

Constitutional Court Ruling No. 3/2560 (2017)

Council of Ministers

Applicant

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Respondent

Constitution, section 178 paragraph two and paragraph three;

Draft Memorandum of Understanding on the Transit of Goods between the Customs Department of the Kingdom of Thailand and the Customs and Excise Department of the Kingdom of Cambodia.

The Draft Memorandum of Understanding on the Transit of Goods between the Customs Department of the Kingdom of Thailand and the Customs and Excise Department of the Kingdom of Cambodia, which was a written international agreement, essentially provided that each party should facilitate the transport of goods in transit. The Draft MOU provided rights and obligations binding on each party. It showed an intent to create a legally binding obligation under international law, being the characteristics of a treaty under section 178 of the Constitution. Furthermore, the treaty contained provisions relating to the transit of goods between the countries aiming at eliminating trade barriers, being characteristics of free trade. However, the Draft MOU did not contain provisions relating to the prescription of customs tariffs which had a direct impact on the price of goods or a quantitative restriction of goods import that would widely affect free trade and impact social or economic structures, or affect trade and investments at the national level. Therefore, the Draft MOU was a treaty relating to free trade under section 178 paragraph three of the Constitution, but was not a treaty which could potentially have a wide scale effect on the security of the economy, society, or trade or investment of the country. Hence, the Draft MOU did not require the approval of the National Assembly under section 178 paragraph two of the Constitution.