Japan not only through scheduled consultations but also proactively via more direct channels within the MOC and the cabinet.

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. Liberalization of vehicles produced in Japan was strongly opposed by American and European assemblers and automotive parts manufacturers based in Thailand.³⁹

³⁹ Even though Japanese carmakers produce locally about 90% of the vehicles sold in Thailand, Japanese firms sought liberalization of vehicles made in Japan in order to increase flexibility for future production strategies and to gain free access for large-engine luxury models, which are still manufactured in Japan. The Automotive Industry Club opposed liberalization of small and medium-size engine vehicles made in Japan but accepted some tariff reduction on vehicles over 3000cc. Liberalization of automotive parts and steel was naturally opposed by parts manufacturers but had partial support from American assemblers that import some inputs from Japan. Automotive part manufacturers eventually accepted a long tariff phase-out so to avoid confrontation with their mostly Japanese clients.

Japanese and Western firms lobbied the Thai government and strategically went to the media to air their strongest positions.⁴⁰

In support of Hypothesis 3, JTEPA also illustrated the possibilities in bilateral FTAs for business collective action and lobbying across borders (between levels II of both countries). Field research revealed that, even before negotiations had started, JTF dispatched representatives to Thailand to discuss with Thai counterpart associations (mainly TTMA and TGMA) on potential tariff reductions and ROOs to be included in JTEPA. Interestingly, Japanese government officials often participated in these meetings. Similar cross-border business collective action occurred in the food sector; TFFA and TFPA contacted wholesale buyers and trading companies in Japan to consolidate positions to be passed to their respective governments.

The Thai government was concerned that JTEPA could make redundant existing investment (or jeopardize future one) in the automotive sector. Accordingly, Thailand accepted the progressive liberalization of automotive parts from Japan but refused liberalization of vehicles, except for a tariff reduction from 80% to 60% on larger-engine cars, which represent less than 0.5% of the total market. In turn, Japan reduced tariffs on garments and textiles, footwear, jewelry, and processed food (METI-JEPA, undated). The official treaty signing was postponed indefinitely due to the political instability in Thailand that eventually led to a coup d'état that ousted Thaksin in September 2006. Far from remaining passive, Thai businesses proactively and openly pressed the new interim

⁴⁰ Thai officials met not only with automotive business associations based in Thailand but also with individual companies. Some carmakers, especially highly influential Toyota, also proactively lobbied cabinet ministers and Thaksin himself (interviews).

government to sign and implement JTEPA. After some reticence, the government yielded to business pressure and ratified the agreement.⁴¹

Since being implemented in November 2007, the overall utilization of JTEPA has stood low at around 25% for exports, which could be partly explained because many items are still covered by long tariff phase-out periods.⁴² In addition, as further elaborated in the working paper referred in footnote 15, low overall utilization hides significant sectoral variability. Utilization of JTEPA by Thai exporters of processed food, jewelry and textiles and garments items exceeds 70% (data provided by MOC; see working paper referred in footnote 33).⁴³

Of note, proactive cooperation and lobbying across borders between the Thai and Japanese private sectors did not end with the enforcement of the agreement. The all-encompassing Thai JSCCIB and Japanese peak Keidanren associations met in February 2011 to publicly demand from their respective governments a review of JTEPA to expand coverage and accelerate liberalization schedules (*Bangkok Post*, February 19, 2011).

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

For decades and until just 2010, the United States was the single largest market for Thai exports. Establishing a bilateral Thailand-United States FTA (TUSFTA) was therefore

⁴¹ Immediately after the coup, Thai businesses requested the military-backed government (October 2006-January 2008) to ratify JTEPA (*The Nation*, October 20, 2006). When a few months later, in February 2007, the government signalled that all pending FTAs would be put on hold until after elections—at least a year later—TCC and 16 business associations publicly urged the government to sign JTEPA and resume negotiations for other FTAs (*Matichon*, February 15, 2007). The government eventually signed JTEPA two months later. Among the associations that pushed the interim government for JTEPA ratification were sectors likely to benefit from it such as jewelry, processed food, textiles and garments, and footwear.

⁴² Nevertheless, this low overall utilization of JTEPA for exports should be put into context since over half of Japanese tariffs are set at zero. When use of JTEPA is calculated only for tariff lines where Japanese MFN is set above zero, corrected JTEPA utilization for exports in 2011 is 71.2%. See working paper referred in footnote 15.

⁴³ Our interviews also revealed that JTEPA implementation encountered some minor problems that may reflect a lack of understanding and/or communication between officials and business associations during consultations and formulations.

fundamental to improve access to the United States for Thai agricultural products, processed food, textiles and garments, commercial vehicles and jewelry.⁴⁴

Thai officials had to confront teams of experienced American negotiators, opening for discussion issues Thailand had never dealt with at the WTO or in previous FTAs (e.g., labor and environmental standards, financial liberalization, competition policy). Although the multiple dimensions of the accord meant that some chapters of the negotiation were assigned to less trade-savvy ministries (e.g. Ministry of Labor, of Natural Resources and Environment, etc.), the newly established *National Committee on FTA Strategy and Negotiations* helped with overall coordination.⁴⁵ As predicted by my initial arguments, the complexity of these negotiations prompted the Thai government to consult more frequently with concerned peak and sectoral business associations that, in turn, established dedicated TUSFTA Committees to coordinate members' inputs and talks with trade officials (interviews).

Importantly, field interviews also revealed that the American and Thai private sectors took the lead over their respective governments in TUSFTA. Organizations representing some American businesses sectors (or firms with activities in the United States) with interests in Thailand (e.g., Thailand-United States Business Council, American Chamber of Commerce, United States-ASEAN Business Council) mobilized promptly and commissioned a TUSFTA impact study as early as mid-2003 (interviews).⁴⁶ In March 2004, before negotiations started, the United States-ASEAN Business Council launched the *United States-*

⁴⁴ Since 2010 the United States has been surpassed by China and Japan as main destinations for Thai exports (Trade Map). In contrast to Japan or Australia, United States' key interests in TUSFTA fell squarely around services liberalization and stricter intellectual property rights rather than on trade in goods.

⁴⁵ According to some American-related business groupings, and despite the experience gained through previous FTAs, Thai negotiators may have approached TUSFTA not fully aware of all of its regulatory implications and the need for prior legislative reforms. The same sources also stated that the Thai team lacked expertise on regulatory issues like labor and environmental standards (interviews). At the time, the President of the United States G.W. Bush had so-called "Trade Promotion or Fast Track Authority", allowing negotiation of FTAs that the United States Congress could only approve or reject but not amend.

⁴⁶ Mindful of the potential resistance to TUSFTA among the Thai general public, the study was assigned to an independent Thai think tank.

