THAILAND

TRADE SUMMARY

In 2000, the U.S. trade deficit with Thailand was approximately $9.75 billion, an increase of $400 million from the U.S. trade deficit of $9.34 billion in 1999. U.S. merchandise exports to Thailand were approximately $6.6 billion, an increase of $1.65 billion (33 percent) from 1999. U.S. exports of private commercial services (i.e., excluding military and government) to Thailand were $1.1 billion in 1999, and U.S. imports were $920 million. Thailand was the United States' 22nd largest export market in 2000. U.S. imports from Thailand were $16.39 billion in 2000, an increase of $2 billion (14 percent) from 1999. Total accumulated U.S. foreign direct investment (FDI) in Thailand is more than $6.9 billion. U.S. FDI in Thailand is concentrated largely in the petrochemical, manufacturing, and banking sectors.

IMPORT POLICIES

Tariffs

During the 2000 fiscal year Thailand's effective tariff rate was 3.6 percent, down from 3.8 percent in 1999. As of November 2, 2000, the simple average tariff rate for 5,846 dutiable MFN items (24 rates) was 17.24 percent, and for 5,910 dutiable items under WTO and MFN (44 rates) was 15.58 percent. Tariffs accounted for 11.27 percent of government revenues during FY 2000, compared to 9.35 percent in 1999.

Thailand's high tariff structure remains a major impediment to market access in many sectors. A member of the World Trade Organization (WTO) and the ASEAN Free Trade Area (AFTA), Thailand has yet to complete efforts to rationalize a complicated tariff regime that currently has 44 rates. Highest tariff rates encompass locally produced import-competing products, including agricultural products, autos and auto parts, alcoholic beverages, fabrics, and some electrical appliances. In some cases, tariffs on unfinished and intermediate products are higher than on related finished products. In the aftermath of the financial crisis, the government increased duties, surcharges, and excise taxes on a range of "luxury" imports from wine to passenger cars. Some tariff increases have corresponded with implementation of trade liberalization measures; for example, tariffs on completely knocked down (CKD) auto kits increased from 20 to 33 percent when local content requirements were eliminated in the automotive industry in 1999.

The government continues to ease other import duties in line with WTO and AFTA commitments, including most recently in October 2000 when it reduced tariffs on 73 items, and in July 2000, when it reduced tariffs on 542 items. Effective January 2000, Thailand eliminated tariffs on 153 information technology-related products pursuant to its obligations under the WTO Information Technology Agreement (ITA).

Taxation

Certain agricultural products and other sensitive items are excluded from Thailand's tariff liberalization program. Excise taxes are high on some items, such as gasoline (25 to 31 percent), beer (50 to 53 percent), and wine (50 to 55 percent). There is an excise tax of 50 percent on certain luxury items, such as yachts and wool carpets, and a 35 percent excise tax on distilled spirits (25 percent for brandy). In March 1999, as part of an economic stimulus package, the value-added tax (VAT) was temporarily reduced from 10 to 7 percent and the excise tax on fuel oil was reduced from 17.5 to 5 percent. These measures are scheduled to remain in effect until October 2001. A second stimulus package in August 1999 removed duty surcharges that the Thai government began to collect in October 1997 in reaction to the regional economic crisis. During the same period, Thailand reduced or eliminated tariffs on a number of raw materials and capital goods in order to increase its industrial competitiveness.

Agriculture and Food Products

High duties on agriculture and food products remain the main impediments to U.S. exports of high-value fresh and processed foods. Under its Uruguay Round agriculture obligations in the WTO, Thailand has committed to reduce its import tariffs, but import duties are an important source of government revenue and serve to protect politically influential domestic agricultural interests from competition from imports.

