THAILAND

In 1998, the U.S. trade deficit with Thailand rose to 8.2 billion, up from$5.2 billion in 1997. U.S. merchandise exports to Thailand were $5.2 billion, a decrease of $2.1 billion from the level of exports in 1997. Thailand was the United States' 26th largest export market in 1998. U.S. merchandise imports from Thailand were $13.4 billion, up $839 million from 1997. The stock of U.S. foreign direct investment was $3.5 billion in 1997. Such investment was concentrated primarily in the manufacturing, petroleum, and wholesale sectors.

IMPORT POLICIES

Tariffs

During the 1998 Thai fiscal year (TFY) (from October 1997 to September 1998), the average applied tariff was 3.28 percent, compared with 5.5 percent in TFY 1997. The average trade weighted tariff for dutiable items was 10.37 percent, down from 15.2 percent in 1997. Tariffs accounted for 5.85 percent of government revenues during TFY 1998, compared to 11.9 percent in 1997. The sharp fall-off in revenue was a result of both lower tariffs and sharply lower levels of imports due to the economic crisis.

Overall, the Thai Government continues to reduce applied tariffs rates pursuant to a reduction schedule established in 1994, although progress was impeded during 1998 due to the economic crisis and shortfall in government revenues. In some areas, Thailand increased tariffs and excise taxes on a number of items. Tariffs on tobacco and clothing were raised from 30 to 60 percent. Woolen textiles, perfumes, cosmetics, and some leather products were raised from 10 to 40 percent. The tariff on crystal glassware rose from 30 to 35 percent. Tariffs on certain steel products were also raised by 2 to 5 percent. The Thai Government also applied an additional, temporary surcharge of 10 percent on all imports with a customs duty of 5 percent or greater. None of these tariff increases or surcharges appears to violate Thailand's WTO tariff binding commitments.

The structure of Thailand's tariff policy divides the Thai tariff schedule into a number of tariff rate categories or bands. The total number of categories has been reduced from 39 to 6, with the following rates: 0 percent for certain goods such as medical equipment and fertilizer; 1 percent for raw materials, electronic components, and vehicles for international transport; 5 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 due to the effects of the regional economic crisis, and sensitivity by domestic industry. However, these tariffs are being reduced gradually. For the period between June and December 1998, the petrochemical products tariff was reduced from 23.5 percent to 21.75 percent. Plastic pellets were reduced from 35.25 percent to 32.62 percent. In January 1999, the rates were reduced again to 20 percent for petrochemical products and 30 percent for plastic pellets.

Certain items are excluded from Thailand's tariff liberalization program. These items include automobiles and auto parts, alcoholic beverages, some agricultural products, and other sensitive products. During 1998, excise taxes were raised on 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).

There are anomalies in the Thai tariff schedules. In some cases, import duties on unfinished materials have been higher than on finished products. Most of these problems should be addressed by Thailand's adoption of the tariff codes and nomenclature of the Harmonized Tariff System (HTS), a move currently being undertaking by the Thai Government.

Agriculture and Food Products

The main constraint to U.S. exports of most high-value fresh and processed foods are high import duties. 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 high (around 60 percent). Furthermore, duties on many high-value fresh and processed food products will remain high even after current rates are reduced between 33 percent and 50 percent in accordance with the WTO rules. Because most pre-WTO rates are around 60 percent, this will leave many items in the 30 percent to 40 percent range by the year 2004.

Thailand's tariff rate quota for a selected number of agricultural products was adjusted in 1996. Despite having a strong agricultural economy, the Thai government has lowered some agricultural product and food product tariffs beyond its WTO commitments. In October 1996, the quota for soybeans was eliminated and soybean meal was reduced, provided that specific domestic purchase requirements are met. In December 1997, these liberalized measures were reaffirmed for the coming year. Corn also enjoys liberalized tariff-rate measures, but the effects are severely limited. The Thai Government continues to require that corn imports arrive between February and June, and corn is also subject to a tariff-rate quota based on domestic wholesale corn prices. Rice is subject to safeguards on importation and price levels, pursuant to WTO rules.