Thailand FTA Business Coalition, to lobby both governments for a comprehensive agreement on behalf of the largest American multinationals.⁴⁷

Likewise, contrary to the reported apathy about FTAs among Thai-owned businesses (Hoadley, 2007a; Sally, 2007; Hoadley, 2008), my field research found that key economic sectors in Thailand acted proactively in TUSFTA (in favor of or against) and lobbied not only Thai but also American authorities. With the United States absorbing then over half of Thai garment exports and a similar share of processed seafood, the corresponding Thai associations urged the Thai government to launch negotiations long before they were initiated. Strong support for TUSFTA also came from the jewelry sector—which at the time accounted for about a quarter of all Thai exports under the United States Generalized System of Preferences—and the Pharmaceutical Research and Manufacturers Association, representing multinational pharmaceutical firms in Thailand (interviews). In turn, the Thai Bankers Association pressed the government to resist financial liberalization, but the opposition mounted by other Thai-based businesses was not so effective, reflecting limited leverage and problems organizing collective action.⁴⁸ Of all FTAs that Thailand had negotiated until then, TUSFTA stirred the strongest popular opposition, especially by civil society groups resisting broadening of WTO's Agreement on trade-related intellectual property rights (interviews).

TUSFTA also confirmed my initial contention (Hypothesis 3) that bilateral FTAs offer greater possibilities for business collective action and for government-business consultation and lobbying across borders than other forms of liberalization. Even before

⁴⁷ American sectoral business associations in the pharmaceutical industry, logistics, software and other services also lobbied in favor of TUSFTA.

⁴⁸ The Thai Pharmaceutical Manufacturers Association and the logistics sector, fragmented in three separate associations, also opposed the agreement (interviews). The interests of small-scale farmers, expected to lose from TUSFTA, were represented by FTA Watch (interviews).

negotiations started, Thai business associations representing garment (TGMA), and processed food (TFFA TPFA) producers, with high stakes in TUSFTA, lobbied directly American officials (interviews; official records).⁴⁹ Field interviews also revealed that during its visits to Thailand, the American negotiation team met with key Thai business associations to exchange views.

Although talks were suspended in early 2006 on continuing political instability in Thailand, prospects for an accord were nevertheless low because of the lack of progress on key American demands, opposition by civic groups in Thailand and changes in the political landscape in both countries.⁵⁰ Malaysia was also involved in bilateral negotiations with the United States and several Thai sectors (e.g., processed food, garments) kept lobbying the post-coup interim government, and successive elected ones, to reopen TUSFTA talks (interviews). However, in 2008, the United States discontinued its bilateral approach in Asia in favor of joining the existing *Trans-Pacific Strategic Economic Partnership* (TPP). With the admission into TPP negotiations of Vietnam—the second largest garment exporter to the United States—in late 2008, of Malaysia in 2010, and the possibility of Indonesia following suit over the near future, Thai exporters have maintained their pressure on the government to join TPP (*The Nation*, September 20, 2010 and April 9, 2013).⁵¹

Slowdown in FTA activity in Thailand since 2006 that has to do not only with the persisting political instability but also with procedural changes introduced by the 2007

⁴⁹ As early as June 2004 and throughout 2004-2006, TGMA hired lobbying firms in the United States to pressure the United States Trade Representative in favor of TUSFTA. TFFA also contracted American lobbyists during 2005-2006 for the same purpose (interviews; Clerk US 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).

⁵⁰ Invalidation of the April 2006 snap elections, forced Thaksin to continue as “Caretaker Primer Minister” but new elections were eventually frustrated by the September 2006 coup d’état. Thaksin, attending a United Nations summit in New York at the time of the coup, had met a few days earlier with American businesses and ensured them that all remaining obstacles in TUSFTA, particularly in the area of intellectual property rights protection, would be solved after elections.

⁵¹ For the short-lived cabinets after the interim government—Thailand had five Prime Ministers during 2008—political survival, not FTAs, was the only priority. Although Yingluck’s current government has been receptive to private sectors demands about TPP, and officially expressed interest in the trade bloc (*The Nation*, November 20, 2012), significant opposition needs to be overcome first. As for TUSFTA, TPP is rejected by a number of Thai service providers, small farmers and NGOs working on access to medicines.

Constitution. Under its Article 190, drafted by FTA Watch, international agreements having a significant economic or social impact must not only get parliamentary approval before negotiations are launched and after once are concluded, but the government is also obliged to consult all stakeholders including the public.⁵² Aware of public's reluctance about FTAs with the United States and the European Union, the Thai private sector has repeatedly asked for changes in Article 190 (e.g., *Bangkok Post*, December 8, 2012).⁵³

In 2007, the European Union proposed to ASEAN the creation of an FTA between both blocs. The European Union is also major market for Thai exporting sectors (e.g., textile and garments, processed food, jewelry, electrical appliances, commercial vehicles), and my interviews found that between 2007 and late 2009 these industries pressed the Thai government to negotiate for the liberalization of their products in the European Union.⁵⁴ In 2010, the European Union abandoned its regional approach and started bilateral negotiations with selected ASEAN countries, beginning with Singapore, Malaysia and Vietnam.⁵⁵ Earlier preferential access to the European Union by these countries could put Thai exporters at a disadvantage, especially as 700 Thai exports are expected to lose preferential treatment under the European Union Generalized System of Preferences in 2015. As in TUSFTA and TPP, by civic groups have decried the European Union-Thailand FTA.⁵⁶ Following Article 190's

⁵² In addition, it also requires fair compensation to those negatively affected by FTAs. Although Article 190 puts Thailand at a disadvantage with respect to countries where FTAs are approved through executive order (e.g., Malaysia), it could also arguably strengthen the bargaining position of Thai negotiators.

⁵³ In April 2013, the government initiated parliamentary proceedings to amend Article 190 but has so far encountered political and civic resistance (*The Nation*, April 4, 2013).

⁵⁴ Sectors potentially adversely affected by an ASEAN-European Union FTA—mainly small firms in the dairy, logistics and communications sectors—opposed the agreement but their leverage and policy influence was limited (interviews).

⁵⁵ At the time, two major obstacles to the ASEAN-European Union FTA were the difficulty for the European Union of embracing a non-democratic Myanmar as a trade partner and the convergence of ASEAN countries on their least common denominator. Negotiations for the European Union-Singapore FTA concluded in December 2012. Our interviews indicated that Thailand was initially second only to Singapore in the priorities of the European Union. However, political instability during 2009-2010 and the difficulties posed by Article 190 have slowed down progress in the bilateral FTA.