Duties on imported consumer-ready food products range between 40-50 percent, the highest in the ASEAN region. Tariffs on meats, fresh fruits and vegetables, and pulses (e.g., dry peas, lentils, and chickpeas) are similarly high, even for products for which there is little domestic production. When import duties, excise taxes and other surcharges are calculated, imported wines face a total import tax of nearly 380 percent. With the exceptions of wine and spirits, there are no longer specific duties for most agricultural and food products and *ad valorem* rates are declining in accordance with WTO obligations. Nevertheless, import duties on agricultural and processed food goods are currently as high as 55 percent and the average tariff rate is 29.32 percent. Furthermore, duties on many high-value fresh and processed food products will remain high -- in the 30-40 percent range -- even after the WTO reductions.

Although its overall import policy is directed at protecting domestic producers, Thailand has been relatively open to imports of feed ingredients (corn, soybeans, soymeal) in recent years. Corn imports enjoy liberalized tariff rates, but the effects are limited by a government requirement that corn imports arrive within a limited time frame (February-June). This places U.S. suppliers at a disadvantage and gives most of the market to corn from the Southern Hemisphere. Corn is also subject to a tariff-rate quota (TRQ) based on domestic wholesale corn prices. In-quota imports are subject to a 20 percent tariff rate, plus a surcharge of about four dollars per ton; the out-of-quota tariff is 76 percent. There are currently no import quotas for soybeans, and the import duty on soybean meal is 5 percent, provided that specific domestic purchase requirements are met. There is an import tax surcharge and an excise tax on wheat imports of about $23 per ton. In addition, there are import license fees for meat products (approximately $115 per ton on beef and pork, $231 per ton for poultry, and $462 per ton for pork offal), which do not appear to reflect the true costs of import administration.

Phytosanitary standards for certain agricultural products, including seed potatoes, may be applied arbitrarily and without prior notification.

The actual trade impact of high tariffs and other trade-distorting measures on individual product categories is difficult to assess. However, a conservative estimate of the cumulative impact of these trade barriers would be in the 20-30 percent range. The annual value of U.S. agricultural exports to Thailand declined from nearly $630 million before the financial crisis to $438 million by 1999, for a host of reasons including reduced domestic demand and currency devaluation, as well as hikes in excise taxes and tariffs. It is estimated, by industry, that potential U.S. agricultural exports to Thailand could reach $900 million a year if Thailand's tariffs and other trade-distorting measures were substantially reduced or eliminated and the economy recovered to pre-crisis levels.

Automotive Sector

Current compound import duties and taxes, among the highest in ASEAN, are burdensome. In response to the financial crisis, the government in October 1997 raised tariffs on passenger cars and sport utility vehicles to 80 percent, up from 42 and 68 percent. Current tariff rates on separate parts and components range from 40 to 60 percent, with the tariff rate on raw materials for parts production at 35 percent. Thailand’s excise tax structure discriminates against passenger vehicles by taxing them at a rate of 35 to 48 percent while pickup trucks are taxed at a rate of only 3 percent. The pre-economic crisis excise tax for passenger cars was based on engine displacement and ranged from 5 to 18 percent.

Quantitative Restrictions and Import Licensing

Thailand is in the process of changing its import licensing procedures to comply with its WTO obligations. Import licenses are required for 26 categories of items, down from 42 categories in 1995-1996. Licenses are required for the import of many raw materials, petroleum, industrial, textiles, pharmaceuticals, and agricultural items. Imports of used motorcycles and parts, household refrigerators using CFCs, and gaming machines are prohibited. Import of some items not requiring licenses nevertheless must comply with applicable regulations of concerned agencies, including extra fees and certificate of origin requirements in some cases. Imports of food, pharmaceuticals, certain minerals, arms and ammunition, and art objects require special permits from relevant ministries. A government commitment to eliminate certificate of origin requirements for information technology imports has not been implemented fully.

