

# THAILAND

## TRADE SUMMARY

The U.S. goods trade deficit with Thailand was \$14.3 billion in 2006, an increase of \$1.7 billion from \$12.6 billion in 2005. U.S. goods exports in 2006 were \$8.2 billion, up 12.4 percent from the previous year. Corresponding U.S. imports from Thailand were \$22.5 billion, up 13.0 percent. Thailand is currently the 24<sup>th</sup> largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Thailand were \$1.5 billion in 2005 (latest data available), and U.S. imports were \$1.1 billion. Sales of services in Thailand by majority U.S.-owned affiliates were \$3.0 billion in 2004 (latest data available), while sales of services in the United States by majority Thailand-owned firms were \$3 million.

The stock of U.S. foreign direct investment (FDI) in Thailand in 2005 was \$8.6 billion (latest data available), up from \$7.6 billion in 2004. U.S. FDI in Thailand is concentrated largely in the manufacturing, finance, professional, scientific, and technical services, and wholesale trade sectors.

## FREE TRADE AGREEMENT (FTA) NEGOTIATIONS

The U.S. Government began FTA negotiations with Thailand in June 2004, and conducted seven rounds of discussions through 2006. The negotiations were suspended indefinitely following a military-led coup against the Thaksin government in September 2006. The United States is prepared to continue FTA negotiations with Thailand once democracy is restored, and will continue to strongly urge Thailand to lift martial law, restore civil liberties and maintain its current timeline regarding constitutional reform and elections.

## IMPORT POLICIES

Thailand's tariff structure remains an impediment to market access in many sectors. The country's average applied MFN tariff rate is 10.9 percent, but some tariffs are as high as 80 percent. The highest tariff rates apply to imports competing with locally-produced goods, including agricultural products, automobiles and automotive parts, motorcycles, alcoholic beverages, fabrics, paper and paperboard products, and restaurant equipment. The Thai government is in the process of unilaterally streamlining its tariff schedule. Tariffs are being reduced to zero or to one of three rates: 1 percent for raw materials; 5 percent for intermediate goods; and 10 percent for finished goods. The Thai government has so far completed restructuring approximately 70 percent of the tariff lines, and plans to restructure another 10 percent soon. In 2006 the government eliminated tariffs on 768 items related to electronics and electrical appliances and 105 products in the printing industry. Further tariff reductions on some automobile and food products are also planned. Tariffs remaining to be restructured are primarily agricultural and luxury products.

### Taxation

Thailand's tax administration generally is complicated and non-transparent. Excise taxes are high on some items, such as unleaded gasoline, beer, wine, and distilled spirits. When import duties, excise taxes, and other surcharges are calculated, the cumulative tax burden on most imported spirits is approximately 284 percent. In 1999, as part of an economic stimulus package, the value-added tax (VAT) was

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temporarily reduced from 10 percent to 7 percent and the excise tax on fuel oil was reduced from 17.5 percent to 5 percent. The Thai government frequently has announced its intention to restore the VAT to 10 percent, but has not yet done so. The most recent effort to restore the VAT to 10 percent was delayed until September 30, 2007.

### **Agriculture and Food Products**

High duties on agriculture and food products and arbitrary management of import licenses and application of sanitary and phytosanitary (SPS) measures (see section below on Standards, Testing, Labeling, and Certification) remain the primary impediments to U.S. exports of high-value fresh and processed foods. Under its WTO Uruguay Round agriculture obligations, Thailand committed to reduce its import duties, but agriculture is scheduled to be among the last sectors targeted under the Thai government's plan.

Duties on imported consumer-ready food products typically range between 30 percent and 50 percent – the highest in the ASEAN region – with some as high as 90 percent (*e.g.*, coffee). Tariffs on meats, fresh fruits (including citrus fruit and table grapes) and vegetables, fresh cheese and pulses (*e.g.*, dry peas, lentils, and chickpeas) are similarly high, even for products for which there is little domestic production. Frozen french fries, for example, are not produced in Thailand, yet face a tariff of 30 percent. When import duties, excise taxes, and other surcharges are calculated, imported wines face a total tax of nearly 400 percent. The excise tax on wine (made of grapes) is 60 percent of value or 100 baht per liter of pure alcohol, whichever is higher. Fermented spirits made from fruits other than grapes, *e.g.*, mangosteen, are subject to an excise tax of 25 percent of value or 70 baht per liter of pure alcohol, whichever is higher.

With the exception of wine and spirits, Thailand no longer applies “specific” duties on most agricultural and food products, and *ad valorem* rates are declining in accordance with Thailand's WTO commitments. Nevertheless, import duties on some agricultural and processed food goods have an average tariff rate of 25.4 percent. Moreover, bound duties on many high-value fresh and processed food products will remain high, from 30 percent to 40 percent, even after Thailand implements reductions required under its WTO commitments. Tariffs on apples are at 10 percent, while duties on pears and cherries remain as high as 30 percent to 40 percent. U.S. fruit growers estimate lost sales of up to \$25 million annually from the combined effect of Thailand's high tariffs, surcharges, and a customs reference price system that often disregards the declared transaction price of these products (see "Customs Barriers" section below).

