THAILAND

TRADE SUMMARY

In 1999, the U.S. trade deficit with Thailand was approximately $9.3 billion, an increase of $1.1 billion from the U.S. trade deficit of $8.2 billion in 1998. U.S. merchandise exports to Thailand were approximately $5.0 billion, a decrease of $250 million (4.7 percent) from the level of U.S. exports to Thailand in 1998. Thailand was the United States' 25th largest export market in 1999. U.S. imports from Thailand were $14.3 billion in 1999, an increase of $889 million (6.6 percent) from the level of imports in 1998. The stock of U.S. foreign direct investment (FDI) in Thailand in 1998 was about $5.7 billion, an increase of 45 percent from the level of U.S. FDI in 1997. U.S. FDI in Thailand is concentrated largely in the manufacturing, petroleum and wholesale sectors.

IMPORT POLICIES

Tariffs

During the 1999 fiscal year Thailand's effective tariff rate was 3.81 percent, up from 3.28 percent in 1998. The simple average tariff for 5,846 dutiable items was 16.97 percent. Tariffs accounted for 9.35 percent of government revenues during FY 1999, compared to 5.85 percent in 1998. The Thai government continues to reduce tariff rates pursuant to a reduction schedule established in 1994, although progress was impeded during 1998 and 1999 due to the economic crisis and shortfalls in government revenues from other sources. A review of Thailand's tariff policies by the WTO Trade Policy Review Body (TPRB) in December 1999 revealed that certain tariff rate increases implemented in 1997 may be inconsistent with Thailand's current tariff rate binding obligations. The United States is seeking the Thai government's clarification of this matter on a priority basis.

The current structure of Thailand's tariff policy divides the Thai tariff schedule into a number of tariff rate categories, or bands. The total number of these categories is being gradually reduced from 39 to 6, as follows: zero percent for certain goods such as medical equipment and fertilizer; one percent for raw materials, electronic components, and vehicles for international transport; five percent for primary and capital goods, such as machinery, tools, and computers; 10 percent for intermediate goods; 20 percent for finished products; and 30 percent for goods "needing special protection," to include such items as fabrics, clothing, refrigerators, and air conditioners. Plans to reduce tariffs on petrochemicals and plastic products have been delayed several times due to the effects of the regional economic crisis and sensitivity in the domestic industry. However, these tariffs, too, are gradually being reduced. In January 1999, the rates for petrochemical products were reduced to 20 percent and for plastic pellets to 30 percent.

In October 1997, the Thai government temporarily raised tariffs on passenger cars and sport utility vehicles to 80 percent, up from 42 and 68 percent. These increases were scheduled to be lifted on January 1, 2000, but they remain unchanged. In addition, in order to come into compliance with its WTO obligations (see "Trade-Related Investment Measures" below), Thailand in 1999 removed local content requirements in the automotive industry. Unfortunately, at the same time Thailand announced its intention to raise the tariff rate on completely knocked down (CKD) kits from 20 to 33 percent.

A revised tariff structure is to be unveiled during the first half of the year 2000 which will categorize goods under three general headings: primary/raw materials; intermediate and semiprocessed products; and finished products. This reorganization could remedy some troublesome anomalies in the Thai tariff schedules; for example, in some cases import duties on unfinished materials have been higher than on finished products. At the same time, tariff reductions on 1,227 of a total of 9,066 dutiable items will take effect as part of Thailand's ASEAN Free Trade Agreement (AFTA) obligations. Effective January 2000, Thailand eliminated tariffs on 153 information technology-related products pursuant to its obligations under the WTO Information Technology Agreement (ITA). However, in implementing its ITA obligations Thailand has reportedly begun to require that imported information-technology products be accompanied by a certificate of origin.

Taxation

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

Agriculture and Food Products

High duties on agriculture and food products remain the main impediments to U.S. exports of high-value fresh and processed foods. Under its Uruguay Round agriculture obligations in the WTO, Thailand is committed to reduce its import tariffs, although items in the consumer food category will still carry a tariff of about 25 percent. Because most pre-Uruguay Round tariff rates are around 60 percent, tariffs on many items will remain in the 30 to 40 percent range by the end of the Uruguay Round implementation period in the year 2004.

Thailand has historically relied on import duties as an important source of government revenue, but which also serve to protect politically important domestic agricultural interests from competing with imports. Duties on imported consumer-ready food products range between 40-50 percent, the highest in the ASEAN region. Tariffs on meats, fresh fruits and vegetables, and pulses (e.g., dry peas, lentils, and chickpeas) are similarly high. When import duties, excise taxes and other surcharges are calculated, imported wines face a total import tax of nearly 380 percent. With the exceptions of wine and spirits, there are no longer specific duties for most agricultural and food products and *ad valorem* rates are slated to decline between 35 percent and 50 percent under WTO rules. Nevertheless, import duties are currently as high as 60 percent. Furthermore, duties on many high-value fresh and processed food products will remain high even after the WTO reductions.