U.S. industry says Thailand's 46-percent duty rates on pulses (e.g., dry peas, lentils, or chick peas) are so high they constitute a trade barrier. Thai snack producers and other food processing companies indicate that their imports of dry peas would increase by at least 20 to 25 percent if the duty rates were at a level commensurate with other Asian countries.

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. Since then, however, efforts to obtain approval for citrus from Texas and Arizona have been underway, but have stalled for unsubstantiated technical reasons.

Quantitative Restrictions and Import Licensing

Thailand is required to bring its import license procedures into conformity with its WTO obligations, but progress has been incremental. Import licenses are still required for 58 items, 23 of which are agricultural. Licenses are required for many raw materials, petroleum, industrial, textile, and agricultural items. All items of food for human consumption require licenses, however U.S. industry complains that registration requirements are unclear and non-transparent. In general, import licenses can sometimes be used to protect unproductive local industries and to encourage greater domestic production. Ten items which do not require licenses must nevertheless comply with the regulations of concerned agencies, offer extra fees, or provide certificates of origin.

Customs Barriers

The Thai Customs Department enjoys an unusual degree of autonomy, and some of its practices appear to be arbitrary and irregular. The current economic crisis has added to the influence of this revenue-generating department, making some newly promulgated reforms difficult. Thai Customs is regarded as a major impediment to trade and investment by many business leaders. In a recent survey on transportation issues, Thai Customs was identified by more respondents as a barrier to doing business than any other problem. Among the problems frequently cited 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. Failure to pay these “facilitation fees” can result in prolonged clearance delays. Import regulations lack transparency, are complicated, have not been adequately notified to domestic and foreign importers/exporters, and are inconsistently applied.

The Customs Department may use the highest previously invoiced price of any product imported from any given country as a reference price for determining applicable duties. Thai customs officials often disregard actual invoiced values in favor of this check price to arrive at an assessment of value. This practice often results in overvaluation and fails to take into account differences in quality, as well as fluctuations in world prices of agricultural goods. Duties are sometimes arbitrary in other ways. For example, import duties on unfinished materials are higher than those on finished goods in some categories, which is a burden to foreign and domestic firms that manufacture or assemble in Thailand.

Despite the many problems, during 1998 considerable progress was made in reforming some areas of customs operations, such as express shipment handling, payment procedures, document simplification and broker licensing. In an effort to limit demands for facilitation fees and to maximize customs revenue, "walls of separation" have been introduced between customs personnel and brokers, and procedures introduced to check documentation upon filing for completeness and accuracy. Plans to introduce a paperless customs system (EDI) have met with only limited success. Computerized procedures are currently limited to express cargo and export shipments. Thai Customs justifies its continued reliance on original documentation, visual inspections, and average price formulas for customs valuations by pointing to chronic cheating on customs declarations by the Thai private sector.

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. Foreign pharmaceutical companies have expressed concerns that the Thai Government’s core list of approved drugs can, in some circumstances, be used to limit market access for imported medicines. Also, in 1998, Thailand expanded its National List of Essential Drugs from the 250 compounds on the World Health Organization essential drug list (designed as a minimal list of drugs that should be available to satisfy basic health care needs in developing countries) to about 450 compounds, but applied a restrictive pricing scheme to limit reimbursement. U.S. pharmaceutical industry groups argue that this change effectively undermines legislation providing “pipeline” protection and market exclusivity for new products in Thailand and serves as a market access barrier to the introduction of new products.

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 renewal fee is approximately 10,000 baht plus an additional service charge of 500 baht. Licensing fees of between $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 $40 per item. The process can take more than three months to complete. A controversial fee of 40,000 baht for fast-track testing service has been dropped.

Some 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

Thai Government policy currently requires a countertrade transaction on government procurement contracts valued at more than one billion baht (about $40 million), on a case by case basis. A counter purchase of Thai commodities valued at 20 to 50 percent of the principal contract may be required. As part of a countertrade deal, the Thai Government may also specify markets into which commodities may not be sold. Usually these are markets where Thai commodities already enjoy significant access. The countertrade requirement is a disadvantage to U.S. suppliers, and the provision for a case by case approach automatically creates a lack of transparency. A revision of Thailand's countertrade regulations is expected during 1999. The draft of a new law regarding government procurement was approved by the Cabinet in March 1998, but is delayed in the Council of State. The new law will provide for a lower countertrade threshold of 300 million baht, and the required counter-purchase of Thai commodities will be not less than 50 percent. Also, a law concerning corruption in government procurement has been approved.