CUSTOMS BARRIERS

The business community has long regarded Thai customs procedures as an impediment to trade and investment. Overall, the Thai Customs Department enjoys a high degree of autonomy and some of its practices appear arbitrary and irregular. Import regulations are complicated, non-transparent, and inconsistently applied. While some progress has been made in reforming payment procedures and broker licensing, some Thai and foreign importers complain of continuing demands for unrecorded cash "facilitation fees." The problems most frequently cited by importers are excessive paperwork and formalities, lack of coordination between customs and other import regulating agencies, and lack of modern computerized processes.

Legislation enacted in March 2000 to implement the WTO Customs Valuation Agreement has alleviated some valuation problems, although some importers complain of uneven implementation, and in particular a discretionary practice by Thai customs officials of using minimum import prices to determine inappropriately that a declared transaction value of an imported good appears to be "too low." USTR is concerned the customs law and its implementation may not comply with the WTO Agreement on Customs Valuation, particularly in the case of agricultural goods. USTR has urged Thailand to discontinue practices inconsistent with the WTO Agreement and to notify its legislation to the WTO Committee on Customs Valuation, in accordance with its WTO obligations.

Certificates of origin continue to be required by Thailand customs as a prerequisite for imported goods obtaining the bound MFN tariff commitments made by Thailand pursuant to the Information Technology Agreement, despite assurances provided to the United States in mid-2000 by Thailand customs authorities that the practice would be eliminated. Industry observes this burdensome practice hinders the smooth flow of IT products into Thailand, including inputs destined for value-added processing and re-export. Thailand’s current practices for ITA-covered products also raise significant questions in terms of their consistency with the WTO Agreement on Rules of Origin.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Thai Food and Drug Administration (TFDA) requires standards, testing, labeling, and certification permits for the importation of all food and pharmaceutical products, and certain medical devices. The cost, duration and complexity of the permitting processes and occasional demands for disclosure of proprietary information can be burdensome. Food import licenses must be renewed every three years with payment of required fees. Pharmaceutical import licenses must be renewed every year, also with associated fees. Labels bearing product name, description, net weight or volume and manufacturing/expiration dates, printed in Thai and approved by the TFDA, must be affixed to all imported food products. .

Some TFDA procedures have been streamlined, but delays of up to a year can occur. All processed foods must be accompanied by a detailed list of ingredients and a manufacturing process description, disclosure of which could jeopardize an applicant's trade secrets.

GOVERNMENT PROCUREMENT

Thailand is not a signatory to the WTO Agreement on Government Procurement, although in the past Thai officials have evinced support for a WTO Agreement on Transparency in Government Procurement. A specific set of rules, commonly referred to as the "Prime Minister's Procurement Regulations," governs public sector procurement for ministries and state-owned enterprises. These regulations require that nondiscriminatory treatment and open competition be accorded to all potential bidders, although different state enterprises typically have their own individual procurement policies and practices so that overall predictability and transparency is lacking. However, preferential treatment is provided to domestic suppliers (including subsidiaries of U.S firms registered as Thai companies), which receive an automatic 15 percent price advantage over foreign bidders in initial bid round evaluations.

The procuring government agency or state enterprise reserves the right to accept or reject any or all bids at any time and may also modify the technical requirements during the bidding process. The latter provision allows considerable leeway to government agencies and state-owned enterprises in managing tenders, while denying bidders any recourse to challenge procedures. Allegations that changes are made for special considerations are frequently made, which has led to charges of bias and controversies on major procurements. For example, in a recent tender for the procurement and construction of a high-speed fiber-optic telecommunications network, the bidding process was repeated several times with changing definitions of technical specifications, generating public allegations of a lack of transparency in the underlying procurement. Despite the official commitment to transparency in government procurement, alleged irregularities and non-transparency continue to be featured regularly in anecdotes from U.S. companies and in media reporting.

Regulations promulgated in May 2000 formalized a Thai government practice requiring a counter-trade transaction on government procurement contracts valued at more than 300 million baht, on a case-by-case basis. A counter-purchase of Thai commodities valued at not less than 50 percent of the principal contract may be required. As part of a counter-trade deal, the Thai government may also specify markets into which commodities may not be sold; these are usually markets where Thai commodities already enjoy significant access. From 1994 through October 2000, 120 counter-trade agreements were carried out, resulting in the exports of 22.6 billion baht. The provision for a case-by-case approach undermines transparency and predictability.