Although its overall import policy is directed at protecting domestic producers, Thailand has been relatively open to imports of feed ingredients (corn, soybeans, soymeal) in recent years. Corn imports enjoy liberalized tariff rates, but the effects are limited by a government requirement that corn imports arrive within a limited time frame (February-June). This places U.S. suppliers at a disadvantage and gives most of the market to corn from the Southern Hemisphere. Corn is also subject to a tariff-rate quota (TRQ) based on domestic wholesale corn prices. In-quota imports are subject to a 20 percent tariff rate, plus a surcharge of about five dollars per ton; the out-of-quota tariff is 77 percent. There are currently no import quotas for soybeans, and the import duty on soybean meal is five percent, provided that specific domestic purchase requirements are met. There is an import tax surcharge and an excise tax on wheat imports of about $30 per ton.

Phytosanitary standards continue to be a source of concern for the United States. In 1995, the United States obtained the Thai government's approval to import fresh citrus fruit from Florida and California, and in 1999 approval was obtained to import citrus fruit from Arizona.

Quantitative Restrictions and Import Licensing

Thailand is required to bring its import licensing procedures into conformity with WTO obligations; consequently, Thailand's import licensing regime is currently under review. Progress toward implementation of WTO rules on licensing has been incremental. All items of food for human consumption are subject to import license requirements, which are often unclear and non-transparently administered. Some items are not subject to a licensing requirement but are subject to other administrative or regulatory requirements including fees or a requirement that imports must be accompanied by certificates of origin.

Customs Barriers

The Thai parliament in January 2000 enacted legislation necessary to implement the WTO Customs Valuation Agreement. This law will come into effect in March 2000 and its application will be retroactive to January 1, 2000 (which is the deadline for compliance with the WTO agreement). This is a welcome development which, if fully implemented and administered, could help address persistent U.S. concerns over Thai customs-related requirements and procedures.

The business community has long regarded Thai customs procedures as an impediment to trade and investment. Overall, the Thai Customs Department enjoys an unusual degree of autonomy and some of its practices appear arbitrary and irregular. Import regulations are complicated, non-transparent, and inconsistently applied. The problems most frequently cited by importers are excessive paperwork and formalities, lack of coordination between customs and other import regulating agencies, and lack of modern computerized processes.

Also, many Thai and foreign importers complain of demands for unrecorded cash "facilitation fees." In an effort to limit demands for such payments and to maximize customs revenue, "fire walls" have been introduced between customs personnel and brokers, and procedures have been introduced to check documentation upon filing for completeness and accuracy. The Customs Department justifies its continued reliance on original documentation, visual inspections, and average price formulas for valuations by pointing to chronic cheating on customs declarations. Plans to introduce a computerized, paperless customs system throughout the country have met with limited success. Computerized entry and clearance procedures are currently available in the limited areas of express cargo and export shipments, and are generally working well in these areas.

Customs Department authorities have periodically disregarded actual invoiced values and relied on the highest invoiced price of a particular product recorded during the previous month as a reference price for determining applicable duties. This practice often results in overvaluation and fails to take into account differences in quality, quantity and bulk purchase discounts, and fluctuations in world prices. Although these problems persist, progress was made during 1999 to reform some aspects of customs operations, particularly express shipment handling, payment procedures, document simplification and broker licensing.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Thai Food and Drug Administration (TFDA) requires standards, testing, labeling, and certification permits for the importation of all food and pharmaceutical products. This process can be a trade restriction due to the cost, length and complexity of the process, and occasional demands for disclosure of proprietary information. The fees for inspection and analysis of pharmaceuticals nearly doubled during October 1999.

Food licenses cost about $600 and must be renewed every three years. Pharmaceutical import licenses cost about $480 and must be renewed every year. The combined fee and service charges associated with renewal of licenses is approximately $290. Licensing fees ranging from $40 to $120 per item are usual for sample food products imported in bulk. Licensing fees for sealed, packaged foods cost about $200 per item. Pharmaceuticals must be registered for a fee of about $40 per item, and must be inspected and analyzed for another fee of about $80 per item. The process can take more than three months.

Some Thai Food and Drug Administration (TFDA) procedures have been streamlined, but delays of up to a year can occur. Also, all processed foods must be accompanied by a detailed list of ingredients and a manufacturing process description. American manufacturers are reluctant to disclose trade secrets, and some American products have not reached the Thai market for this reason.