⁵⁶ The bilateral FTA has been condemned by the Thai Pharmaceutical Manufacturers Association and the Minister of Health himself for its potential implications for access to medicines (*Nation*, August 25, 2009; *Bangkok Post*, July 12, 2012). On December 2012, a coalition of NGOs and consumer groups urged the European Union Parliament to press the European Commission to forgo WTO-plus features on intellectual property rights in the FTA (personal communication).

mandate, during 2010 the MOC set in place an unprecedented process of hearings with businesses, small-farmers, civil society and well as other public agencies, whose opinions were forwarded to the Cabinet and Parliament.⁵⁷ In line with Hypothesis 1, at these hearings, government agencies acknowledged the complex regulatory framework in the European Union and the need for trade officials to gain detailed information on production processes before negotiating ROOs with the European Union.⁵⁸ Over the last couple of years, peak business associations in Thailand have publicly urged the government to speed up the launching of negotiations to avoid losing ground vis-à-vis other ASEAN members (*The Nation*, January 25, 2013). Bilateral talks officially began in May 2013 (Table 1).⁵⁹

Some FTA negotiations with small trading partners, and at different stages of study or negotiation since the Thaksin's administration, remain in a limbo in light of lack of substantial economic rationale, while others have been abandoned. Increased awareness about FTAs has prompted some Thai-based export-oriented sectors to reconsider some of these older proposals and proactively lobby for those that could benefit them (Table 1).⁶⁰

After several years of rapid cabinet turnover, a relatively more stable political environment has allowed the last two Prime Ministers to subscribe new FTAs with mid-size partners.⁶¹ Over time, Thai officials and organized business have gained greater expertise on FTA-related issues and developed new institutions to communicate and coordinate between

⁵⁷ Between April and July 2010, the MOC commissioned an impact study and established a dedicated Thai-European Union FTA Committee that conducted consultations with 161 business associations, 455 small-scale farmers, 445 civic groups and 80 government agencies (mimeos, available upon request).

⁵⁸ Another recommendation from these consultations was the creation of a centralized organization, with business and civil society participation, to conduct cross-sectoral impact analysis on previous and future FTAs (mimeos, available upon request).

⁵⁹ In December 2012, the Thai cabinet approved the issues for negotiation, later endorsed by the Parliament (*Bangkok Post*, December 5, 2012; *The Nation*, June 2, 2013). In Thailand, negotiations for this FTA will be lead by the Thailand Trade Representative Office.

⁶⁰ FTAs between Chile and several key competitors (e.g. Malaysia, China, Korea) mobilized Thai-based firms in the automotive, electrical appliances, processed food and plastic sectors, who pressed the government to rescue a proposal from 2003 and start negotiations for an FTA in 2011. Likewise, following an increase in automotive exports to Peru by 800% during 2004-2008 (reaching two thirds of total exports), in 2009, carmakers in Thailand lobbied to resume negotiations for the Thai-Peru FTA, on hold since 2004.

⁶¹ As of July 2013, in addition to a pending decision on TPP, Thailand is holding exploratory talks with South Korea, Canada and Turkey (personal communications).

and among themselves. Constitutional checks have improved accountability in FTA policymaking although, given political fragmentation and a highly mobilized civil society, they could block progress on FTAs containing WTO-plus provisions, such as the TPP or Thailand-European Union FTAs.

4. Malaysia FTA policymaking

By developing country standards, Malaysia has a liberal trade and investment regime outside those sectors related to the promotion of the ethnic-Malay/bumiputera population like government procurement, strategic services and some manufacturing industries, most notably the automotive.⁶²

In contrast to the more disperse policymaking process in Thailand, international trade and industrial policies in Malaysia are formulated within a single agency, the Ministry of International Trade and Industry (MITI).⁶³ MITI bears most responsibility for FTA policymaking and coordinates inputs from other agencies and from the private sector before agreements are passed to the cabinet for sanction, not requiring of parliamentary approval.⁶⁴ Peak business associations in Malaysia comprise the influential Federation of Malaysian Manufacturers (FMM) and the three smaller ethnic chambers of commerce, all jointly integrated into a national chamber. These associations, especially FMM but also some key independent sectoral groupings, are represented on the advisory boards of government

⁶² For the last four decades Malaysian economic policy has been guided by two overarching goals: achieving developed nation status and fostering participation of the local ethnic-Malay/bumiputera population in the economy. In the mid 1980s and early 1990s, the government launched several national automotive brands, most notably PROTON and PERODUA, that it has sheltered from internal and external competition.

⁶³ Malaysia policymaking is highly centralized, especially when compared to Thailand. Policy proposals emerge primarily from the Prime Minister Department and are formulated by the bureaucratic elite largely outside the public debate (Leong, 1992:204; Siddiquee, 2013). Highest levels in the Malaysia bureaucracy have been portrayed as closely linked with the political leadership (Chin, 2011:148; Siddiquee, 2013).

⁶⁴ Other important players are the investment and export promotion agencies (Malaysian Industrial Development Authority, MIDA, and the export promotion agency, MATRADE, respectively) under the aegis of MITI and the Economic Policy Unit, within the Prime Minister Office. Ministries frequently contributing inputs on trade policymaking include Finance, Agriculture and Agro-based industries and Plantation Industries and Commodities.

agencies participating in regular consultations with economic ministries.⁶⁵ Interviews with government officials attested to the reliability of the technical intelligence provided by FMM that, despite its privileged access to Malaysian policymaking, has avoided cooptation. Compared to FMM's strong secretariat, the weaker Malay, Indian and Chinese Chambers have limited technical capacity and are mostly integrated by small and medium firms. In line with the more centralized and behind doors policymaking process, Malaysian business associations rarely use the media either to pressure or praise the government on specific policies as Thai associations openly do.

Malaysia is a member of the WTO, APEC and ASEAN. Private sector consultation and participation in WTO and APEC liberalization rounds were mostly restricted to MITI's Annual Dialogue (Okamoto, 2004; interviews). Until only recently, Malaysia was a laggard within ASEAN as it resisted early programs for intra-regional liberalization of intermediate inputs and excluded the automotive sector from AFTA schedules in the aftermath of the Asian crisis (Yoshimatsu, 2002).

Although initially reluctant to enter into bilateral FTAs, fear of exclusion from the FTAs of competing nations prompted Malaysia to start negotiating its own. In addition to five regional ASEAN+ FTAs, Malaysia already has six bilateral FTAs in force (Table 2).

⁶⁵ Inspired by Japan, in 1983 Malaysia introduced the concept of *Malaysia Inc*, in reference to the collaboration and consultation between private and public sectors on economic policymaking. The model has often blurred boundaries between the private sector, the state and the ruling party (Gomez and Jomo, 1999; Gomez, 2009). In resource-based sectors, including the largely influential palm oil industry, which has significant participation by government-linked companies and government schemes, business associations are integrated within government-sponsored boards and councils that develop most of the sectoral intelligence and represent their interests at trade fora.