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 taken over administration of some of these programs, particularly packing credits, usually charging interest at LIBOR plus 3.0 to 3.5 percent.

As an incentive to stimulate export activity in reaction to the current economic climate in Thailand, the packing credit program expanded for the period between October 22, 1997 through September 18, 1998. The Thai Government has approved additional packing credit loans through commercial banks totaling $500 million, at LIBOR plus 3.0 percent to 3.5 percent. The Thai Export-Import Bank offers a 9.0 percent to 9.5 percent interest rate (LIBOR plus 1 percent), quoted in dollars, paid out in baht, and repaid in dollars.

LACK OF INTELLECTUAL PROPERTY RIGHTS PROTECTION

Since November 1994, Thailand has been on the U.S. Special 301 "Watch List." 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. The most significant problem is enforcement, as large quantities of illicit goods continue to be sold at the retail level. Allegations of irregularities continue to undermine confidence in the police.

During 1998, the U.S. and Thai Governments concluded an Action Plan intended to strengthen levels of IPR protection and enforcement within Thailand, and to focus Thai activities in those areas of priority concern to industry. The Action Plan sets forth a number of substantive 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 reforms prescribed by the Action Plan has been uneven; overall piracy rates continue to climb, and efforts by the interagency Joint Committee for the Suppression of Intellectual Property Infringement (JCSIPI) have not yielded satisfactory results. Despite the long-anticipated creation in December 1997 of the Thai Intellectual Property and International Trade Court, the Thai judiciary is reluctant to treat IPR violations as serious crimes and has not consistently imposed deterrent monetary penalties or jail sentences. U.S. copyright industries report an estimated trade loss of nearly $200 million from IPR infringement.

At the close of 1998, a ministerial-level review of progress in suppressing piracy was conducted and the Thai Government concluded that the problem of IPR piracy was outstripping available enforcement resources. Accordingly, a plan has been put into effect to borrow enforcement officials from local police units in order to increase the number and frequency of raids against retail vendors of pirated software, video, and sound recording goods. This enforcement strategy, together with a policy of greater communication and coordination among enforcement agencies, was put into effect in February of 1999. The U.S. Government continues to urge the Thai Government to also target the production of infringing works as a fundamental element of any enforcement strategy.

Patents

Thailand's Patent Law was amended by the Thai Parliament in October 1998 and the amended provisions will enter into effect in 1999. Pursuant to the U.S.-Thai IPR Action Plan, the amended law abolished the Pharmaceutical Review Board. According to initial observations, businesses in Thailand are generally pleased with the amendments. However, they foresee problems rising from new provisions regarding compulsory licensing authorizing the Director General of the Department of Intellectual Property to override a patent and issue a compulsory license if the patent is deemed as not being locally "worked"or if the price is deemed unreasonably high.

In September 1992, Thai legislation extended protection to pharmaceuticals and agricultural machinery, and increased patent protection to 20 years. In 1993, following complaints from private industry about inadequacies in the law, the Thai Government established administrative measures to provide a degree of market exclusivity for pharmaceutical products not eligible for protection under the 1992 law ("pipeline protection"), narrowed the scope of compulsory licensing provisions, and restricted the authority of the Pharmaceutical Review Board. These measures, however, are not fully consistent with the growing international consensus on protecting pharmaceutical products. The market exclusivity period, for example, is a maximum of just six years. The Thai Government has refused to exercise discretionary authority to amend pending patent applications under the 1979 law. Such action would provide enhanced protection under the 1992 patent law amendments and would protect not only pharmaceutical products, but also the production process.

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 have conducted more piracy raids in 1998 than previous years. But the scale of the problem is growing, rather than shrinking. For computer software, especially, the piracy rate increased during 1998. One problem is that the copyright law contains certain 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 judicial fines generally imposed for copyright piracy are 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 IPR Action Plan, trademark application procedures in Thailand were streamlined in 1998. In addition to 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, which was approved in late 1997.