GOVERNMENT PROCUREMENT

Thailand is not a signatory to the WTO Agreement on Government Procurement. Thai government practice currently requires a counter-trade transaction on government procurement contracts valued at more than 300 million baht (about $8 million), on a case-by-case basis. A counter-purchase of Thai commodities valued at not less than 50 percent of the principal contract may be required. As part of a counter-trade deal, the Thai government may also specify markets into which commodities may not be sold; these are usually markets where Thai commodities already enjoy significant access. The provision for a case-by-case approach automatically creates a lack of transparency and predictability.

EXPORT SUBSIDIES

Thailand maintains several programs that benefit manufactured products or processed agricultural products and may constitute export subsidies. These include subsidized credit on some government-to-government sales of Thai rice (agreed on a case-by-case basis), preferential financing for exporters in the form of packing credits, tax certificates for rebates of packing credits, and rebates of taxes and import duties for products intended for re-export. Thailand’s Export-Import Bank has assumed responsibility for the administration of some of these programs, particularly packing credits, usually charging interest at LIBOR plus 3.0 to 3.5 percent.

The Thai government grants additional packing credit loans through commercial banks totaling $500 million, at LIBOR plus three to three and a half percent. The Thai Export-Import Bank offers a nine to nine and a half percent interest rate (LIBOR plus one percent), quoted in dollars, paid out in baht, and repaid in dollars.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Despite the passage of significant IPR legislation and a good working relationship between foreign business entities and the Thai Department of Intellectual Property, IPR piracy continues to be one of the leading trade issues between the United States and Thailand. U.S. copyright industries report an estimated annual trade loss of more than $240 million from IPR infringement in 1999. The most significant problem is enforcement, as piratical production continues to expand and large quantities of infringing goods continue to be sold at the retail level. Allegations of irregularities continue to undermine confidence in the police and the public prosecutor's office. Since November 1994, Thailand has been on the U.S. Special 301 "Watch List."

An IPR action plan concluded between the U.S. and Thailand during 1998 strengthened levels of IPR protection and enforcement in Thailand. The action plan set forth elements for streamlining IPR regulatory procedures, enhancing cooperation between relevant Thai ministries and enforcement authorities, and other important reforms in the copyright, patent, trademark and general enforcement areas. The Thai government's implementation of the action plan continues to be a priority for the United States. During late 1998 and early 1999, the Thai government continued to step up enforcement actions and to enhance coordination among various police and enforcement-oriented authorities. As a result, police raids and successful prosecutions before the IPR court improved steadily during the last half of 1998, and dramatically during 1999.

In those areas where enforcement efforts have been concentrated, pirates and counterfeiters are on the defensive and have been forced to alter their activities. Nevertheless, overall piracy rates continue to climb. Prosecutions continue to be hampered by the disappearance from police custody of evidence of IPR infringement. The higher courts in Thailand remain reluctant to regard IPR violations as a criminal matter or to impose meaningful penalties that could help deter future infringement. When jail sentences are imposed, these are often overturned on appeal.

Patents

TRIPS-consistent amendments to Thailand's patent regime were enacted by the Thai Parliament in October 1998. The amended provisions entered into effect in September 1999.

Copyright

Thailand's copyright law became effective in March 1995, bringing Thailand into closer conformity with international standards under the WTO TRIPS agreement and the Berne Convention. With active participation on the part of U.S. industry associations, the Thai police conducted many more raids in 1999 than previous years; nevertheless, the scale of the problem is growing. For example, industry estimates for 1999 indicate that the piracy rate for business software was 81 percent (representing about $66 million in lost trade) and the piracy rate for entertainmnet software was 95 percent (representing $116.3 million in lost rate). One problem is that the copyright law contains ambiguities, particularly regarding decompilation and infringement of software, which continue to be areas of concern. Another deficiency is that the regulations for enforcement procedures leave loopholes that frustrate effective enforcement. Moreover, the fines imposed for copyright piracy are often too light to deter offenders.

Trademarks

Amendments to the trademark law in 1992 provide higher penalties for infringement and extend protection to services, certification, and collective marks. While these amendments seem to have created a viable legal framework, and have led to some improvements in enforcement, trademark infringement – especially for clothing and accessories – remains a serious problem. U.S. companies with an established presence in Thailand and a record of sustained cooperation with Thai law enforcement officials have had some success in defending trademarks, but the process remains time-consuming and expensive. Pursuant to the 1998 IPR action plan, trademark application procedures in Thailand were streamlined during that year. Counterfeit production of plush toys (including certain types of dolls and stuffed animals) in outlying provinces is a new and growing problem. In addition to action on domestic pirated production, the United States continues to urge the Thai government to address the export of infringing goods to overseas markets.