EXPORT SUBSIDIES

Thailand's programs to support trade in certain manufactured products and processed agricultural products may constitute export subsidies. These include various tax benefits, import duty reductions, credit at below market rates on some government-to-government sales of Thai rice (agreed on a case-by-case basis) and preferential financing for exporters in the form of packing credits with odd date maturities and values otherwise unavailable in international credit markets. Thailand's Export-Import Bank administers some of these programs, charging interest in the 7-8 percent range during 2000.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Despite the passage of significant IPR legislation and a good working relationship between foreign business entities and Thai enforcement authorities, IPR piracy continues at high levels. U.S. copyright industries reported an estimated annual trade loss of more than $250 million from IPR infringement in 2000. Since November 1994, Thailand has been on the U.S. Special 301 "Watch List."

An IPR action plan concluded between the U.S. and Thailand during 1998 strengthened levels of IPR protection in Thailand. The action plan set forth elements for streamlining IPR regulatory procedures, enhancing cooperation between relevant ministries and enforcement authorities, and other important reforms in the copyright, patent, trademark and general enforcement areas. Coordination among various police and enforcement-oriented authorities improved, and the number of police raids and successful prosecutions against both retailers and manufacturers grew steadily from the last half of 1998 through 2000.

On the legislative front, Thailand's remaining two pieces of TRIPs-related legislation – a Trade Secrets Act and a Geographic Indications Act – were introduced into the legislature in 2000 but remain to be passed. The latest draft of the Trade Secrets Act reportedly would allow government agencies to disclose trade secrets to protect any "public interest" not having commercial objectives, giving rise to concerns that authorities will not be required to protect approval-related data against unfair commercial use.

Obstacles to effective enforcement are numerous. Resource limitations, especially in the wake of the financial crisis, hamstring police capabilities and judicial administration alike. Although conviction rates are very high, corruption and a cultural climate of leniency can complicate some phases of case administration. Irregularities in police and public prosecutor procedures occasionally have resulted in the substitution of insignificant defendants for major ones and the disappearance of vital evidence. The frequency of raids compromised by leaks from police sources has declined but remains a concern. Pirates, including those associated with transnational crime syndicates, have responded to stepped up levels of enforcement with intimidation against rights-holders' representatives.

A specialized intellectual property court established in 1997 has improved judicial procedures and imposed higher fines. Criminal cases generally are disposed of within six to twelve months from the time of a raid to the rendering of a conviction. However, in many cases penalties imposed are insufficient deterrence, according to rights-holders, and relatively few persons have served time in jail for copyright infringement. Defendants sometimes disappear while on bail, and sentences sometimes are reduced or overturned on appeal. Authorities lack sufficient resources to undertake enforcement actions apart from those initiated by rights-holders. Effective prosecutions can be labor-intensive for rights-holders, who often investigate, participate in raids, help coordinate the warehousing of confiscated property, and assist in the preparation of documentation for prosecution.

Patents

Amendments to Thailand's patent regime, which were designed to meet Thailand's TRIPS obligations, entered into effect in September 1999. However, Thailand's underfunded patent office lacks both the expertise and a sufficient number of patent examiners to keep up with its volume of applications. Patent examinations can take more than five years. Industry continues to express ongoing concerns regarding Thailand's legal provisions regarding data protection for patentable material. At this time, it is unclear whether the pending Trade Secrets Act will offer sufficient measures for data protection.