In addition, the Thai Government's agreement with the IMF contains a commitment to accelerate the privatization of state holdings in the areas of energy, telecommunications, and transportation. 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 Services Agreement. Little progress was made on privatization in 1998.

Thailand’s WTO basic telecommunications commitments cover only facilities-based services. Market access provisions become effective in 2006, although Thailand has yet to enact legislation to permit broader competition and implement pro-competitive regulatory reforms. Under WTO commitments, Thailand will permit foreign participation in this sector with a maximum of 20 percent equity.

Legal Services

The Alien Business Law prohibits foreign equity participation in a law firm exceeding 49 percent. However, under the U.S.-Thai Treaty of Amity, U.S. investments are exempted from the restriction on foreign equity participation in a law firm. Therefore, while U.S. investors may own law firms, U.S. citizens may not provide legal services in Thailand. The Thai Government admits only Thai citizens to the practice of law and, since 1973, has prohibited foreign lawyers (with the exception of "grand fathered" non-citizens) from providing litigation services.

Financial Services

Over the past several years the Government has gradually liberalized access by foreign firms to the Thai financial sector. However, significant restrictions on non-Thai participation in the sector remain. Since 1997, aliens have been allowed to engage in brokerage services. However, foreign firms are only allowed to own majority shares (greater than 49 percent) of Thai securities firms on a case-by-case basis.

During the WTO Financial Services Agreement negotiations, the Thai Government made significant commitments to liberalize the banking industry. Foreigners are permitted to own up to 100 percent of Thai banks and finance companies for a period of10 years; after which additional capital will have to be contributed by domestic investors. Foreign firms will be required to reduce their equity stakes toward 49 percent as new capital is added. In reaction to the regional economic crisis, the Thai Government is encouraging foreign banks to assist in the re-capitalization of Thai financial institutions by taking large equity positions in domestic firms.

Foreign banks are still disadvantaged in a number of ways, most notably are limits on branches. Foreign banks must maintain minimum capital funds of 125 million baht ($3.12 million at a January 1999 exchange rate) invested in government or state enterprise securities, or directly deposited in the Bank of Thailand. The number of expatriate management personnel is limited to six in full branches, and two in Bangkok International Banking Facility (BIBF), although the Thai authorities frequently grant exceptions on the basis of need.

INVESTMENT BARRIERS

Upon exchange of the instruments of ratification in December 1997, a new tax treaty between the United States and Thailand entered into force. Smaller American firms, in particular, had been disadvantaged by the lack of a reciprocal tax agreement between the two countries. The new treaty provides for the elimination of double taxation and gives American firms tax treatment equivalent to that enjoyed by Thailand's other tax treaty partners.

The Thai Cabinet has indicated it may rescind the current (1972) Alien Business Law, and enact a new and more liberal version during 1999. The existing law restricts aliens from holding a range of occupations in Thailand. The pending legislative proposal is expected to reduce these restrictions, and create two categories of restricted occupations. The first category of restricted sectors includes occupations that exploit Thai natural resources or are concerned with national security. The second category, which could restrict foreign business and investment, includes jobs in which Thailand feels it cannot compete with foreigners and therefore wishes to protect, such as farming, handicrafts, transportation, and construction. It is expected that the pending measure, when enacted, will define certain exceptions and allow foreigners to seek waivers from restricted sectors.

Trade-Related Investment Measures

Thailand has notified to the WTO certain measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMs). The measures deal with local requirements in various sectors such as automobiles, engines and components, television picture tubes, milk/milk products, aluminum sheeting, and others. Proper notification allows developing-county WTO Members to maintain such measures for a five-year transitional period after entry into force of the WTO. Thailand therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO Members meet these obligations.

ANTICOMPETITIVE PRACTICES

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 some progress in the procurement area. The Thai Constitution, which was revised in October 1997, contains provisions addressing corruption within 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 term of nine years, with no possibility of renewal, 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 anti-corruption offenses and increases penalties for violations.

ELECTRONIC COMMERCE

Thailand currently has no laws regulating electronic commerce.