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Investment protection for U.S. investors in Thailand

Written by: Jack Sheehan and Huy Luu

A major concern for U.S. investors in Thailand is whether their investments will be protected. Since the U.S. and Thailand have not concluded a bilateral investment treaty, the U.S. investors will need to rely on other treaties and/or initiatives for reassurance regarding investment protection.

In this article, we provide an overview of the Treaty of Amity and Economic Relations between Thailand and the U.S. (Amity Treaty), as well as recent initiatives aimed to provide a proper framework to protect U.S. interests in Thailand.

AMITY TREATY

The Amity Treaty was signed by the U.S. and Thailand on May 29, 1966.

Under the Amity Treaty, special rights and benefits are provided to American investors who wish to establish their businesses in Thailand, with the following trade advantages:

- American investors may engage in business, with some restrictions stated below, on the same basis as Thai companies (national treatment). In

other words, they can own a majority or entirely own a company and may set up a branch in Thailand; and

- American investors are exempt from most restrictions on foreign investment that are imposed by the Foreign Business Act. They are restricted only in the fields of communications, transport, fiduciary functions, banking involving depository functions, exploitation of land or other natural resources, and domestic trade in agricultural products.

TRADE AND INVESTMENT FRAMEWORK AGREEMENT

In 2012, the U.S. and Thailand signed the Trade and Investment Framework Agreement (TIFA). TIFA allows both countries to engage in discussions on trade and investment issues, including market access, labor, environment, protection of intellectual property rights, customs, etc. TIFA serves as a forum for the two countries to meet and discuss the foregoing issues with the objective of improving cooperation and enhancing opportunities for trade and investment. Meetings are held at least once a year at the senior level of both governments.

U.S.-ASEAN EXPANDED ECONOMIC ENGAGEMENT INITIATIVE

In 2012, the U.S. and ASEAN (which includes Thailand) launched the U.S.-ASEAN Expanded Economic Engagement (E3) Initiative.

The E3 initiative is a framework for economic cooperation and is designed to expand trade and investment ties between the U.S. and ASEAN. Issues to address under the E3 initiative include investment principles, information and communications technology principles, trade facilitation, standard development and practices, transparent business environment, etc.

This initiative will help lay the groundwork for the ASEAN countries to prepare to join other high-standard trade agreements, such as the Trans-Pacific Partnership Agreement now under negotiation. ■

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