

### III. TRADE POLICIES AND PRACTICES BY MEASURE

#### (1) INTRODUCTION

1. The general thrust of Thailand's trade policy remains liberal, and the Government continues to encourage trade and improve market access in most cases (Chapter II). The tariff remains one of the main trade policy instruments. The impact is stronger on prices than revenue, however, with taxes on imports and exports (about B 72 billion) having declined to around 6% of tax revenue, less than 5% of total government revenue, and about 0.8% of GDP.<sup>1</sup>

2. Since 2007, Thailand has adopted the ASEAN Harmonized Tariff Nomenclature (the AHTN Protocol). This follows the six-digit commodity classification codes of the World Customs Organization's Harmonized System (HS) adding two more digits to the codes for subheadings used across ASEAN. The system applies to trade inside and outside ASEAN. The implications are discussed below (Section (2)(ii)), as are the complexities of Thai tariffs, with their 31 *ad valorem* rates of 0-80%, 19 specific-duty rates, 158 alternate-duty rates, over a quarter of tariff lines unbound, and peak *ad valorem* rates on imports competing with locally produced goods, such as farm products, automotive products, motorcycles, alcoholic beverages, fabrics, paper and paperboard, and restaurant products.<sup>2</sup>

3. The gap between bindings and applied rates allows tariffs to be raised and creates some uncertainty. But the overall trend is for tariffs to continue to fall. The period covered by the last Review of Thailand saw general cuts in duties, to 1% on raw materials, to 5% on intermediate products, and to 10% on finished products, and further cuts were made on imports used by the food and automotive sectors and electronics products. In 2008, duties were eliminated on 150 raw materials. In October 2010, certain automotive parts for assembling or manufacturing hybrid-electric vehicles were exempted from import duty for three years, a move aimed at making Thailand a centre for producing environmentally friendly cars. From November 2010, small and medium-sized enterprises have been eligible to apply for duty exemption on certain types of machinery.<sup>3</sup>

4. However, imports still often face burdensome requirements including extra fees, surcharges, and certificate-of-origin requirements. They are regulated through customs controls, duties and taxes, and currency controls, all of which are being moderated to some extent.<sup>4</sup>

5. Despite remaining shortcomings in its system, Thailand supports trade facilitation and continues to streamline many of its customs procedures by using on-line processing and payment, and introducing "single window" services. Import licensing and prohibitions on various items have remained generally unchanged during the review period. They are applied for economic reasons such as infant industry protection. During the period under review, Thailand notified a new safeguards law and initiated a number of safeguards and anti-dumping cases.

6. The law allows export taxes to be levied on a number of products. The persistence of relatively high statutory export taxes on a few commodities (by-products of animal hides and wood and sawn wood products) as well as the possibility of reintroducing others (e.g. on rice and rubber) constitutes a form of assistance to domestic downstream industries. More importantly, if Thailand was to apply export taxes to products of which it is a major supplier, they could exacerbate world price fluctuations. Export controls in the form of registration requirements, export licensing, quotas,

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<sup>1</sup> Bureau of the Budget (2010), p. 28; and IMF (2010), p. 31.

<sup>2</sup> Economist Intelligence Unit (2010a), p. 90.

<sup>3</sup> Economist Intelligence Unit (2010a), p. 90; and World Bank (2011), p. 81.

<sup>4</sup> Economist Intelligence Unit (2010a), p. 93.

and prohibitions apply to some 30 products, mainly for purposes of safety, public health, environmental, and protection of intellectual property, or to comply with Thailand's international agreements. Export licensing requirements on a few products have been removed since the previous Review. Certain goods, mainly food staples, are reserved by law to ensure that domestic needs are met before exports can be permitted.