Table 2: Malaysian Bilateral FTAs*

Official Name**	Coverage***	Timeline	Status
Malaysia-Japan EPA	Comprehensive	Proposal: January 2002. Joint Study: February-December 2003. Negotiations: December 2003-May 2005. Signature: December 2005. Implementation: July 2006	Active
Malaysia-Pakistan CEPA	EHS of 125 lines at HS6 level CEPA comprehensive	EHS signature: December 2005. Implementation: January 2006. CEPA negotiations: April 2005-September 2007. Signature: November 2007. Implementation: January 2008	Active
Malaysia-New Zealand FTA	Comprehensive	Negotiations: May 2005-May 2009. Signature: October 2009. Implementation: August 2010	Active
Malaysia India CECA	Comprehensive	Proposal: December 2004. Joint study: January 2007. Negotiations: 2008-2010. Signature: February 2011. Implementation: July 2011	Active
Malaysia-Chile FTA	Trade in Goods	Proposal: November 06. Negotiations: June 2007-May 2010. Signature: November 2010. Implementation in February 2012	Active
Malaysia-Australia FTA	Comprehensive	Negotiations: April 2005-March 2012. Implementation: January 2013	Active
Malaysia-US FTA & TPP	FTA comprehensive TPP comprehensive	Bilateral Negotiations: June 2006-July 2008 (eight rounds). Suspended Malaysia joined TPP in October 2010. Last round (17 th) in May 2013	Bilateral suspended TPP under negotiation
Malaysia-EU FTA	Comprehensive	ASEAN-EU negotiations: Abandoned in early 2010 Bilateral negotiations: December 2010-ongoing (last round in September 2012)	Under negotiation
Malaysia-Turkey FTA	Trade in goods	Negotiations: May 2010-ongoing (last round in January 2012)	Under negotiation

Source: Governments' websites (updated as of August 2013)

* Only FTAs that reached negotiation status are included.

** Abbreviations in this Table: CECA: Comprehensive Economic Cooperation Agreement; CEPA: Closer Economic Partnership; EHA: Early Harvest Agreement EPA: Economic Partnership Agreement; TIFA: Trade and Investment Framework Agreement; TPP: Trans-Pacific Partnership

*** HS6 level refers to the 6-digit level of specification under the Harmonized Commodity Description and Coding System, which is the international nomenclature for goods developed by the World Customs Organization. HS6 includes around 5,500 items.

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

During negotiations for the ASEAN-China FTA, the first for Malaysia after AFTA, consultation with the private sector was limited to FMM and key sectoral associations (interviews). ASEAN-China FTA was beneficial for Malaysian producers of palm oil and rubber and negotiation on behalf of these sectors was conducted by their respective government-linked boards. Field interviews found that some relevant sectors, like the steel industry, were not consulted, resulting in the liberalization of some sensitive products under normal track. This reversal incensed the Malaysian Iron and Steel Industry Federation and prompted it to take a more active role in successive FTAs.

Malaysia initiated its bilateral liberalization approach negotiating an FTA with one of its largest trading partners, Japan. Consequently, it did not have the chance to hone its negotiating skills with smaller partners as Thailand did. With the Malaysia-Japan Economic Partnership Agreement (MJEPA), Malaysia sought not only to expand market access in Japan for some key exports, but also to enhance its position as an investment destination. On its part, Japan's main interest laid in eliminating tariffs on automobiles, steel, and electrical machinery as well as easing non-tariff barriers and restrictions in services (MOFA-MJEPA, 2003; interviews). In contrast to Thailand, FTA impact studies conducted directly by MITI or commissioned to other government agencies or think tanks are never disclosed to the public. Although the initiative for MJEPA rested with the political leadership and top bureaucratic ranks, interviews indicated that business consultation was wider than in ASEAN-China FTA and that MITI gathered technical intelligence from relevant government agencies and a number of business associations. Coordination of MJEPA fell to the Ministry of Foreign Affairs, but MITI dealt with the market access component. Some business associations claimed that the Malaysia government negotiated early FTAs—including MJEPA but also FTAs with Pakistan and New Zealand—using template models and simple trade statistics (interviews)

Outside a few sectors, MJEPA elicited limited enthusiasm among a mostly defensive local business community. Interviews found that support for MJEPA came mainly from the palm oil, plastics, and textiles and garments industries. The Malaysian Plastics Manufacturers Association was consulted but did not take a leading role while the Palm Oil Board and Council conveyed the positions of business associations. Among the most proactive associations in MJEPA were the Malaysian Textile Manufacturers Association (MTMA) (see

below) and Malaysian Iron and Steel Industry Federation. As postulated by Hypothesis 2, the Malaysian Iron and Steel Industry Federation learned from its exclusion during the formulation of the ASEAN-China FTA and pressured the government for adopting its position during MJEPA.

In line with Hypothesis 3, MJEPA fostered cross-border collective action between organized business groups and firms in both countries. As in Thailand, even *before* negotiations between both governments had started, representatives from the Japan Textile Federation met with their counterparts of MTMA to negotiate on a common proposal to put forward to their respective governments. Again, Japanese officials often attended these meetings. Business collective action and lobbying and government-business consultations across borders also occurred in the steel sector. Interviews discovered that the Japan Iron and Steel Federation contacted the Malaysian Iron and Steel Industry Federation to find areas of agreement. Steel producers in Japan lobbied for liberalization in Malaysia not only through the Japanese government, but also directly on the Malaysian government. It is worth noting that Japanese officials also contacted the Malaysian Iron and Steel Industry Federation to learn on its position and offered it support in pushing for domestic reforms (interviews).⁶⁶

Negotiations stumbled over liberalization of the highly protected Malaysian automotive sector. At the time, Malaysian carmaker PROTON was seeking further delays in AFTA implementation, all the while facing financial losses and strong competition from Japanese firms at home. Naturally, PROTON opposed liberalization under MJEPA. MJEPA was endorsed by the Malaysian Automotive Association, which encompasses all foreign assemblers and distributors. The government consulted not only with national carmakers and

⁶⁶ The Malaysian Iron and Steel Industry Federation eventually succeeded in obtaining the phase out of tariffs on sensitive items by 2015.

the Malaysian Automotive Association, but also individual Japanese firms (interviews).⁶⁷ Some consultations with the automotive industry involved the MITI Minister or Prime Minister Abdullah himself. Some of the informants for this research indicated that Japanese carmakers threatened to move all their assembly to Thailand if liberalization demands were not met.

