THAILAND

TRADE SUMMARY

The U.S. goods trade deficit with Thailand was $12.7 billion in 2005, an increase of $1.4 billion from $11.2 billion in 2004. U.S. goods exports in 2005 were $7.2 billion, up 13.6 percent from the previous year. Corresponding U.S. imports from Thailand were $19.9 billion, up 13.2 percent. Thailand is currently the 23rd largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Thailand were $1.1 billion in 2004 (latest data available), and U.S. imports were $903 million. Sales of services in Thailand by majority U.S.-owned affiliates were $2.6 billion in 2003 (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 2004 was $7.7 billion, up from $7.1 billion in 2003. U.S. FDI in Thailand is concentrated largely in the manufacturing, professional, scientific, and technical services, and mining sectors.

FREE TRADE AGREEMENT (FTA) NEGOTIATIONS

The U.S. government began FTA negotiations with Thailand in June 2004, and has conducted seven rounds of discussions. Having concluded an FTA with Singapore in May 2003, the United States is seeking to advance President Bush's Enterprise for ASEAN Initiative (EAI), which is aimed at enhancing U.S. relations with ASEAN countries, and to address concerns about Thailand's trade and investment regime. While the two sides have made progress in many areas of the negotiations, much work remains. The U.S. Government had hoped to conclude the talks by the spring, but in February, the Thai Government called snap elections for April 2 and it has been in caretaker mode since then. The United States and Thailand will jointly determine how best to proceed once a new government is in place.

IMPORT POLICIES

Thailand's high tariffs remain a major impediment to market access in many sectors. The country's average applied Most Favored Nation (MFN) tariff rate is 11.46 percent (the average applied MFN tariff rate in the agricultural sector is 24.32 percent, while in the industrial sector the average applied tariff rate is 9.48 percent). The highest tariff rates apply to imports competing with locally produced goods, including agricultural products, automobiles and auto parts, alcoholic beverages, fabrics, paper and paperboard products, restaurant equipment, 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 1997-98 financial crisis, the Thai government increased duties, surcharges, and excise taxes on a range of "luxury" imports, including wine, passenger cars, and wool carpets. Some tariff increases have occurred in conjunction with elimination of other trade restructuring measures; for example, tariffs on completely knocked down (CKD) automobile kits increased from 20 percent to 33 percent (later reduced to 30 percent) when local content requirements were eliminated in the automotive industry in December 1999. Thailand also imposes a 60 percent duty on motorcycles. When import duties, excise taxes, and other surcharges are calculated, the price of a motorcycle in Thailand is close to double its selling price in the United States. Thailand also does not permit the importation of bulk spirits at bottle strength for local bottling, thus limiting the access of imported spirits to the market.

The Thai government is behind in its schedule to implement its WTO and ASEAN Free Trade Area (AFTA) tariff reduction commitments and rationalizing its complicated tariff regime, which currently has 46 rates. Nonetheless, it has continued to lower selected import duties in line with WTO and AFTA commitments, mostly on raw materials and inputs not produced locally. In 2005, the government reviewed the entire tariff structure, which includes 5,505 items. Tariffs in the electronics sector, which make up about one fourth of total tariff items, will be the first group for which tariff reductions will be announced. The government is expecting to complete the tariff restructuring by the end of 2006, as 80 percent of AFTA tariff lines are scheduled to be brought down to zero by January 2007.

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 whiskey is approximately 169 percent. In March 1999, as part of an economic stimulus package, the value-added tax (VAT) was 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 continues to delay the decision. The most recent effort to restore the VAT to 10 percent was scheduled to take place on October 1, 2005; that commitment has been 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 rationalized under the Thai government’s tariff restructuring 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 there is 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 for 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 to 40 percent, even after reductions under WTO commitments. Tariffs on apples are 10 percent, while duties on pears and cherries remain as high as 60 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 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 applies burdensome requirements associated with the issuance of import permits for feed ingredients. For example, tariff rates on corn imports have been liberalized, 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, in favor of corn from the southern hemisphere. Corn is also subject to a tariff-rate quota (TRQ): in-quota corn imports (54,440 mt) are subject to a 20 percent tariff rate, while out-of-quota corn imports are subject to a 73.8 percent tariff. There are unlimited import quotas for soybeans, for which the import duty is five 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.