Copyright

Thailand's copyright law became effective in March 1995, bringing Thailand into closer conformity with international standards under TRIPS and the Berne Convention. With active participation on the part of U.S. industry associations, the Thai police conducted many more raids on copyright infringement operations in 2000 than previous years, both at the retail and production levels. Nevertheless, the scale of the problem is growing. A joint auditing campaign by the Department of Intellectual Property and the Business Software Alliance in 2000 confirmed that a majority of Thai and foreign companies operating in Thailand use illegal software. The copyright law is ambiguous regarding decompilation, and regulations for enforcement procedures leave loopholes that frustrate effective enforcement. A draft Optical Disk Plant Control Act under consideration in the parliament is designed to enhance the authority and capabilities of the police to act against operators of illicit optical disk factories.

Trademarks

Amendments to the trademark law in 1992 provided higher penalties for infringement and extended protection to service, certification, and collective marks. The government streamlined trademark application procedures pursuant to the IPR action plan in 1998. Additional amendments enacted in June 2000 broadened the legal definition of a mark and were designed to bring Thailand's trademark law into compliance with the TRIPS agreement. While these developments have created a viable legal framework and have led to some improvements in enforcement, trademark infringement – especially for clothing, accessories, and plush toys – remains a serious problem. U.S. companies with an established presence in Thailand and a record of sustained cooperation with Thai law enforcement officials have had some success in defending trademarks, but the process remains time-consuming and expensive.

SERVICES BARRIERS

Telecommunications Services

Thailand's commitments under the WTO call for opening the telecommunications services sector to direct foreign competition by January 2006. Thailand's WTO commitments cover only facilities-based telecom services and do not include resale. The government has allowed foreign participation in the telecom sector since 1989 but progress toward full liberalization remains slow. The market is dominated by two state operators, the Communications Authority of Thailand (CAT, which controls international links) and the Telephone Organization of Thailand (TOT, which controls domestic services), and a few large private sector companies that have been awarded concessions by the government to provide wireless and wire-line services. CAT imposes equity and revenue-sharing requirements on International Value Added Network Service (IVANS) providers.

In February, 2001, Thailand's state privatization committee approved plans to restructure CAT and TOT. The agencies will be formed into companies and placed in a holding company initially wholly owned by the finance ministry. The privatization plan calls for the eventual sale of the companies to separate strategic partners and the public, with the government limited to maintaining a maximum 49.9 percent stake in the firms. Thus far the plan has met with opposition in the Thai parliament; Its future is unclear.

An underdeveloped administrative and legal infrastructure will continue to complicate provision of telecom services. The Frequency Allocation Act, passed in January 2000, called for the establishment by October 2000 of a National Telecommunications Commission, responsible for licensing, spectrum management and supervision of telecom operators, and a National Broadcasting Commission, responsible for regulating the radio and television broadcast sectors. Neither has been constituted yet but a new government is expected to give them priority in 2001. Decisions on complex issues such as licensing, interconnection, and standard-making are anticipated to be made by CAT and TOT in collaboration, which may prove cumbersome and time-consuming.

Legal Services

Current law prohibits foreign equity participation in Thai law firms in excess of 49 percent, and foreign nationals are prohibited from practicing law in Thailand. However, under the U.S.-Thai Treaty of Amity and Economic Relations, U.S. investments are exempted from the general restriction on foreign equity participation in law firms. Thus, while U.S. investors may own law firms here, U.S. citizens (and other nationals) may not provide legal services (with the exception of "grand-fathered" non-citizens). Most foreign attorneys are restricted from practicing law in Thailand, although in certain circumstances they may act in a consultative capacity.

Financial Services

Over the past several years, the Thai government has increasingly liberalized access for foreign firms to the Thai financial sector; however, significant restrictions on non-Thai participation in the sector remain. For example, aliens have been allowed to engage in brokerage services since 1997, but foreign firms are allowed to own majority shares (i.e., greater than 49 percent) of Thai securities firms only on a case-by-case basis.