In the final text, Malaysia agreed to open its automotive and steel sectors to Japan fully by 2015 (METI-MJEPA, undated). Japan, on the other hand, eliminated tariffs on chemicals, plastics and textiles and garments, and offered technical cooperation in several areas.⁶⁸ Since implementation in July 2006, overall utilization of MJEPA by Malaysian exporters has been low, at slightly over 10% of total exports. However, reflecting initial lobbying interests, sectoral utilization has been heavily concentrated with palm oil and plastics alone accounting for about half of the value of all Malaysian exports to Japan under MJEPA. Producers in the palm oil, plastics, chemicals, and garments sectors use MJEPA preferences in almost 100% of their exports to Japan (data from MITI and see working paper referred in footnote 15). In turn, Malaysian imports of Japanese automotive parts have trebled and constitute now the main import item under MJEPA preferences.

After MJEPA, the Malaysian government stepped up its FTA activity and entertained proposals for FTAs with smaller trading partners and that originated more often from these countries than from its own initiative or Malaysian businesses (Table 2).⁶⁹ In 2007, Malaysia signed an FTA with Pakistan, the second largest export destination for Malaysian palm oil,

⁶⁷ Automotive parts suppliers for PROTON and PERODUA (through their respective Vendors associations) strongly opposed any liberalization, whether through AFTA or bilateral FTAs. By contrast, the Malaysian Automotive Component Parts Manufacturers Association, was content with a sufficiently long phase-out of tariffs.

⁶⁸ See two other working papers by the author (also in this Working Paper series), one entitled “Creation and Shifting of Rents within Bilateral Free Trade Agreement Blocs. Firms, States and the Redistribution of Power within Production Networks under Regionalism” and the one referred in footnote 33.

⁶⁹ The rationale for some of these FTAs laid primarily in the partners’ interest in gaining access to ASEAN and/or in very specific sectoral preferences. Nevertheless, fostering common Islamic roots has been also a factor in many of these FTAs.

which accounts for 65% of total exports to that country. Consultation with the Malaysian private sector was limited to peak associations and the Palm Oil Board and Council. Proposals for bilateral FTAs between Malaysia and India, New Zealand and Australia emerged from the partner side, soon after similar FTAs with ASEAN. Only the Malaysia-Chile and Malaysia-Turkey FTAs were launched without being preceded by regional accords. As advanced by my initial argument, small economic benefits and limited private sector interest in these bilateral FTAs have dragged on their negotiations.⁷⁰ The Malaysia-India FTA is expected to benefit large and politically influential infrastructure sector firms that lobbied for the agreement.⁷¹ My interviews found that support for the other four FTAs was concentrated in Malaysian garments, rubber and electrical goods producers. Expertise gained during previous negotiations helped MITI officials deal with technical issues and beyond-border disciplines in the FTAs with New Zealand, Chile and Australia.

4.2 FTAs with the largest partners: businesses taking the initiative

The United States has traditionally been Malaysia's largest market and source of foreign investment.⁷² For Malaysia, a bilateral FTA was therefore important to ease access in the United States to its main exports, some like footwear and textiles and garments facing steep duties of up to 48%. In turn, the United States was only interested in a comprehensive FTA that could liberalize Malaysian government procurement and services, introduce labor and environmental standards and enforce stricter competition policy and intellectual property rights.

⁷⁰ In 2009, Malaysia accepted an FTA proposal from Turkey that has attracted limited business interest in Malaysia. Consequently, negotiations have been slow.

⁷¹ During interviews, trade negotiators confirmed that political drive for the FTA came from the Indian side. Given Indian resistance to opening up key sectors, Malaysia gave low priority to these negotiations.

⁷² The importance of the United States as an export destination has declined in recent years. Until 2008, the United States absorbed around 20% of all Malaysian exports for 8.3% in 2011, behind China, Singapore and Japan.

When bilateral talks started in June 2006, Malaysia was not longer a novice at negotiating FTAs, but the level of complexity involved in the Malaysia-United States FTA (MUSFTA) was far beyond that of any previous FTA. My interviews found that, in line with Hypothesis 1, such complexity compelled MITI officials to conduct not only more *ex-ante* impact analyses but also more consultations with the private sector and other government agencies, some of them new to trade negotiations.⁷³

In the United States, MUSFTA received support from firms in the pharmaceutical and services sectors (e.g. logistics, software, finance). On December 2005, before the start of negotiations, American multinationals party to the United States-ASEAN Business Council created the *United States-Malaysia FTA Business Coalition*, which along the American Chamber of Commerce and other pressure groups lobbied the United States Congress and the Trade Representative for a comprehensive deal in MUSFTA.⁷⁴

As anticipated by the theoretical framework, the relevance of the United States market for Malaysian exporters meant that the push for MUSFTA in Malaysia emerged not from the government—in fact, reluctant to open for negotiation key government-controlled sectors—but from the private sector itself. Interviews found that FMM and MTMA were concerned about the progress in trade negotiations between the United States and other ASEAN countries and urged the Malaysian government to seek its own FTA. The FMM, which traditionally maintains a behind-the-scenes lobbying approach, took an unprecedented active and public position in favor of MUSFTA.⁷⁵ With the impending loss of Trade

⁷³ Liberalizing government procurement and services required changes in highly-sensitive domestic laws favoring ethnic Malay/bumiputeras. Agencies involved in an FTA for the first time in MUSFTA included the ministries of Human Resources, of Natural Resources and Environment, of Energy, Green Technology and Water, of Information, of Communication and Culture, and of Science, Technology and Innovation as well as the Attorney General's Office.

⁷⁴ In May 2006, the American Chamber of Commerce in Malaysia (representing firms with interests in United States-Malaysia relations) prepared a report on key areas for liberalization in Malaysia as part of MUSFTA (mimeo).

⁷⁵ FMM issued several public statements in support of MUSFTA (e.g., *The Edge Daily*, March 12, 2007; *The Star*, March 23, 2007; *New Straits Times*, August 22, 2006).

Promotion Authority by the United States President (see footnote 45), FMM pressed for the rapid conclusion of talks that could have put Malaysia several years ahead of competing countries.⁷⁶ At the time of negotiations, the United States accounted for almost two thirds of all Malaysian garment exports and, accordingly, MTMA took a proactive position and lobbied the Malaysian government in favor of TUSFTA.⁷⁷ Another key sponsor of MUSFTA was the Pharmaceutical Association of Malaysia, representing multinational pharmaceutical firms operating in the country. In turn, the three ethnically-based chambers and generic drug producers in the Malaysian Organization of Pharmaceutical Industries opposed the FTA (interviews; *New Straits Times*, February 28, 2007).⁷⁸

As predicted by Hypothesis 3, research found that MUSFTA fostered business collective action and lobbying across borders. As early as July 2006, MTMA hired lobbying firms in the United States to pressure its Trade Representative in favor of liberalization of the textile/garment sectors in MUSFTA. Lobbying to American trade authorities by MTMA continued until late 2009, more than a year after the last negotiation round had stalled (interviews; official records).⁷⁹ In turn, the *United States-Malaysia FTA Business Coalition* and the American Chamber of Commerce in Malaysia pressured MITI officials for the liberalization of services and government procurement (interviews). Field interviews also revealed that business communities in different sectors in both countries arranged *ad-hoc* bilateral meetings (between both levels II) to jointly exhort both governments for a comprehensive deal.