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 in the process of 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 as is desired by the Thai government. U.S. agricultural exports, including fish and forestry products, to Thailand, which dropped dramatically in the aftermath of the 1997 financial crisis to $440 million in 1998, have recovered and reached $765 million in 2004. 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 in this sector are among the highest in the ASEAN. In response to the financial crisis, the Thai government in October 1997 raised tariffs on Completely Built Up (CBU) passenger cars and sport utility vehicles to 80 percent, up from 42 percent and 68 percent, respectively. Thailand signed an FTA with Japan in August 2005 that will phase in over four years a reduction of tariffs to 60 percent on Japanese vehicles with engines greater than 3000 cc. Current tariff rates on parts and components range from 10 percent to 30 percent. However, tariffs on CBU pick-up trucks have been reduced from 60 percent to 40 percent.

Excise taxes in Thailand are based on engine displacement. In July 2004, Thailand revised its excise tax structure and simplified the previous system. Thailand's taxes on passenger vehicles range from 30 percent to 50 percent, while pickup trucks are taxed at a rate of three percent. 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 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 U.S. concerns that these higher published tariffs could be misleading and discourage potential U.S. exporters.

Quantitative Restrictions and Import Licensing

Thailand is still in the process of changing its import licensing procedures. Import licenses are required for at least 26 categories of items, including many raw materials, petroleum, industrial materials, textiles, pharmaceuticals, and agricultural items.

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 made no significant changes to its customs practices in 2005. During 2003-2004, Thailand took some steps to improve its customs practices, building on discussions held under the U.S.-Thailand Trade and Investment Framework Agreement (TIFA). 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 and recognize that the Thai government is committed to improving its customs procedures and facilitating trade.

As part of its effort to improve the transparency and efficiency of customs procedures, Thailand implemented in 2003 a *de minimis* threshold, exempting goods valued at 1,000 baht or less from formal entry procedures and has increased the low-value informal clearance threshold to 40,000 baht ($1000) from 20,000 baht ($500). Thailand also has taken action to expand customs clearance working hours, to increase the use of electronic and paperless customs procedures, and to create an English-language version of the Customs Department website.

The Thai government needs to make further progress to enhance the transparency and efficiency of its customs regime. 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 continued use of arbitrary values.

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. Although Thailand has taken steps to streamline its customs appeals procedures, some businesses contend that the process is still too lengthy and not yet fully transparent. 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 consider the cost, duration, and complexity of the permitting processes to be 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 jeopardize an applicant's trade secrets. A labeling regime for genetically modified foods, modeled on the Japanese system, was put into effect in May 2003. The TFDA has introduced new regulations on food safety testing, known as Ministerial Decree 11, requiring that many imported food products undergo testing and certification for a number of chemical additives. U.S. food exporters report that these new rules are burdensome and unclear, and no risk assessment substantiating the need for this testing has been provided.

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 ISO and HACCP 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.

U.S. private sector representatives have raised concerns about a number of measures proposed or implemented as a result of TISI actions. These measures include a technical regulation proposed by TISI on radio disturbance limits for personal computers and another technical regulation issued by TISI requiring all uninterruptible power systems to meet certain testing standards.

Thailand bars large-displacement motorcycle traffic from its tollways, including large motorcycles that are engineered to be ridden safely at highway speeds. In 2000, Thailand adopted motorcycle emissions regulations that 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. U.S. industry contends that enforcement of these standards has been non-transparent and 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; although in the past Thai officials have indicated 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. While these regulations require that non-discriminatory treatment and open competition be accorded to all potential bidders, different state enterprises 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 15 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 Thai government procurement policies. Reversing a long-standing non-discriminatory government procurement policy, "Buy Thai" impeded market access of foreign suppliers in selected sectors during 2001-02, notably personal computers. While Thailand officially 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.

A 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 frequently surface, including charges of bias on major procurements. Despite the official commitment to transparency in government procurement, U.S. companies and Thai media regularly report allegations of irregularities. 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, or $7.7 million, on a case-by-case basis. A counter-purchase 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 September 2005, 292 countertrade agreements were signed, resulting in exports valued at 67 billion baht, or approximately $1.7 billion.

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. Low interest loans provided under the Export Market Diversification Promotion Program for exporters targeting new markets ended in December 2003.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Widespread commercial intellectual property counterfeiting and piracy continue at high levels, despite the promise that accompanied the recent restructuring of IPR enforcement agencies.