7. Thailand has various export promotion and incentive programmes, including bonded warehouses, duty drawback, and other duty and tax refund schemes, as well as tax and non-tax benefits under the Industrial Estate Authority of Thailand and the Customs Free Zones scheme. In 2007, Thailand notified the WTO that all export subsidies to be eliminated under programmes for which it had been granted an extension had been terminated. Exports remain eligible for "tax and duty compensation", which is set as a fixed percentage of the f.o.b. value for each product, hence opening the possibility of over- or under-compensation, notwithstanding regular adjustments. The state-owned Export-Import Bank of Thailand (EXIM Bank) provides a wide range of credit and insurance facilities to promote exports of goods and services, and operates in competition with commercial banks. Statutorily, any severe losses incurred by the EXIM Bank from specific operations carried out in compliance with government policies are to be compensated by the Ministry of Finance. However, the authorities have indicated that this has never happened.

8. A new law on safeguards was enacted in August 2009. Under the new law, a Committee on Safeguards may determine whether to impose safeguards based on an investigation carried out by the Department of Foreign Trade and following a petition from domestic producers of like products. At the time of writing, provisional safeguards had been applied in one case. The law on anti-dumping and countervailing measures has not been changed since the last Review of Thailand. Between 1 January 2007 and 31 May 2011, Thailand initiated six anti-dumping cases; after review, it continued to apply anti-dumping duties in 19 cases and terminated them in 5.

9. Government procurement underwent some reform during the review period with the completion of the first phase of a comprehensive electronic government procurement system. This first phase, e-Auction, applied to government contracts of B 2 million or more. However, government procurement remains complex, as different government agencies are responsible for their own procurement, and several procurement methods are used, not all of which are open to competition.

10. Taxes provide nearly all of government revenue and most tax is from income tax on companies, VAT, and excise duties. The corporate income tax system is relatively complex with a number of different rates applied that depend on the size of the corporation and whether it is listed on the stock exchange or the alternative investment market. Adding to the complexity are the different allowances and tax relief measures designed to encourage investment, which cost about B 160 billion per year. Ostensibly, the VAT system is quite simple with a standard rate of 7% applied to most goods and services. However, the application of the system appears to be quite complex and was the subject of a WTO dispute that found, *inter alia*, that it discriminated against imports. The excise system comprises many different rates on various goods and services.

11. Thailand continues to apply a system of price monitoring and price controls on a wide range of products and services. Prices of a broad range of goods and services are regularly monitored for changes, and price controls are applied to some of them by setting maximum prices, requiring advance notice before prices can be increased, or by labelling requirements showing the price paid.

12. Thailand continues to strengthen the protection of intellectual property rights, including enforcement, although a number of proposed laws remain as drafts because of political disruption to legislation and some trading partners remain concerned about abuses. It is also promoting creativity

and invention through intellectual property. Considerable efforts continue to be made to increase the level of transparency and disclosure. Nevertheless, they have only been partly effective in reducing allegations of corruption in certain areas, such as customs procedures, customs valuation, tariff-rate-quota licensing, government procurement, and granting tax incentives.

**(2) MEASURES DIRECTLY AFFECTING IMPORTS**

**(i) Customs procedures**

**(a) Recent developments**

13. Improving customs procedures and trade facilitation in general are important objectives of the Thai Government and a major concern for the private sector. The main official policy objectives are transparency, simplicity, honesty, using an updated version of the Harmonized System of tariff classification, and quick and secure electronic processing.

14. Customs procedures have been fully paperless since 2008, via electronic data interchange (EDI), within the department and more recently with other agencies. The next step will be to have a single-window service within Thailand, which the Government hoped would be fully operational by late 2011 or 2012, that would allow traders to use a single contact point to reach all the required authorities and permit-issuing agencies. These electronic innovations continue to cut processing time, which was already falling because of reforms introduced in earlier years.<sup>5</sup> Electronic services on the department's "customs clinic" website cover: exchange rates, vessel and flight schedules, customs over-time fee checking, e-tracking, software for pre-transfers, import and export statistics, advanced ruling on customs tariff classification forms, advanced ruling on customs valuation forms, advanced ruling on rules of origin, customs fee forms, duty compensation forms, duty drawback forms, customs declaration forms, registration forms, counter service submission forms, application forms for agents.<sup>6</sup> It was also reported that these reforms would cut the widespread use of illegal payments and help eradicate the Customs Department's reputation as one of the most corruption-plagued agencies in government. Despite this, and other means such as pay rises and other incentives, a customs hotline, and private-sector participation in solving problems, Thai and foreign companies were still complaining of a serious problem in 2010.<sup>7</sup>