⁷⁶ For FMM, TUSFTA (and now the TPP) was also a tool to open up and make more transparent Malaysia's government procurement system (interviews).

⁷⁷ As in Thailand, the share of the United States market in Malaysian garment exports has progressively declined to an average of 45.3% during the 2010-2012 period (Trade Map).

⁷⁸ In Malaysia, civil society mobilization against MUSFTA was limited compared to that in Thailand.

⁷⁹ Clerk of the US 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).

As Malaysia embarked on more and more relevant FTAs, the private sector created institutions to reduce the transaction costs entailed in collective action and lobbying. Coinciding with the start of MUSFTA negotiations, FMM led the creation of the *Private Sector Task Force on FTAs*, with the goal of coordinating positions across business associations and provide feedback to MITI officials, who also attend these meetings.

Bilateral negotiations stalled in July 2008 due to Malaysia's resistance to the liberalization of government procurement and services and the change in American FTA policy in the region in favor of TPP. Still, my interviews in late 2009 found that the Malaysian private sector kept pushing both governments for a bilateral FTA until late 2009. FMM and MTMA favored a MUSFTA over TPP because the former enhances their leverage during negotiations and discriminates against firms from other ASEAN countries. However, when the United States made it clear that it would only pursue regional talks, both associations started lobbying the Malaysian government to join TPP, pressure that proved key in Malaysia's decision to eventually entering TPP talks in October 2010 (interviews).⁸⁰

Among members of the Malaysian private sector and civil society, only an FTA with the European Union evokes as much interest, in favor or against, as MUSFTA or TPP. Once again, Malaysian exporters favored a bilateral FTA with the European Union that could discriminate against other ASEAN competitors while the government preferred an ASEAN-European Union FTA, more amenable to exclusion of the sensitive automotive and services

⁸⁰ In February 2010, at a meeting between the Malaysian private sector representatives and the Deputy United States Trade Representative, the FMM expressed support for TPP and 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, accessed at: <http://wikileaks.org/cable/2010/02/10KUALALUMPUR96.html>, accessed on November 25, 2011). Despite strong support for TPP by MTMA, some modelling studies have questioned the benefits of TPP for the textile sector (*The Edge*, September 11, 2012). The Malaysian private sector has also supported TPP by way of its participation in the APEC Business Advisory Council. As in MUSTFA, TPP has encountered resistance from generic drug producers and civic groups concerned that provisions in intellectual property rights in TPP would hinder access to medicines, an argument backed by the Malaysian Health Minister himself (*Sun Daily*, August 6, 2012). TPP has also spurred government-business consultation across borders. In his visit to Malaysia, the United States Trade Representative not only met with Malaysian officials and American firms in Malaysia but also with the FMM (*Bernama*, April 25, 2012).

sectors (interviews). European Union's abandonment in 2010 of a deal with ASEAN in favor of separate bilateral FTAs was welcomed by the FMM and MTMA.

Bilateral negotiations for the Malaysia-European Union FTA (MEUFTA) started in December 2010 (Table 2). European Union's main priorities in MEUFTA are the liberalization of government procurement and services, followed by the opening up of the automotive sector. The greatest beneficiaries and supporters in Malaysia of MEUFTA are palm oil producers—Europe is their second largest market—and the machinery, electrical appliance and textile/garment industries.⁸¹ By contrast, MEUFTA is viewed with special concern by automotive firms, generic drugs manufacturers and those that could be adversely affected by the liberalization of government procurement and services (e.g., government-linked companies, small and medium firms, and civil society groups).

FMM and MTMA have taken a proactive role in MEUFTA and pushed the government to speed up negotiations, especially since Thailand and Indonesia are lagging behind in their own deals with the European Union. In a country where consultations with the private sector and civil society and pressures to influence policymaking are not aired to the public arena, MITI took the unusual move of issuing a public statement to dispel NGOs' concerns about the health, environmental and food security implications of MEUFTA.⁸²

Although initially reluctant to FTAs, Malaysia has already signed or is negotiating a number of FTAs. Like in other areas of Malaysian policymaking, the content and conclusions of government consultations with stakeholders in the context of FTA formulation have remained closely guarded. Still, field research found that MITI officials have expanded and

⁸¹ Although European Union tariffs on palm oil products are relatively low, Malaysian exporters face significant non-tariff barriers in the form of environmental standards.

⁸² Accessed on April 3, 2011 at: http://www.miti.gov.my/cms/contentEmail.jsp?id=com.tms.cms.article.Article_ebc576cd-c0a8156f-6f346f34-b884ab1a

deepened their consultation process and that the preferences and intelligence provided by key business associations have been crucial to the development of Malaysia's FTA negotiating positions. In the case of FTAs with potentially significant economic impacts (e.g., MUSFTA, TPP, MEUFTA), the private sector, particularly FMM and MTMA, has taken an increasingly proactive role. Over time, trade officials and business associations have gained greater expertise in FTA negotiation and formulation. Although the level of institutional change and creation spurred by FTAs has not reached (at least yet) that occurred in Thailand, new institutional settings to reduce government and business coordination, collective action and consultation have also emerged in Malaysia.

5. Discussion

Realist renderings in the FTA policymaking literature contend that systemic constraints and power asymmetries at the international level push developing countries, helplessly one after another, to enter bilateral FTAs with developed nations. This unidirectional determination of national strategies by the international context 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 a) driven from political elites and with scant participation or interest of the private sector in the formulation of FTAs first or in their utilization afterwards and, b) launched primarily for foreign policy and/or security motivations rather than economic ones (reviewed in Ravenhill, 2010).⁸³ Only in Japan has

⁸³ Literature on policymaking in Thailand and, particularly, Malaysia after the Asian crisis has been highly influenced by statist models and reinforced by the personalized and centralized decisionmaking styles of Prime Ministers Thaksin and Mahathir, respectively (Gomez and Jomo, 1999; Beeson, 2000; Slater, 2003; Ockey, 2004; Phongpaichit and Baker, 2004; Chaiwat and Phongpaichit, 2008; Siddiquee, 2013). These views may have led to downplay (or dismiss) the role of the private sector in FTA policymaking. While firms in both countries have

the private sector been reported to have proactively lobbied its government in favor or against FTAs and a clear economic rationale of its FTAs been recognized (e.g., Solis, 2003; Manger, 2005; Yoshimatsu, 2005).