Thailand's overall import policy is directed at protecting domestic producers, and the Thai government has implemented non-transparent price controls on some products and maintains significant quantitative restrictions that impede market access. The United States is concerned that access to tariff-rate quotas for agricultural products is often managed in an arbitrary and non-transparent manner. Although Thailand has been relatively open to imports of feed ingredients, including corn, soybeans, and soymeal, in recent years, the Thai government maintains excessively burdensome requirements associated with the issuance of import permits for feed ingredients. For example, corn imports enjoy liberalized tariff rates, but the benefit of this tariff reduction has been offset by a Thai government requirement that corn imports arrive between March and June, a seasonal limitation not provided for in Thailand's WTO schedule. This requirement 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); in-quota corn imports (54,700 mt) are subject to a 20 percent tariff rate, while out-of-quota corn imports are subject to a 73 percent tariff. There are import quotas for soybeans, for which the import duty is 5 percent. However, Thailand requires that importers purchase a certain amount of domestically-produced product before being granted licenses for imported products. Importers of skim milk powder report that import quota allocations are often released late, which sometimes causes interruptions in trade flows.

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In addition, the Thai government requires import license fees for meat products of approximately \$114 per ton on beef and pork, \$227 per ton for poultry, and \$114 per ton on offal that do not appear to reflect the costs of import administration. SPS standards for certain agricultural products also often appear to be applied arbitrarily and without prior notification. The Thai government is implementing a long-dormant requirement of inspecting individual slaughterhouse or farm facilities that export animals and animal products into Thailand. Efforts have been made to negotiate a system audit, as opposed to a plant by plant audit the Thai government is seeking.

U.S. agricultural exports to Thailand, including fish and forestry products, which dropped dramatically in the aftermath of the 1997 financial crisis to \$440 million in 1998, have recovered and approached \$750 million for the past three years. According to U.S. industry estimates, potential exports to Thailand could reach as much as \$1.5 billion annually if Thailand's tariffs and other trade-distorting measures are substantially reduced or eliminated and the economy recovers to pre-crisis levels.

### **Automotive Sector**

Thailand's import duties and taxes on vehicles are among the highest in ASEAN. In response to the 1997 financial crisis, the Thai government raised tariffs on Completely Built Up (CBU) passenger cars and sport utility vehicles to 80 percent, up from 42 percent and 68 percent, respectively and they remain at that level today. Thailand negotiated an FTA with Japan during 2005, but it remains unsigned. If ratified among other tariff cuts, the agreement will phase in over four years a reduction of tariffs to 60 percent on Japanese vehicles with engines greater than 3000 cc.

Excise taxes in Thailand are based on various vehicle characteristics, such as engine size, weight and wheelbase. In July 2004, Thailand revised its excise tax structure, but it remains complex and heavily favors domestically manufactured vehicles. Taxes on passenger vehicles range from 30 percent to 50 percent, while pickup trucks are taxed at a rate of 3 percent. As a result, pickups account for more than 50 percent of total vehicle sales in Thailand.

The Thai government administers several incentive measures that benefit automotive exports. These include tax reimbursements on imported materials for export production; tax redemption on exported parts and vehicles; tax reduction on imported materials. Additionally, Thailand has established a Free Trade Zone Area (FTZ) in order to support export-related investments. In the FTZ area, the Thai government provides services to facilitate customs processing and production.

Customs valuation issues have been particularly acute in the automotive sector (see "Customs Barriers" section below).

### **Textiles**

Thailand's tariff rates for U.S. textile exports are high, ranging from 20 percent to 30 percent for most fabrics and 30 percent for most clothing and other made-up textile products. In addition, Thailand applies specific unit duties on more than one-third of all textile tariff lines, which make effective rates even higher. Furthermore, on the APEC website, Thailand's applied tariffs for certain clothing are incorrectly listed as 60 percent. Thailand has not yet addressed United States' concerns that these higher published tariffs could be misleading and discourage potential United States exporters.

### **Quantitative Restrictions and Import Licensing**

Thailand is still in the process of changing its import licensing procedures to comply with its WTO obligations. Import licenses are required for at least 26 categories of items, including many raw

materials, petroleum, industrial materials, textiles, pharmaceuticals, and agricultural items. Import procedures for jute and marble will soon be brought into line with WTO requirements.

Imports of used motorcycles and parts and gaming machines are prohibited. Imports of other products must meet burdensome regulatory requirements, including extra fees and certificate-of-origin requirements. Thailand does not have specific measures of general application relating to non-preferential rules of origin.