U.S. copyright industries reported an estimated annual trade loss of more than $175 million in 2004 from IPR infringement in Thailand. An increasing volume of pirated and counterfeited products manufactured in Thailand are 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. In June 2003, the United States provided Thailand with a proposed IPR Action Plan. This plan included detailed proposals for action to be taken on enforcement, legislative/regulatory, and judicial issues. Key among these were: (1) revisions to the optical disk legislation then pending before Parliament and expeditious passage of this legislation; (2) a clear improvement in Thailand's IPR enforcement record through sustained, aggressive, and coordinated enforcement efforts; and (3) improvements in the draft Copyright Act amendments under consideration and passage of these amendments. After the FTA negotiations were underway, Thailand enacted optical disk legislation that 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.

The implementing regulations for the Trade Secrets Act, which was passed in March 2002, have yet to be adopted. The Thai Food and Drug Administration (FDA) and Department of Agriculture have drafted regulations to implement the Act, and public comments have been solicited. Although the draft regulations are now ready for signature by the Minister of Public Health, it is likely they will not be acted upon until the completion of the bilateral FTA negotiations.

The latest available draft of the Trade Secrets Act allows a government agency to disclose trade secrets to protect any "public interest" not having a commercial interest, provided the agency takes "regular measures to protect such trade secrets from unfair commercial use." The U.S. Government has raised concerns that this language would provide authorities with overly broad authority that could deny the protection of approval-related data against unfair commercial use.

A further piece of legislation related to the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Geographic Indications Act, was passed by the Thai Parliament in September 2003 and went into effect in April 2004. Private sector representatives have expressed concern about the implementation and enforcement of the Plant Variety Protection Act, noting the wide availability of pirated or counterfeit seeds and other products in Thailand.

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. In 2003, the Ministry of Commerce took the lead in promoting interagency cooperation on IPR enforcement issues, concluding two Memorandums of Understanding between enforcement agencies (Thai police and the Thai Customs Department) and rights holders to better coordinate operations. While these agreements prompted improved retail enforcement leading up to and during the October 2003 APEC Leaders Meeting in Bangkok, retail piracy returned soon thereafter. Despite several attempts throughout 2004, including a new MOU signed between the same parties in June, 2004 the Thai government has yet successfully to sustain enforcement actions against retailers, distributors, and manufacturers of pirated and counterfeit goods. In June 2005, another MOU was concluded that provided for support by rights holders for rewards payments to enforcement officials.

The Thai Parliament passed legislation in the fall of 2003 to fully authorize the establishment of the Department of Special Investigations (DSI). In its work on IPR enforcement, DSI should focus on major infringing production, warehousing and trafficking operations, as well as those activities associated with organized crime. However, DSI is not yet adequately staffed to carry out these responsibilities. In December 2003, the Thai Cabinet approved, in principle, draft amendments to the Anti-Money Laundering Act, one of which makes IPR crimes a criminal offense. This amendment 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 criminal 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, 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

Amendments to Thailand's patent regime designed to meet TRIPS obligations entered into effect in September 1999. Thailand's patent office, however, 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 some aspects of patent search for novelty and preparation of applications to academic institutions in order to speed up the registration process. In 2005, Thailand began preparations to accede to the Paris Convention and the Patent Cooperation Treaty.

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 conform with two 1996 World Intellectual Property Organization (WIPO) treaties, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. These treaties, commonly known as the WIPO Internet treaties, entered into force in 2002. The draft amendments to the Copyright Law have been approved by the Cabinet, but further changes are expected to result from the ongoing FTA negotiations.

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 the National Broadcasting Commission and new regulations for cable operators. Since December 2003, the Thai government, however, has missed several deadlines 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 October 2004, the Thai Parliament passed the Optical Disk Manufacturing Control bill, in the drafting stage since 1999. This legislation is designed to enhance the authority and capabilities of the Thai government to act against operators of illicit optical disk factories and to control the production materials and machines of legal producers. U.S. copyright industries are concerned that the optical disk legislation is deficient in several respects, including that penalties are not high enough to deter pirates and do not enhance the government’s enforcement and oversight powers sufficiently. The legislation went into effect in August 2005.

Book publishers are concerned 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 one industry group, annual losses are estimated to be 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 in the 1998 IPR action plan. 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 insufficient to have a deterrent effect.

SERVICES BARRIERS

Telecommunications Services

Thailand made substantial progress toward reforming the regulatory regime for the telecommunications sector during 2005, but several controversial issues remain unresolved and significant obstacles to foreign investment in the sector remain in place. While Thailand is expected to fulfill its 1997 commitment under the WTO to liberalize basic telecommunications services by January 2006, new technologies such as mobile telephony and broadband internet services have transformed the telecommunications sector in the intervening period. At this stage, the net positive impact of liberalizing the market in fixed-line services, facsimile, telex, and telegraph services as promised will be marginal.