15. Thailand is not yet a contracting party to the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention) or the International Convention on the Harmonization of Frontier Controls on Goods; however, it has expressed its intention to accede to the Revised Kyoto Convention. At the time of its previous Review, Thailand was amending its laws to comply with the Revised Kyoto Convention and in June 2007, the amendments were at the final stage of being considered in Parliament, but the process was disrupted by political events. However, Thai officials say that present customs procedures are largely consistent with the revised convention. The Department website says its new-generation system, known as "e-Customs", is consistent with the standards and guidelines expressed in the Revised Kyoto Convention (RKC), and is integrated with the systems of other government agencies and clients, such as transport operators, banks, Free Zones, and warehouse operators so that it can be used quickly and securely.<sup>8</sup>

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<sup>5</sup> WTO (2008).

<sup>6</sup> Viewed at: [www.customsclinic.org](http://www.customsclinic.org), e-services page [15 June 2011].

<sup>7</sup> Economist Intelligence Unit (2010a), p. 91.

<sup>8</sup> See: [www.customs.go.th/Customs-Eng/CargoClearance/CargoClearance.jsp?menuNme=Cargo](http://www.customs.go.th/Customs-Eng/CargoClearance/CargoClearance.jsp?menuNme=Cargo), [15 June 2011].

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(b) Registration

16. All importers and government agencies, are required to register. Special treatment is given to companies eligible for a "gold card" system: they must have registered paid-up capital of not less than B 5 million, have been engaged in import-export for at least three years, and be a member of the Federation of Thai Industries, the Thai Chamber of Commerce or the Thai Gold Card Importers and Exporters Association; they must have not violated customs laws and regulations for three years, and must provide a bank guarantee. They are exempt from regular inspection. Government agencies, state enterprises and companies granted duty exemptions by the Board of Investment are also eligible.

(c) Customs inspection and valuation procedures

17. Further reforms to strengthen customs valuation under the WTO Agreement were introduced during the period covered by the last Review.<sup>9</sup> Under the current procedures, valuation takes into account information on invoices and other documents, such as country of origin, quantity, composition of value, and description of goods). Valuation is based on the c.i.f. (cost, insurance, and freight) price of imports. Customs officials accept the declared value shown in the invoice as the transaction value, i.e. the export price actually paid or payable for the goods when sold to Thailand, adjusted and meeting prescribed conditions. If the transaction value cannot be applied, other methods are used in the following sequence: the transaction value of identical goods and similar goods; the deductive value; computed value; and a fallback estimated value. Importers may appeal valuations within 30 days under customs laws in force since 2000. The decision of the Appeal Committee is final except if the importer raises concerns in a Tax Court. An "advance ruling" policy for customs valuation was announced in 2009, implemented in 2010, and is now available as an Electronic Advance Ruling on Valuation system. The authorities say this is for transparency and consistency, and to enable importers, exporters, international trade entrepreneurs, and others to be more competitive.

18. The Customs Department collects fees for customs services, including for documentation, and charges for attendance at Customs House during holidays or after office hours. The import declaration fee is B 200 per transaction.<sup>10</sup>

19. A WTO dispute DS371 was launched in February 2008 when the Philippines complained that Thai customs procedures and taxes on cigarettes discriminated against Philippine exports. The dispute panel found in favour of the Philippines in November 2010, and in June 2011 the Appellate Body upheld the core findings, which Thailand had challenged.

20. Thailand does not require preshipment inspection for imports.

(d) Rules of Origin

21. Thailand does not have any legislation on non-preferential rules of origin and the rules applying to preferential rules of origin are taken from the relevant agreement, for example, imports from other ASEAN countries are subject to the ASEAN CEPT Scheme, imports from New Zealand to

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<sup>9</sup> See WTO (2008), which includes more details and a summary of the review after Thailand notified the laws used to apply the WTO Agreement.