Imports of food, pharmaceuticals, certain minerals, arms and ammunition, and art objects require special permits from relevant ministries. Thailand requires that detailed and often proprietary business information about the manufacturing process and composition of food be provided in applications for food product registration.

### **Customs Barriers**

Thailand continues to take steps to improve its customs practices, building on the U.S.-Thai bilateral dialogue held over the past five years. While the international business community maintains that some positive customs policy changes are slow in filtering down through the bureaucracy, most acknowledge the progress to date.

The lack of transparency and efficiency of the Thai customs regime remain a concern. In July 2003, Thailand formally notified the WTO of legislation passed in 2000 implementing the WTO Customs Valuation Agreement. Meanwhile, Thailand has drafted, but not yet submitted to Parliament, legislation limiting the discretion of the Customs Director General to arbitrarily increase the customs value of imports (though in practice, the Director General has not made use of that discretion). Some industry representatives continue to report inconsistent application of the WTO transaction valuation methodology and repeated use of arbitrary values. Industry representatives have asked that Thai Customs publish proposals for changes in customs laws, regulations, and notifications and allow time for comments on these proposals. They have also requested that Customs impose a time limit on the issuance of rulings, respond to appeals within an established time period, provide a full explanation of its decisions regarding appeals, establish a reasonable time period at the beginning of an audit or an investigation for their completion and provide a written report of the findings of the audit or investigation.

In addition, as is the case with some Thai agencies, Customs has an incentives program rewarding officials for identifying violators based on a percentage of the recovered revenues. This practice encourages revenue maximization rather than compliance with legal requirements. Corruption in the Customs Department reportedly remains a serious problem.

### **STANDARDS, TESTING, LABELING AND CERTIFICATION**

Thailand's Food and Drug Administration (TFDA) imposes standards, testing, and labeling requirements, and requires certification permits for the importation of all food and pharmaceutical products, as well as certain medical devices. Many U.S. companies have raised concerns that the cost, duration, and complexity of the permitting processes are overly burdensome and are concerned about the periodic demands for disclosure of proprietary information. TFDA has streamlined its procedures somewhat, but U.S. companies still report delays of up to a year. All processed foods must be accompanied by a detailed list of ingredients and a manufacturing process description, disclosure of which could potentially jeopardize an applicant's trade secrets. A labeling regime for foods derived by the use of biotechnology, modeled on the Japanese system, was put into effect in May 2003. In 2004, the Ministry of Public Health (MOPH) introduced new regulations on food safety testing, known as Ministerial Decree 11, requiring

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that many imported food products undergo testing and certification for a number of chemical additives. Decree 11's implementation has been delayed as MOPH has undertaken revisions of the guidelines but these guidelines have yet to be finalized.

In August 2006, the Department of Agriculture in the Ministry of Agriculture and Cooperatives, notified the WTO of its proposed new rules on Thai quarantine practices on certain imported fruits and vegetables from all exporting countries. Under these rules, all imported relevant commodities will be subject to pest risk assessment (PRA) prior to importation. While commodities that have a record of export can be allowed to ship during the PRA review, other products will be prohibited.

The Thailand Industrial Standards Institute (TISI) is the national standards organization under the Ministry of Industry. TISI is empowered to provide product certifications according to established Thai standards and is an accredited body for International Standards Organization (ISO) and other certifications in Thailand. The Thai government requires the certification of 60 products in ten sectors, including agriculture, construction materials, consumer goods, electrical appliances and accessories, PVC pipe, medical equipment, LPG gas containers, surface coatings, and vehicles. In the case of medical equipment, Thailand requires product approval in the country of origin before it can be registered, which disadvantages products that have already received regulatory approval in other countries (usually the EU) before receiving U.S. FDA approval. Uninterruptible power supply product imports must meet a more stringent radio signal emissions standard that appears to favor local suppliers.

Thailand prohibits motorcycle traffic from its expressways, including large-engine motorcycles that are sufficiently powerful and intended for expressways and do not pose the same safety risk to other travelers as underpowered motorcycles. Thailand's motorcycle emissions regulations are an amalgamation of standards and tests used elsewhere in the world, resulting in standards that reportedly are among the most stringent in the world. Enforcement of these standards has been non-transparent so that even producers utilizing advanced low-emission technology have difficulty meeting these standards.

## **GOVERNMENT PROCUREMENT**

Thailand is not a signatory to the WTO Agreement on 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. While these regulations require that nondiscriminatory treatment and open competition be accorded to all potential bidders, different state enterprises and ministries typically have their own individual procurement policies and practices. Preferential treatment is provided to domestic suppliers (including subsidiaries of U.S. firms registered as Thai companies), which receive an automatic 7 percent price advantage over foreign bidders in initial bid round evaluations.