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 on November 1, 2004. The Thai Senate chose the commissioners amid much controversy over political interference in their selection in August 2004, and the King of Thailand appointed the Commission on October 1, 2004. The NTC's secretariat was formed from the former Post and Telecommunications Department (PTD) on November 1, 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 state-owned telecommunications firms, the initiative for liberalization of the sector clearly rests with the industry regulator, the NTC.

In its first year, the NTC formulated the Telecom Master Plan for 2005-2007, published in the Royal Gazette on August 3, 2005. It has 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 also set criteria for allocation of telephone numbers, and has set temporary measures for radio and frequency allocation. It has also issued six type I and Type III telecommunication licenses to TOT Pcl (TOT) and CAT Telecom Pcl (CAT Telecom) on August 4, 2005. The licenses granted cover the existing telecommunications services operated by the two incumbent operators. (For regulation of internet service providers, see comment under electronic commerce.)

The NTC has also begun to move forward with the licensing process for satellite services. Hearings began in November 2005, and the NTC expects to issue licenses in 2006. 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 telecommunication licenses will apply).

The NTC is planning to address other pending issues. It held hearings on third-generation (3G) mobile telephone services in November 2005, and it plans to set licensing criteria and issue the licenses during the first half of 2006. It is still not known whether there will be an auction for the licenses or the licenses will be administratively allocated. Because so many different existing networks are governed by different rules, the NTC must also determine the regime for payment of interconnection charges when issuing 3G licenses. By law, allocation of frequencies requires participation by both the NTC and a National Broadcast Commission, which is still not yet operational. It remains unclear how frequencies will be allocated and whether allocation will await the formation of the NBC.

The RTG has allowed foreign participation in the telecommunications sector since 1989, but state-owned enterprises, now corporatized at TOT and CAT Telecom, have continued 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 market in mobile services, for example, is dominated by three private operators, whose shares are listed on the Stock Exchange of Thailand: Advanced Information Service (AIS), Total Access Communication (TAC) and TA Orange (a subsidiary of the True Corporation). All three operators have pursued linkages with foreign telecommunications firms. Singapore Telecom holds approximately a 20 percent stake in AIS, and in October 2005, Norway's Telenor AS bought out both TAC and its parent company UCOM. Some analysts have suggested that this buyout of UCOM and TAC, which is currently being reviewed by the NTC, was structured in a way intended to get around the spirit, if not the letter, of restrictions on foreign investment in Thailand's telecommunications sector.

In November 2001, the RTG enacted a Telecommunications Business Law that lowered the permitted percentage of foreign ownership in telecommunications companies from 49 percent to 25 percent. The government of Prime Minister Thaksin Shinawatra publicly pledged to amend the law to return the foreign ownership limit to 49 percent, and in November 2005, such an amendment was finally approved. The amendment also abolishes the requirement that the executive board of a telecommunications company must be 75 percent Thai.

Thailand's telecommunications operators have historically operated as state-owned enterprises, and the legacy of state-ownership continues to affect the business environment in the sector.

The two outstanding issues are concession conversion and privatization. Beginning in the mid 1980s, the RTG introduced competition into the telecommunications sector to increase capacity so as to meet the booming economy's demand for telecommunication 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 abiding by their contracts 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 the revenue sharing payments.

The RTG is also planning to partially privatize TOT (in May 2006) and CAT Telecom (still not scheduled). Regulatory uncertainty on such issues as interconnection charges complicates the task of determining their market value, however. Additionally, the loss of revenue from the unwinding of the concessions raises the question of whether investors will find their shares to be attractive investments.

Postal and Express Delivery Services

The Thailand Post Company, Ltd., is a state enterprise that has been corporatized. The Postal Committee is the regulator of postal services in Thailand. The provisions of the Postal Act B.E. 2477 (1934) cover basic postal (letters and postcards) and personal information. Any enterprise providing express delivery services not related to personal information as provided by the Act (such as parcel post) fall outside the purview of the Postal Committee. As a result of the postal services monopoly, other express delivery service providers are currently assessed a charge of Bht. 37 per piece, approximately $1 U.S. dollar, consisting of both postage and the fine for violating the postal service monopoly. The Telecommunications Ministry is working to solve the problem of monopoly rights by drafting a bill to eliminate the monopoly. The bill envisions dividing postal services into universal service and specific services. It is unclear, however, whether express delivery service providers will wish to be included in the scope of the law as postal service providers because of the accompanying licensing obligations.