In the aftermath of the Asian financial crisis, and in response to commitments made during 1997 WTO financial services negotiations, Thailand has taken major steps to liberalize its banking industry. Foreigners are now permitted to own up to 100 percent of Thai banks and finance companies for 10 years (from the date of acquisition). However, new capital invested in these ventures afterwards will have to come from domestic investors until such time as foreign-held equity shares fall to 49 percent. The Thai government has encouraged foreign investors to assist in re-capitalizating Thai financial institutions by taking large equity positions in domestic firms, and a total of four (out of thirteen) Thai commercial banks are now majority owned by foreign banks.

Foreign banks operating in Thailand are still disadvantaged in a number of ways, most notably by means of a maximum limit of three branches – although only one can be in Bangkok. Foreign banks must maintain minimum capital funds of 125 million baht ($2.93 million at January 2001 exchange rates) invested in government or state enterprise securities or deposited directly with the Bank of Thailand. Expatriate management personnel are limited to six professionals in full branches and to two professionals in Bangkok International Banking Facility operations, although exceptions are frequently granted.

INVESTMENT BARRIERS

The rights of U.S. investors in Thailand are secured by the U.S.-Thai Treaty of Amity and Economic Relations of 1966 (AER) and the U.S.-Thailand Tax Treaty of 1997. A new Alien Business Act, which took effect in March 2000, lays out the overall framework governing foreign investment and employment in Thailand. It eliminated some restrictions on foreign participation in a number of occupations. The Act generally does not affect projects established with Board of Investment promotion privileges or export businesses authorized under the Industrial Estate Authority of Thailand law, and will not supersede provisions of bilateral treaties, such as the AER.

Trade-Related Investment Measures

In 1995, pursuant to the WTO Agreement on Trade-Related Investment Measures (TRIMs), Thailand notified to the WTO its maintenance of local content requirements to promote investment in a variety of sectors, including the milk and dairy processing, and the motor vehicle assembly and parts industries. It eliminated these measures in the auto sector by the January 1, 2000, deadline established by the TRIMs Agreement but has requested an additional extension for dairy products. This request remains pending in the WTO.

ELECTRONIC COMMERCE

The government has attached a high public priority on the development of e-commerce and approved an Electronic Commerce Framework in October 2000. An undeveloped legal infrastructure and shallow internet penetration remain constraints on e-commerce, however. A draft Electronic Commerce Law, addressing e-signatures, has been introduced in the legislature. Four related bills, covering computer crimes, universal access, data protection, and electronic funds transfer, are being drafted.

The large role played by the state-owned telecom operator -- the Communication Authority of Thailand (CAT) -- is an obstacle to the development of the Internet and e-commerce. Its mandatory share ownership (CAT 32 percent; CAT employees 3 percent) of all licensed Internet service providers (ISPs) and its monopoly on telecom services impose high costs on online business. Required divestment of its ISP interests has not been implemented. The National Telecommunications Commission currently being formed (see Telecommunications Services) is expected to draw up new market rules.

OTHER BARRIERS

Several government firms are protected from foreign competition in Thailand. In the pharmaceutical sector, the Government Pharmaceutical Organization is not subject to requirements faced by the private sector on registration and permitting and can produce and market generic formulations of drugs marketed by foreign companies irrespective of SMP protection (see Patents). Requirements barring government hospitals from using drugs not on the National List of Essential Drugs (NLED) significantly constrain the availability of many imported products not listed on the NLED.

Allegations of impropriety in government procurement contracts and in activities administered by the Thai Customs Department are common. The lack of transparency in administrative procedure and conflicts of interests among politicians and regulators contribute to perceptions of wrongdoing. However, the government has undertaken considerable efforts to counter official corruption. The new constitution, which contains provisions to combat corruption, enhances the status and powers of the Office of the Counter Corruption Commission (OCCC), and made this body independent from other branches of government. Persons holding high political offices, and members of their immediate families, are now required to disclose their assets and liabilities before assuming and upon leaving office. Furthermore, a new law regulating the bidding process for government contracts both clarifies actionable anti-corruption offenses and increases penalties for violations.