A "Buy Thai" directive from the Prime Minister's office issued in 2001 has raised additional concerns about the Thai government procurement policies. While Thailand denies that the "Buy Thai" policy discriminates against foreign producers, specific language used in government instructions on some procurement tenders explicitly excludes foreign-made, non-Thai products from the bidding process.

Government agencies and state enterprises reserve 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 frequently surface, including charges of bias on major procurements. Despite an official commitment to transparency in government procurement, U.S. companies and Thai media have reported

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allegations of irregularities. In addition, private sector representatives have expressed concern regarding a Thai government decision to no longer include arbitration clauses in concessions and government contracts.

Regulations promulgated in May 2000 formalized a Thai government practice requiring a countertrade transaction on government procurement contracts valued at more than 300 million baht, on a case-by-case basis. A counterpurchase of Thai commodities valued at not less than 50 percent of the value of the principal contract may be required. As part of a countertrade deal, the Thai government also may specify markets into which commodities may not be sold; these are usually markets where Thai commodities already enjoy significant access. From 1994 through August 2006, 309 countertrade agreements were signed, resulting in exports valued at over 74 billion baht. The Thai government is reviewing its countertrade policies due to concerns about delays and the management of these transactions. The United States is monitoring this issue.

## **EXPORT SUBSIDIES**

Thailand maintains programs to support trade in certain manufactured products and processed agricultural products, which 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 (established on a case-by-case basis), and preferential financing for exporters. The Thai government terminated its packing credit program in compliance with WTO commitments but received an extension of its WTO exemption period for the Industrial Estate Authority of Thailand and the Board of Investment. Low interest loans provided under the Export Market Diversification Promotion Program to exporters targeting new markets ended in December 2003.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Widespread commercial IPR counterfeiting and piracy continue. U.S. copyright industries reported an estimated annual trade loss of more than \$308 million in 2005 from IPR infringement in Thailand. An increasing volume of pirated and counterfeited products manufactured in Thailand is exported. Thailand has been on the U.S. Special 301 Watch List since November 1994.

The United States and Thailand held extensive consultations on IPR issues under the TIFA and during the FTA negotiations aimed at strengthening Thailand's regime. During the FTA negotiations, Thailand enacted optical disc legislation but it lacked many key elements, and U.S. officials continue to press Thailand to address these deficiencies. The Copyright Act amendments have not been enacted and lack of sustained, aggressive, and coordinated enforcement remains a substantial problem.

On January 30, the Ministry of Public Health issued implementing regulations for the 2002 Trade Secrets Act. The regulations restrict the government from releasing protected data for a period of five years, but do not provide data exclusivity that would prevent unfair commercial use.

The Geographical Indications Act was passed by the Thai Parliament in September 2003 and went into effect in April 2004. This legislation allows rights holders to seek protection for indications which identify a good as originating in the territory of a member or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographic origin.

Registration of new plant varieties under the Plant Variety Protection Act began in April 2006. Private sector representatives have expressed concern about the implementation and enforcement of the Act,

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noting the wide availability of pirated counterfeit seeds and other products in Thailand. The United States urged Thailand to strengthen the 1999 Act to make it consistent with the 1991 International Convention for the Protection of New Varieties of Plants (UPOV) and to accede to this convention.

Thailand's IPR enforcement efforts have been inconsistent. Although conviction rates are high, corruption and a cultural climate of leniency can complicate prosecution of cases. The frequency of raids compromised by leaks from police sources remains a concern. Pirates, including those associated with transnational crime syndicates, have responded to intensified levels of enforcement with intimidation against rights holders' representatives and enforcement authorities. The Ministry of Commerce has the lead in promoting interagency cooperation on IPR enforcement issues. In August 2006, the Ministry concluded a Memorandum of Understanding (MOU) between enforcement authorities, retail establishments and rights holders to better coordinate operations. While the MOU is an important step, the Thai government has yet to ensure sustained enforcement actions against retailers, distributors, and manufacturers of pirated and counterfeit goods.

The Department of Special Investigations (DSI) was established in 2004 and took on an IPR enforcement role, focusing on major infringing production, warehousing and trafficking operations, as well as those activities associated with organized crime. In January 2006, the threshold for cases to be referred to DSI was lowered to 500,000 baht (\$13,400), promising stronger investigative action into more cases. In December 2003, the Thai Cabinet approved in principle draft amendments to the Anti-Money Laundering Act, one of which makes IPR crimes a "predicate" offense. These amendments would allow police and other law enforcement officials to seize and investigate funds and suspected bank accounts. However, in July 2004, the Council of State, which reviews pending legislation, rejected the inclusion of IPR crimes as a predicate offense, citing concerns that IPR violations are "commercial disputes."