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; however, 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. Significant restrictions remain on foreign participation in the sector, however. While foreigners 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 to 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 (TAMC) 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 provide accounting services 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 has resulted in a new barrier to trade in the transport services sector. While the full impact of the law remains unclear, it introduces uncertainty into the treatment of operations of foreign shipping companies. The law was scheduled to become effective in October 2005, but the implementing regulations drafted by the Ministry of Transport are not yet finalized. 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 previously). In view of the severe penalties for non-compliance (including a retroactive fine of Baht 50,000 per contract), international shipping firms have pre-emptively sought to avoid exposure by either incorporating in Thailand or appointing an agent, and passing the attendant costs on to consumers. The current 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. The United States believes this implementing regulation, if adopted, would resolve the restrictions on the branch office created by the new law.

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 of controlling items throughout the supply of the service, including both air and ground-based operations in order to speed the movement of goods. (See also comment under postal and express delivery services.)

In 2005, there has been considerable progress toward liberalization of air transport services. Building on the bilateral Open Skies Agreement of 2003 between the Kingdom of Thailand and the United States, which covered cargo services, the two countries signed a comprehensive Open Skies Agreement in September 2005 that includes passenger air travel. The agreement provides for a phase-in period until 2010 with respect to full passenger pricing liberalization and full fifth freedom passenger traffic 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.

Advertising

Thai law prohibits advertising on pay television. Television is the most popular media for advertising. There are no regulations on foreign participation in advertising.

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.

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

While the Royal Thai Government (RTG) has placed a high priority on the development of electronic commerce and approved an electronic commerce framework in October 2000, it has only partially enacted the laws and implemented the regulations envisioned. Internet penetration among the population age 6 years and up has increased markedly in recent years, reaching 10.4 percent nationwide and 26.9 percent in Bangkok in 2003, according to the National Statistics Office. Rates of household ownership of a computer have likewise been rising, reaching 9.6 percent nationwide and 29.4 percent in Bangkok in 2003, and 13.7 percent nationwide and 33.1 percent in Bangkok in 2005. An undeveloped legal framework nevertheless continues to constrain the development of electronic commerce.

An Electronic Transactions Act entered into force in April 2002, but it is awaiting the Cabinet's issuance and approval of a royal decree to implement the law. In 2002, RTG plans called for enacting four additional bills into law: a cyber-crime bill, a national information infrastructure bill to facilitate universal service, a data protection bill, and an electronic funds transfer bill. The cyber-crime bill was approved by the Cabinet in September 2003. Subsequent review took two years. In November 2005, the bill was sent back to the Cabinet for submission to the House of Representatives. It is currently with the screening committee of the House of Representatives and is scheduled for the first reading during the current parliamentary session. The national information infrastructure bill remains under review at MICT, awaiting the outcome of a restructuring of the ministerial offices to oversee implementation of the law. In view of the broad interest in data protection across many sectors of the economy, the Prime Minister's Office has taken charge of drafting data protection legislation. Similarly, the electronic funds transfer bill has been superceded by the MICT's effort to draft an electronic payments bill, which it has completed. The MICT is currently scheduling hearings on the bill. It is not yet known when any of the above bills will be enacted into law.

Since the newly established National Telecommunications Commission (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) to KSC Commercial Internet Public Company Limited in June 2005.

Responsibility for policy with respect to electronic commerce rests with the MICT. Oversight of the industry, however, remains divided among the MICT and other agencies including the National Electronics and Computer Technology Center, under the Ministry of Science and Technology.

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 (NLED) significantly constrain the availability of many imported products.

The Thai government retains authority to set price ceilings for 20 goods and services, including medicines, sound recordings, milk, sugar, fuel oil, and chemical fertilizer. Price control review mechanisms are non-transparent. Price control determinations are sometimes based on outdated assumptions, including 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.

Thailand has not signed the UN Convention against Corruption, which entered into force on December 14, 2005. Nevertheless, the Thai government has made some efforts to counter official corruption. The Thai Constitution of 1997 contains provisions to address 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 are required to disclose their assets and liabilities before assuming and upon leaving office. Moreover, a new law regulating the bidding process for government contracts both clarifies actionable anti-corruption offenses and increases penalties for violations. Nonetheless, anti-corruption mechanisms continue to be employed unevenly; there are relatively few prosecutions of government officials for corruption offenses. 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.