<sup>10</sup> Fees are not easy to find on the otherwise informative Customs Department website except in sample valuations where the fee is given as US\$50. Viewed at: [www.customsclinic.org](http://www.customsclinic.org) [15 June 2011].

the Thailand-New Zealand Free Trade Agreement, and imports from Japan to the Thailand-Japan Economic Partnership Agreement.<sup>11</sup>

22. In general, the basic rule is a product wholly obtained or that has undergone substantial transformation in the country of export. Substantial transformation is defined as a change in customs classification and, for some products, value added above threshold which varies depending on the agreement.

23. The Rules of Origin Division, under the Tariff Classification Directorate of the Customs Department, reviews the progress of harmonization, improvement, and simplification of non-preferential and the preferential rules of origin.

**(ii) Tariffs**

**(a) Applied MFN tariffs**

24. Since the start of 2007, Thailand has applied the ASEAN Harmonized Tariff Nomenclature (AHTN) which has standardized the 8-digit codes across ASEAN, simplifying trade and customs procedures. It also had the effect of increasing the number of tariff lines from 5,505 to 8,300. Although the application of the AHTN has had an impact on the statistics for tariffs, the rates applied to specific products have not changed since the previous Review. One effect the change in nomenclature has had on statistics has been a slight increase in the average tariffs, not because tariffs on any product were increased but because the tariff lines in the 2006 tariff book that were divided into two or more lines tended to be those that had above average tariffs. Similarly, the apparent decrease in the proportion of non-*ad valorem* tariffs is because these tariff lines were not divided by the application of the AHTN (Tables III.1 and AIII.1).

**Table III.1**  
**Tariff structure**  
(%)

	MFN applied		Final bound <sup>a</sup>
	2006	2011	
1 Bound tariff lines (% of all tariff lines)	73.7	73.6	73.6
2 Simple average rate	11.0	11.2	28.0
WTO agricultural products	25.0	26.5	36.6
WTO non-agricultural products	8.8	9.0	26.0
Textiles	8.9	9.3	28.6
Clothing	30.1	29.6	30.0
First stage of processing	12.8	14.1	28.8
Semi-processed products	4.1	3.9	27.4
Fully processed products	14.8	13.8	28.1
3 Duty free tariff lines (% of all tariff lines)	18.5	18.6	2.0
4 Tariff quotas (% of all tariff lines)	1.0	1.2	1.2
5 Domestic tariff "peaks" (% of all tariff lines) <sup>b</sup>	3.9	5.6	0.8
6 International tariff "peaks" (% of all tariff lines) <sup>c</sup>	25.2	24.2	87.6
7 Overall standard deviation of tariff rates	14.0	14.1	14.5

**Table III.1 (cont'd)**

<sup>11</sup> Thai Customs Department online information. Viewed at: [http://www.customsclinic.org/index.php?option=com\\_content&view=article&id=159&Itemid=173&lang=en](http://www.customsclinic.org/index.php?option=com_content&view=article&id=159&Itemid=173&lang=en) [May 2011].

		MFN applied		Final
		2006	2011	bound <sup>a</sup>
8	Non- <i>ad valorem</i> tariffs (% of all tariff lines)	22.5	9.2	9.6
9	Non- <i>ad valorem</i> tariffs with no AVEs (% of all tariff lines)	19.9	8.8	9.5
10	Nuisance applied rates (% of all tariff lines) <sup>d</sup>	12.2	10.3	0.1

Note: The 2006 tariff is based on HS02 nomenclature consisting of 5,505 tariff lines; 2011 tariff is based on HS07 nomenclature consisting of 8,300 tariff lines. Calculations including AVEs provided by the authorities for non-*ad valorem* rates. In case of non-availability the *ad valorem* part of alternate rates (only those saying "whichever is higher") is taken into account. Excluding in-quota rates.

a Based on 2011 tariff schedule. Implementation of final bound rates was reached in 2005. Calculations are based on bound tariff lines only.

b Domestic tariff peaks are defined as those exceeding three times the overall simple average applied rate.

c International tariff peaks are defined as those exceeding 15%.

d Nuisance rates are those greater than zero, but less than or equal to 2%.