The Thai government established a specialized intellectual property court in 1997, which has improved judicial procedures and imposed tougher penalties. Criminal cases generally are disposed of within 6 months to 12 months from the time of a raid to the rendering of a conviction. However, courts frequently hand down light sentences that are not considered a deterrent to criminal behavior. Thai officials generally 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, and assist in the preparation of documentation for prosecution.

## **Patents**

Thailand's patent regime generally provides adequate protection for most innovations. However, U.S. industry has expressed concerns that the legislation that Thailand enacted to implement its data protection obligations under the TRIPS Agreement would not provide adequate protection of confidential information from disclosure. U.S. industry is also concerned that Thailand does not have a formal patent linkage system to prevent the regulatory approval of copies of pharmaceuticals that are still patented. There has been a recent increase in the number of such copies receiving Thai FDA approval while the original product is still under patent. Thailand's patent office lacks sufficient resources to keep up with the volume of applications, and patent examinations can take more than five years. The Department of Intellectual Property is seeking to contract out to academic institutions some parts of patent search for novelty and preparation of applications in order to speed up the registration process. In 2005 Thailand began preparations to accede to the Paris Convention and the Patent Cooperation Treaty.

Thailand's Ministry of Public Health has pursued the issuance of compulsory licenses on certain patented drugs and has indicated it may consider using compulsory licensing with respect to drugs for treating a broad range of medical conditions. The United States acknowledges Thailand's ability to issue

compulsory licenses to address public health emergencies, subject to its own law and its obligations as a member of the WTO. At the same time, the United States has expressed concern regarding a lack of transparency and consultation in the Thai government's pursuit of this policy and about the potentially expansive use of compulsory licenses. The United States has also raised concerns about the potential impact of this and other recent actions by the Thai government on the broader trade and investment climate in Thailand. The United States has urged Thailand to address judiciously the complex intersection between health and intellectual property policy, and to do so in ways that recognize the role of intellectual property in the development of new drugs.

## **Copyrights**

Thailand's copyright law, intended to bring Thailand into conformity with international standards under TRIPS and the Berne Convention, became effective in March 1995. Despite efforts by Thai police at the retail, distribution, and production levels and by corporate end users, piracy remains a serious concern. The Copyright Law is ambiguous regarding decompilation and regulations for enforcement procedures leave loopholes that frustrate effective enforcement.

The Thai government is in the process of amending the Copyright Law in order to bring it in line with two 1996 World Intellectual Property Organization (WIPO) treaties, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. The draft amendments to the Copyright Law have been approved by the Cabinet, but await legislative consideration.

Cable piracy continues to be a major problem throughout Thailand, as pirate providers expand their reach in the provinces. In December 2003, the Thai government initiated a new policy offering amnesty to operators who agree to cease infringing actions under threat of legal action. This policy is intended as a temporary measure pending the establishment of a National Broadcasting Commission and new regulations for cable operators. However, the Thai government has failed to initiate enforcement operations.

U.S. copyright industries continue to express serious concerns over the rapid and unchecked growth of optical media piracy in Thailand. In August 2005, the Optical Disk Manufacturing Control Act went into force. This Act is designed to enhance the authority and capabilities of the Thai government to act against operators of illicit optical disc factories and to control the production materials and machines of legal producers. U.S. copyright industries are concerned that the Optical Disk Act is deficient in several respects, including that penalties are not high enough to deter pirates and do not enhance the Thai government's enforcement and oversight powers sufficiently.

Book publishers have raised concerns that the existing copyright law is being interpreted in a manner that is allowing extensive book piracy, especially in the form of illegal photocopying, to go unchecked. According to industry, annual losses are estimated at about approximately \$30 million.

## **Trademarks**

The Thai government amended its trademark law in 1992, increasing penalties for infringement and extending protection to service, certification, and collective marks. The Thai government also streamlined trademark application procedures, addressing issues raised by the U.S. Government. Additional amendments designed to bring Thailand's trademark law into compliance with the TRIPS Agreement were enacted in June 2000, broadening the legal definition of a mark. While these developments have created a viable legal framework and have led to some improvements in enforcement, especially for clothing, accessories, and plush toys, trademark infringement 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 costly. Penalties for proven trademark violations are insufficiently high to have a deterrent effect.

## **SERVICES BARRIERS**

### **Telecommunications Services**

Thailand has made substantial progress toward reforming its telecommunications regulatory regime during the past year, but several controversial issues remain unresolved and significant obstacles to foreign investment in the sector remain in place. While Thailand is still working to liberalize its basic telecommunications services, new technologies such as mobile telephony and broadband Internet services have transformed the telecommunications sector in the intervening period.