The present study was intended to examine the evolution of bilateral FTA policymaking in the two most FTA-active middle-income countries in ASEAN, Thailand and Malaysia, and analyze how FTAs have shaped government-business relations. Prevailing narratives about East Asian FTAs have emphasized the primacy of political, diplomatic, and security motivations over economic ones. With the exception of Japan, these FTAs have reportedly emerged from a cognitive consensus among national political leaderships and with little involvement or interest on the part of business. Instead, this paper contended that, compared to multilateral liberalization, the information demands posed by bilateral FTA negotiations on trade officials should compel them to intensify consultations with the private sector to fill gaps in expertise (Hypothesis 1). At the same time, easier assessment of impacts in bilateral FTAs should generate stronger incentives for firms to influence their policymaking (Hypothesis 2) as well as greater options for business consultations, collective action and lobbying across borders (Hypothesis 3). Information and coordination demands by successive FTAs on government and businesses associations should encourage both actors to invest in their trade expertise and create institutions to reduce transaction costs in FTA formulation (Hypothesis 4).

Field research for this project confirmed all the initial hypotheses. However, and despite differences in their institutional and policymaking frameworks, the evolution of FTA formulation in Thailand and Malaysia has followed similar patterns. While the formulation of

historically sought to advance particularistic interests through clientelist connections, business associations have gained increasing policy influence. Of note, several studies on FTA formulation in Thailand and Malaysia were based on secondary research.

some FTAs in both countries, particularly early ones, may have indeed originated from their political leadership, neither constructivism nor foreign policy and security arguments provide a sufficient model to explain sectoral variability in liberalization within or across FTAs. In fact, it was found that whenever the economic argument was weak or unclear, negotiations dragged or were eventually abandoned. This is not to say that the preferences of the private sector have exclusively determined Thai and Malaysian FTA policymaking or that the political and institutional configurations in these countries have not played a critical role. On the contrary, the translation of firms' generic preferences into particular policy choices (e.g. specific levels of tariffs or ROOs, etc) is influenced by factors beyond firms such as the institutional setting that, as in other areas of policymaking, not simply accepts or rejects preferences but determines what options are available, thus influencing firms' policy preferences in the first place (Crystal, 2003; Woll, 2005). The institutional framework and the contextual interactions between government and business have influenced FTA policymaking. For instance, a more direct policymaking process, a more subdued style of business lobbying and lower civil society contestation against FTAs, has placed Malaysia ahead of Thailand in its FTA negotiations with the European Union and the TPP. But, as argued in this paper, FTAs have also fed back to the institutional setting.

As more FTAs were negotiated, consultations by trade officials with the private sector and other government agencies became more frequent and formalized—now a constitutional mandate in Thailand—being particularly intense in demanding FTA talks with large developed partners. These government-business consultations were set not only to attend private sector preferences (classical pressure lobbying), but also for Thai and Malaysian trade officials to gain access to complex technical information needed during

bilateral FTA negotiations (regulatory lobbying in Woll and Artigas [2007] and Woll's [2008] terminology). Nevertheless, interviews found that not all sectors were able to participate and not all associations consulted took part on an equal footing.⁸⁴ Both case studies illustrated Schneider's (2004) argument on how business collective action and mobilization is influenced by the way governments engage the private sector in policymaking—e.g., exclusion, conflict or cooperation.⁸⁵ Lack of engagement of some economic sectors in early FTAs prompted affected firms and business associations, especially peak and more efficient ones, to organize and mobilize, reactively or proactively, in subsequent FTAs. For instance, exclusion of the Malaysian Iron and Steel Industry Federation in the formulation of the ASEAN-China FTA prompted this association to take a more active stand in successive FTAs. Conflict between the Thai government and automotive firms in JTEPA increased mobilization by the latter. Lastly, cooperation of Thai and Malaysian officials with peak associations strengthened and consolidated the consultation process.

In any case, and independently of the original motivation of an FTA proposal, its text must specify the barriers to be removed or maintained, arguably eliciting preferences among concerned firms in favor or against. The private sector in both countries has been mostly unenthusiastic about previous multilateral and regional liberalization rounds. But clearer *ex-ante* assessment of impacts in bilateral liberalization fostered the involvement in FTA policymaking of business associations and firms that remained passive in other forms of liberalization. The private sector in both countries participated not only through the invited

⁸⁴ 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. When sectors and associations faced internal conflicts or in the case of large firms that could leverage their investment, Thai and Malaysian officials directly involved (and/or were approached by) individual firms.

⁸⁵ Business groups react to the way governments engage them in policymaking, being more likely that they mobilize when they are excluded or when their relation with government is marked by conflict (Schneider, 2004).

consultation process but, for the most influential and capable associations and firms, also proactively. Contrary to the reported apathy of East Asian business about FTAs, it was found here that for some sectors and high-impact FTAs, the initiative did not originate from the political leadership, but rather from businesses that pushed their host government, and sometimes also the partner's, to initiate and speed up (or delay) talks.

Field research found that Thai and Malaysian FTAs have largely responded to sectoral (even firm-specific) economic interests (see also working papers referred in footnotes 15 and 68).⁸⁶ During the 1980s and 1990s, multinational firms invested across ASEAN were key supporters of early schemes for regional liberalization of intermediate inputs and AFTA itself (Yoshimatsu, 2002; Yoshimatsu, 2008). As East Asian production networks have expanded and deepened over the last two decades, multinationals based in Thailand and Malaysia and operating within these networks have pressed host governments to enter into bilateral FTAs. But much of the support and push for FTAs in both countries has also originated from domestic exporters involved in traditional one-way horizontal trade (e.g., textiles and garments, processed food) seeking easier access to large destination markets.

Nevertheless, interviews also found that some small firms, including potential beneficiaries, did not use FTAs, nor were they even aware about their benefits because their associations did not inform them, found FTAs too complex or, simply, were not interested in the first place. Whether due to uninterested members, insufficient time to consult them, lack of internal coordination capabilities or capture by the most influential firms, interviews

⁸⁶ As benefits from bilateral FTAs could asymmetrically accrue to some firms over others also inside the bloc, private sector lobbying regarding FTAs has not only involved business associations intermediating sectoral positions but also individual firms, as evidenced in our field research. See working paper by the author (also in this series), one entitled "Creation and Shifting of Rents within Bilateral Free Trade Agreement Blocs. Firms, States and the Redistribution of Power within Production Networks under Regionalism"

revealed that, in some instances, business associations' position on FTAs may have only reflected the views of their executive committees.

Bilateral FTAs offer business groups incentives and options to influence trade policymaking in ways that have been overlooked by the extant literature and are missing in multilateral negotiations. In any case, increasing private sector involvement in FTA formulation over time does not necessarily mean that it will mobilize in any future FTA as the limited enthusiasm raised by some recent proposals demonstrates. Nevertheless, firms have become increasingly aware of FTA impacts and the institutional setting for business collective action and government-business relations is already in place. It could be therefore expected that businesses that could be potentially affected by prospective FTAs will mobilize, in favor or against, to influence its sectoral formulation.