SERVICES BARRIERS

Telecommunications Services

Telecommunications services in Thailand are state-controlled, although the government has allowed significant private sector participation since 1989. The Communications Authority of Thailand imposes equity and revenue-sharing requirements on International Value Added Network Service (IVANS) providers. The privatization of the two existing state-owned telephone companies was part of the telecommunications master plan approved in late 1997.

In addition, the economic stabilization agreement concluded between Thailand and the IMF in 1997 called for acceleration of the privatization of state holdings in the energy, telecommunications, and transportation sectors. As a first step, the two state telecommunication operators are expected to form strategic alliances with foreign operators, in preparation for liberalization of the sector which will be realized upon implementation of Thailand's obligations under the WTO Basic Telecommunications Agreement. Thailand passed the State Enterprise Capital Act, a necessary precursor act, in 1999. This law will enable state enterprises to convert assets to shares.

Thailand's WTO basic telecommunications commitments cover only facilities-based services and do not include resale. Market access, national treatment, and pro-competitive regulatory provisions will only become effective in 2006, provided that Thailand enacts the necessary changes to its laws. Thus far, Thailand has yet to enact legislation to permit broader competition and implement pro-competitive regulatory reforms. Under its WTO commitments, Thailand will permit foreign participation in this sector with a maximum of 20 percent equity.

Legal Services

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

Financial Services

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

In the aftermath of the Asian financial crisis, and in response to commitments made during 1997

WTO financial services negotiations, Thailand has taken major steps to liberalize its banking industry. Foreigners are now permitted to own up to 100 percent of Thai banks and finance companies for 10 years (from the date of acquisition). However, new capital invested in these ventures afterwards will have to come from domestic investors until such time as foreign-held equity shares fall to 49 percent. The Thai government is actively encouraging foreign investors to assist in the re-capitalization of Thai financial institutions by taking large equity positions in domestic firms. During the second half of 1999, majority shares in two domestic banks were sold to foreign banks and sales of two additional banks are expected early in 2000.

Foreign banks operating in Thailand are still disadvantaged in a number of ways, most notably by means of a maximum limit of three branches – although only one can be in Bangkok. Foreign banks must maintain minimum capital funds of 125 million baht ($3.3 million at December 1999 exchange rates) invested in government or state enterprise securities or deposited directly with the Bank of Thailand. Expatriate management personnel are limited to six professionals in full branches and to two professionals in Bangkok International Banking Facility operations, although exceptions are frequently granted.

INVESTMENT BARRIERS

The rights of U.S. investors in Thailand are secured by the U.S.-Thai Treaty of Amity and Economic Relations of 1966 and the U.S.-Thailand Tax Treaty of 1997. In October 1999, the Thai parliament enacted the long-awaited new Alien Business Act, laying out the overall framework governing foreign investment and employment in Thailand. The Act will enter into effect in early March 2000, and will eliminate existing prohibitions and liberalize restrictions on foreign participation in a number of occupations. The Act generally does not affect businesses established with Board of Investment Promotion (BIP) projects or export businesses authorized under the Industrial Estate Authority of Thailand law, and will not supersede provisions of bilateral treaties.

Trade-Related Investment Measures

In 1995, pursuant to the WTO Agreement on Trade-Related Investment Measures (TRIMS), Thailand notified to the WTO its maintenance of local content requirements to promote investment in a variety of sectors, including the milk and dairy processing, and the motor vehicle assembly and parts industries. It appears that Thailand eliminated these measures by the January 1, 2000 deadline established by the TRIMS Agreement. While this was a welcome development, Thailand unfortunately chose to replace its TRIMS in the auto sector with increased tariff rates on completely knocked down (CKD) kits (see “Tariffs” above).

OTHER BARRIERS

Several government firms are protected from foreign competition in Thailand. Also, allegations of impropriety in government procurement contracts and in activities administered by the Thai Customs Department are common. However, there has been progress in the procurement area. The revised Thai constitution contains provisions addressing corruption in the government. The new constitution also enhanced the status and powers of the Office of the Counter Corruption Commission (OCCC), and made this body independent from other branches of government. The members of the new commission serve for a single term of nine years, and report to their own chairman. Also, persons holding high political offices, and members of their immediate families, are now required to disclose their assets and liabilities before assuming and upon leaving office. Furthermore, a new law regulating the bidding process for government contracts both clarifies actionable anticorruption offenses and increases penalties for violations.

ELECTRONIC COMMERCE

Thailand currently has no laws regulating electronic commerce, but it is an issue under active consideration. The Thai government is pursuing legislation designed to further promote the development of electronic commerce activity.