The seven-member National Telecommunications Commission (NTC) -- the independent regulator mandated by the 1997 constitution responsible for licensing, spectrum management, and supervision of telecommunications operators — began its operations in November 2004. The creation of the NTC follows reorganization with respect to ministerial oversight of the telecommunications sector in 2002. While the new Ministry of Information and Communication Technology (MICT) is responsible for overall telecommunications policy, including such major initiatives as privatization of the state-owned telecommunications firms, the initiative for liberalization of the sector clearly rests with the industry regulator, the NTC.

The NTC formulated a Telecom Master Plan for 2005-2007, to guide the development of the telecommunications sector. It established licensing criteria for the three types of telecommunications licenses it may issue: Type I (without network); Type II (with or without network for specific groups or users); and Type III (with network for public telecommunication services). The NTC has set criteria for the allocation of telephone numbers. It has set temporary measures for radio and frequency allocation. The NTC has issued six Type I and Type III telecommunications licenses to state-owned telecommunications providers TOT and CAT. The licenses granted cover the existing telecommunications services operated by the two incumbent operators.

Since the NTC began its work in November 2004, a clearer regulatory framework for the operation of Internet Service Providers (ISPs) has emerged. The NTC has established licensing criteria, license fees, and interconnection charges for ISPs. The NTC issued the first Type I telecommunications license (for an operator without its own network) in June 2005. As of this writing, the NTC has issued Type I licenses to a total of 44 ISPs.

A March 2006 study by the World Bank noted complaints by many local ISPs that “prices charged for international bandwidth and access to international Internet gateway services are extremely high; there is a critical shortage of international data capacity; and the quality of service, including the lack of redundancy is very poor, leading to frequent, long and unplanned service outages.”

The NTC has also begun to move forward with licenses for satellite services. The three types of licenses will be: Type I for Satellite Operators (the licensing principles for Type III telecommunications licenses will apply); Type II for Earth-station Operators (the licensing principles for Type II telecommunications licenses will apply); and Type III for Satellite Service Re-Sellers (the licensing principles for Type I telecommunications licenses will apply).

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NTC plans to issue licenses for third-generation (3G) mobile telephone services have been delayed. By law, allocation of frequencies requires participation by both the NTC and a National Broadcast Commission (NBC), which is still not yet operational. It remains unclear how frequencies will be allocated and whether allocation must await the formation of the NBC.

An amendment to the Telecommunications Business Law went into effect in December 2005 that raised the limit of allowable foreign ownership from 25 percent to 49 percent. State-owned enterprises continue to control large segments of the market, particularly in fixed-line and international long-distance services. With the growth of new markets such as mobile phone and satellite services in recent years, however, the role of private companies in this dynamic sector has grown accordingly. The two largest mobile service operators have pursued controversial tie-ups with foreign telecommunications firms. In January 2006, Singapore-based Temasek bought a controlling interest in Shin Corporation, the parent of mobile provider AIS, and in October 2005, Norway's Telenor AS bought out both TAC and its parent company UCOM. The Ministry of Commerce initiated an investigation into foreign ownership of Shin Corporation that may force Temasek to divest some of its ownership to comply with the law.

Thailand's telecommunications operators have historically operated as state-owned enterprises and the legacy of state ownership continues to affect the business environment in this sector. The two outstanding issues are concession conversion and privatization. Beginning in the mid-1980s, the Thai government introduced competition into the telecommunications sector to increase capacity so as to meet the booming economy's demand for telecommunications services. The state-owned telecommunications companies, now TOT and CAT Telecom, granted several concessions to private companies on a Build-Transfer-Operate (BTO) contract basis. Under the BTO contracts, the private contracting party established telecommunications networks at their own expense. Upon completion of the concession period, all assets are to be transferred to the concession grantor. Revenue sharing payments for each concession have differed. A dual structure in the sector resulted, where the concessionaires both compete with TOT and CAT Telecom while at the same time submitting to their regulation and making revenue sharing payments to them. While early plans for reform of the sector called for concession conversion, the NTC decided not to interfere in the concessions but to begin issuing licenses to provide telecommunications services. Concessions are thus expected to expire gradually as the private operators migrate subscribers for mobile services from 2G to 3G services, which will bring their operations under the purview of the NTC and free them from revenue sharing payments.

The Thai government is also planning to partially privatize TOT and CAT Telecom, but the privatization has met resistance. Regulatory uncertainty on such issues as interconnection charges complicates the task of determining the companies' market value.

### **Legal Services**

Current Thai 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.-Thailand Treaty of Amity and Economic Relations (AER Treaty), U.S. investments are exempted from the general restriction on foreign equity participation in law firms. U.S. investors may own law firms in Thailand; but U.S. citizens and other foreign nationals (with the exception of "grandfathered" non-citizens) may not provide legal services. In certain circumstances, foreign attorneys may act in a consultative capacity.

### **Financial Services**

After the 1997-98 financial crisis, the Thai government liberalized foreign firms' access to the financial sector. However, significant restrictions remain on foreign participation in the sector. While aliens have

been allowed to engage in brokerage services since 1997, for example, foreign firms are allowed to own shares greater than 49 percent of Thai securities firms only on a case-by-case basis.