Both case studies confirmed the initial proposition (Hypothesis 3) that bilateral FTAs foster business collective action and lobbying across borders (Table 3). Likewise, empirical evidence showed that bilateral FTAs facilitate cross-border consultation by a government with business sectors in the partner country (Table 3).

As noted earlier, the opportunity for business associations to be consulted by governments depends on their reliability as sources of information as well as on their capacity to deliver consensual positions. Frequently, as many as 4-5 bilateral and regional FTAs are being negotiated simultaneously, so business associations in Thailand and Malaysia have had to collect more often their members' positions and coordinate them both internally and with other business groupings. Associations with strong secretariats and that have developed strong technical capabilities and achieved internal collective action (e.g., FTI, TCC, TTMA/TGMA, TFFA/TFPA in Thailand or FMM and MTMA in Malaysia) have had

more chance to be heeded by governments. However, this is not to say, as discussed earlier, that individual firms do not have direct access to the new FTA policymaking process or that unintermediated clientelist channels have all but entirely disappeared.⁸⁷

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

FTA	Relationship Type	Example*	Period**
JTEPA	Business collective action across borders (between both levels II)	Meetings between Japanese and Thai textiles/garments associations to negotiate a common position. Also participated by Japanese officials	Before and during of negotiations
JTEPA	Business collective action across borders (between both levels II)	Business associations representing Thai processed food producers contacted wholesale buyers and trading companies to consolidate lobbying positions	Before and during negotiations
JTEPA	Business lobbying across borders (level II in one country lobbying level I in the other)	Japanese automotive firms lobbying Thai and Japanese governments	Before and during negotiations
JTEPA	Business collective action (between both levels II) and lobbying (level II in one country lobbying level I in the other) across borders	Thai and Japanese peak business associations coordinated demands to the Thai and Japanese governments to expand FTA coverage and accelerate liberalization schedules	After implementation (February 2011)***
TUSFTA	Business collective action (between both levels II) and lobbying (level II in one country lobbying level I in the other) across borders	American multinationals sponsored United States-Thailand Business Coalition to lobby both governments for a comprehensive agreement	Before and during negotiations
TUSFTA	Cross-border government-business consultation and lobbying (between level I in one country and level II in the other)	The United States negotiation team met with Thai business associations during visits to Thailand	During negotiations
TUSFTA	Business lobbying across borders (level II in one country lobbying level I in the other)	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 talks stalled
MJEPA	Business collective action across borders (between both levels II)	Meetings between Japanese and Malaysian textiles/garments associations to negotiate a common position. Also participated by Japanese officials	Before and during of negotiations
MJEPA	Business collective action across borders (between both levels II)	Meetings between Japanese and Malaysian iron and steel associations to negotiate a common position.	Before start of negotiations
MJEPA	Business lobbying across borders (level II in one country lobbying level I in the other)	Japanese steel producers lobbied directly to Malaysian authorities	During negotiations
MJEPA	Cross-border government-business consultation and lobbying (between level I in one country and level II in the other)	Japanese officials contacted the Malaysian steel association to learn about its position and offered support in pushing for domestic reforms	During negotiations
MUSFTA	Business lobbying across borders (level II in one country lobbying level I in the other)	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 talks stalled
MUSFTA	Business lobbying across borders (level II in one country lobbying level I in the other)	American multinationals sponsored the United States-Malaysia FTA Business Coalition to lobby to both governments for a comprehensive FTA	Before and during of negotiations
MUSFTA	Business lobbying across borders (level II in one country lobbying level I in the other)	American interest groups based in Malaysia lobbied Malaysian officials for Malaysian liberalization in MUSFTA	Before and during of negotiations
MUSFTA	Business collective action across borders (between both levels II)	Malaysian and American business communities arranged bilateral meetings to find consensus points on MUSFTA	Before and during of negotiations

Source: Field research interviews except for *** (*Bangkok Post*, February 19, 2011)

* See text for details. Collective action and lobbying across borders also occurred for civil society. Thai civic groups urged the European Union Parliament to avoid that the Thailand-European Union FTA includes provisions beyond the WTO on intellectual property rights.

** Evidence obtained for the indicated period. It cannot be excluded that these relationships also occurred before and after then.

⁸⁷ In both countries, influential and proactive individual firms used any channel available to them to affect FTA policymaking.

Field research confirmed that successive FTA negotiations have been a formative process for politicians, bureaucracies and businesses (Hypothesis 4). At the least, FTA negotiations have enhanced the technical trade expertise and institutional capacity of government agencies and organized business. But as more FTAs have been pursued (often simultaneously), and interactions within and among agencies and business associations became more frequent, the information, coordination and coordination costs entailed in such iterative process have spurred the creation of *ad-hoc* and permanent institutions for government inter-agency coordination, private sector collective action and government-business intermediation (Table 4).

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

FTA	Institution	Sponsor	Functions Served	Period
JTEPA and successive FTAs	Overarching committee on FTAs Dedicated subcommittees on JTEPA and ulterior FTAs	Thai peak (FTI, TCC) and sectoral business associations	* Business collective action and coordination of inputs from members * Business collective action and coordination of positions with other associations in Thailand and FTA partners * Focal point for government officials * Lobbying Thai and FTA partner governments	Mid-2004 onwards
JTEPA and successive FTAs	National Committee on FTA Strategy and Negotiation	Thai government (Cabinet level)	* Government inter-agency consultation and coordination at the cabinet level * Provide direction and coordination among government agencies and across multiple FTAs	November 2004 onwards
Thai FTAs launched after 2007	Institutionalization of consultations with business and civil society in Thai FTAs: Article 190 of the 2007 Thai Constitution	Sponsored by the NGO FTA Watch and adopted by the government and constituent parliament	* Mandatory consultations by the government with business groups and civil society * Mandatory approval of FTA negotiations and final texts by the Thai Parliament * Mandatory compensation of sectors negatively affected by FTAs	2007 onwards
Malaysian FTAs after mid-2006	Private Sector Task Force on FTAs	Malaysia peak business association (FMM)	* Business collective action and coordination of positions across business associations * Feedback and lobbying to government officials also attending meetings	Mid-2006 onwards

Source: Field research interviews

Broader and more frequent consultations with stakeholders, mainly businesses but also civil society, in the course of FTAs negotiations have helped government and firms in both countries to better define their preferences and resulted in a more accountable trade policymaking process. More importantly, and without entering into normative debates about

the economic or developmental merits or demerits of FTAs, strengthening of the technical capacities of all stakeholders could potentially be transferred to other areas of policymaking while the institutional structures created for FTA formulation may endure to provide similar functions during WTO rounds.

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