Foreigners are permitted to hold a maximum of 25 percent of the equity in Thai banks. Within the “Financial Sector Master Plan” drafted by the Bank of Thailand and approved by Parliament, this percentage may be increased to 49 percent at such time as the Central Bank deems appropriate. The Master Plan requires all Thai deposit-taking institutions to become either a retail or commercial bank with differing minimum capital requirements. The Bank of Thailand has indicated that no new banking licenses will be issued until “economic conditions” permit greater competition in the Thai banking market.

Foreign banks currently operating in Thailand are disadvantaged in their ability to compete. Most notably, they are limited to one branch, and are not permitted to operate off-site ATM machines, which are considered as branches. Foreign banks must maintain minimum capital funds of 125 million baht (\$3.1 million) 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 two professionals in Bangkok International Banking Facility operations, although exceptions are often granted.

Charged with helping to restructure the financial sectors’ non-performing loans, the government-owned Thai Asset Management Corporation gives priority to Thai nationals when contracting for management, technical, and advisory services. Foreigners may be hired, however, in the absence of qualified Thai nationals.

### **Construction, Architecture, and Engineering**

Foreigners are prohibited from working as engineers or architects, but in practice, they can work as consultants in these fields. Construction firms must also be registered in Thailand (*i.e.*, establish a commercial presence). Under the U.S.-Thailand AER Treaty, American firms may establish companies in Thailand that provide construction, architectural, and engineering services. The Thai government regulates the billing rates of foreign construction, architectural, and engineering firms. Current practice places a ceiling on billing for these services by foreign firms.

### **Accounting Services**

Foreigners cannot be licensed as Certified Public Accountants and therefore cannot practice accounting in Thailand. Foreign accountants may only serve as business consultants.

### **Transport Services, including Express Delivery Services**

The passage of the Multimodal Transport Act of July 2005 represents a new barrier to trade in the transport services sector. While the full impact of the law remains unclear, it introduces new uncertainty into the treatment of operations of foreign shipping companies. Political difficulties in 2006 delayed approval of implementing regulations. While the text of the law itself appears to require foreign shipping companies performing multimodal services in Thailand to either incorporate in Thailand or appoint a Thai agent (as opposed to operating out of their branch offices in Thailand as they have to date), the draft ministerial regulations implementing the law provide that the law shall not apply to foreign shipping companies transporting goods under bills of lading governed by international convention. In view of the severe penalties for non-compliance (including a retroactive fine of Baht 50,000 per contract), international shipping firms have sought to contain their downside risk by either incorporating in

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Thailand or appointing an agent, passing the attendant costs on to customers. In addition, private express companies must pay postal “fines” and penalties in Thailand that can amount to an average of 37 baht per item.

The 49 percent limit on foreign ownership in land transport (trucking) hampers investment in the growth of express delivery services. Express delivery firms prefer to have the option to control items throughout the supply of the service, including both air and ground-based operations in order to speed the movement of goods.

The United States and Thailand signed a comprehensive bilateral Open Skies Agreement in September 2005 that provides for full liberalization by 2010. The agreement includes phase-in periods with respect to pricing and fifth freedom rights.

### **Healthcare Services**

Thai government policy is highly restrictive in the healthcare services sector (*e.g.*, hospital, dental, physician services), particularly regarding the lack of transparency relating to hospitals and the possibility of foreign ownership, administration, and equity shares in treatment facilities. Thailand has offered no medical services commitments in the current General Agreement on Trade in Services (GATS) negotiations.

### **Retail Services**

The Ministry of Commerce is finalizing a draft Retail Act that will regulate retail business. In September, the Thai government requested major foreign and domestic retailers to voluntarily freeze their expansion plans while regulations were drawn up to protect smaller retailers. In October 2006, the Thai government issued guidelines, under the Trade Competition Act (1999) to prevent retailers from setting “unfair practices” such as: pricing goods lower than costs; requesting discounts from suppliers; charging high introduction fees for new products; and returning products to the supplier without valid reasons.

### **Advertising**

The Ministry of Public Health proposed a new law in October 2006 that would ban advertising for alcohol products in all media. Thai law prohibits advertising on pay television. There are no regulations on foreign participation in the advertising sector.

## **INVESTMENT BARRIERS**

The Alien Business Act lays out the overall framework governing foreign investment and employment in Thailand. Although the Act prohibits foreign investment in most sectors, Thailand makes an exception for U.S. investors pursuant to the AER Treaty. Under the AER Treaty, Thailand may discriminate against U.S. investors only in the following sectors: communications, transportation, fiduciary functions, banking involving depository functions, the exploitation of land or other natural resources, and domestic trade in indigenous agricultural products. Moreover, Thailand’s obligation to accord national treatment to U.S. investors in all other sectors does not extend to “the practice of professions, or callings reserved for [Thai] nationals.”

The Alien Business Act’s prohibitions on foreign investment generally do not affect projects established by Board of Investment promotion privileges or export businesses authorized under the Industrial Estate Authority of Thailand law.

## **FOREIGN TRADE BARRIERS**

In January 2006, the Thai Cabinet approved amendments to the Foreign Business Act. The United States has expressed serious concerns to the Thai government about the restrictions that these amendments would impose on certain investments in Thailand and about the implications that these amendments would have for Thailand's international legal obligations and for the investment environment in Thailand. These amendments were sent to the Council of State for legal review. When this review is completed, the Thai Cabinet is expected to send the proposed amendments to the National Legislative Assembly. In response to the strong interest expressed in this proposed legislation by the foreign business community and foreign governments, the Thai government has indicated its willingness to engage in a dialogue with all interested parties and consider changes to these amendments.

### **Trade-Related Investment Measures**

In 1995, pursuant to the WTO Agreement on Trade-Related Investment Measures (TRIMS), Thailand notified the WTO that it would maintain local content requirements to promote investment in a variety of sectors, including milk and dairy processing, and the motor vehicle assembly and parts industries. Thailand eliminated the measures in the automotive sector by the January 1, 2000, deadline established by the TRIMS Agreement. In 2001, along with several other developing countries, Thailand received an extension for its milk and dairy processing measures. It eliminated those measures at the end of 2003.

### **ELECTRONIC COMMERCE**

Thailand lacks a complete legal framework to support electronic commerce, and the business community has been unable to fully take advantage of electronic commerce opportunities. Most electronic commerce takes place business-to-business. Internet penetration and computer usage are still relatively low but have increased markedly in recent years. A survey by the National Statistics Office in 2005 found that 14.5 million Thais (25 percent) over the age of six used computers, and seven million (12 percent) use the Internet.

The Thai government enacted the Electronic Transactions Act (ETA) in April 2002 to govern civil and commercial transactions made electronically. A royal decree on transactions excluded from enforcement of the Electronic Transactions Act became effective in March 2006. Three other decrees necessary to fully implement the ETA have been approved in principle but await final Cabinet approval and submission to the King. Four pieces of legislation relating to electronic commerce are nearing final stages. A cyber-crime bill, an electronic funds transfer bill, and a national information infrastructure bill to facilitate universal service are expected to be enacted in 2007. A data protection bill is still under review by the Council of State and will require Cabinet and parliament approval. An undeveloped legal framework nevertheless continues to constrain the development of electronic commerce.

### **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. In addition, it can produce and market generic formulations of drugs marketed in foreign countries irrespective of safety monitoring program protection. Thai government requirements limiting government hospitals' procurement and dispensing of drugs not on the national list of essential drugs significantly constrain the availability of many imported products.

The Thai government retains authority to set *de facto* price ceilings for 33 goods and two services, including staple agricultural outputs, liquefied petroleum gas, medicines, sound recordings and student

## **FOREIGN TRADE BARRIERS**

uniforms. Under the 1999 “Act Relating to Price of Merchandise and Service” a government committee headed by the Minister of Commerce has the authority to “Prescribe the purchase price or distribution price of merchandise or service...”, “prescribe maximum profit per unit...” and set the terms and conditions – including maximum permissible volumes – of any goods and service in the Kingdom. The law was amended in 1999 with the advent of a Competition Law and was meant to be phased out. However, with several critical aspects of Competition Law still undefined, the old law continues in place with no expiration under current consideration by the Thai government. Price control review mechanisms are non-transparent. Price control determinations are sometimes based on outdated assumptions, including with respect to exchange rates, and go for long periods without review, even upon repeated petition for review by affected parties. Only sugar currently is subject to a retail price ceiling. In practice, the Thai government also uses its control of major suppliers of products and services under state monopoly, such as the petroleum, aviation, and telecommunication sectors, to influence prices in the local market.

The Thai government has made some efforts to counter official corruption. The Thai Constitution of 1997 contains provisions to combat corruption, including enhancement of the status and powers of the Office of the Counter Corruption Commission (OCCC), which is independent from other branches of government. Persons holding high political office and members of their immediate families now are required to disclose their assets and liabilities before assuming and upon leaving office. Moreover, a law regulating the bidding process for government contracts both clarifies actionable anti-corruption offenses and increases penalties for violations. Nonetheless, counter-corruption mechanisms continue to be employed unevenly. The lack of transparency in administrative procedures also contributes to perceptions of corruption in Thailand. Prescribed comment periods for new legislation and regulations are sometimes not honored, and implementing regulations can be unclear, causing uncertainty among companies about the interpretation of the provisions.