Source: WTO Secretariat calculations, based on data provided by the Thai authorities.

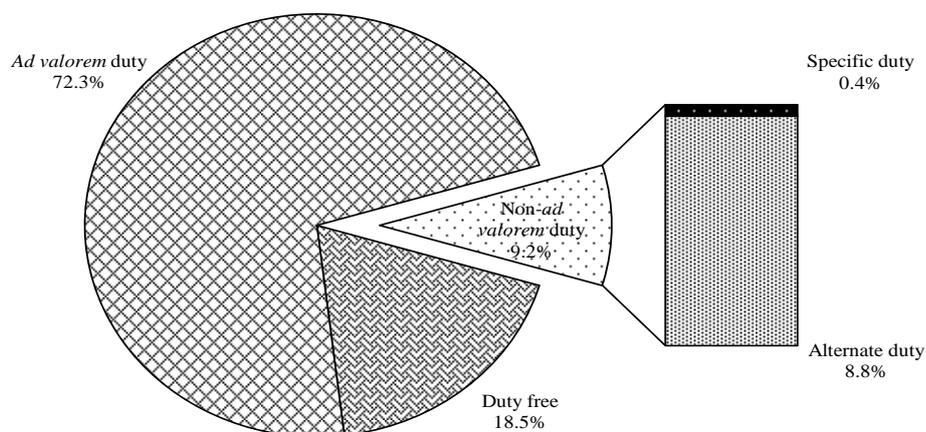
25. Changes to statutory rates require legislative approval, while applied rates (or temporary/adjusted rates) may be modified by the Minister of Finance without Parliament's approval, subject to Cabinet consent; the Minister, with the approval of the Cabinet, may also charge "special duty" for any goods at a rate not exceeding 50% of the relevant rate in the Tariff Schedule.

26. Thailand has a relatively complicated tariff structure with considerable numbers of duty-free tariff lines, *ad valorem* tariffs, and non-*ad valorem* duties, of which some are alternate duty rates (the higher of an *ad valorem* rate and a specific duty) (Chart III.1). It was not possible to calculate *ad valorem* equivalents for a number of non-*ad valorem* tariffs. Therefore, any summary of average tariffs, variation of tariffs, or other data must be treated with caution.

### Chart III.1

#### Tariff distribution by type of duty, 2011

(Share of total tariff lines)



Note: Table III.1 shows 18.6% for duty-free rates; this includes 0.1% of specific rates that have an AVE of 0%.

Source: WTO Secretariat estimates, based on data provided by the authorities.

27. As noted above, the average applied MFN tariff increased slightly to 11.2% as a result of the increase in the number of tariff lines rather than actual tariffs increases. Tariff rates vary considerably from one HS chapter to another and within chapters. Agricultural products (WTO definition) tend to have the highest tariffs, with an average applied rate of 26%. Within agricultural products, beverages, spirits, and tobacco have the highest tariffs with an average of 49%. The greatest variability in any sector, and the highest average tariff outside of agriculture, is in transport equipment with a standard deviation of 26 and an average of 33% (Chart III.2).

28. Thailand has notified the WTO Committee on Agriculture that it has 24 tariff quotas for agricultural products, including for products that Thailand is a net exporter of, such as rice and sugar. Fill rates vary considerably from one quota to another. In the 2004-08 period, no in-quota imports were reported for garlic, copra, maize for feed, palm oil, coconut oil, or longans; while in-quota imports were well in excess of the minimum tariff quota for tea, soya beans, and soya bean cake.<sup>12</sup>

(b) Bound tariffs

29. According to the authorities, Thailand has bound 74% of the 8,300 ASEAN harmonized tariff lines under the HS2007 nomenclature, which Thailand has been using since 1 January 2007. Of the 26% of tariff lines that the authorities indicated are unbound, several are for agricultural products.<sup>13</sup> On average, bound tariffs are more than twice as high as applied MFN tariffs and they have greater variability both between and within product categories.

(c) Preferential tariffs<sup>14</sup>

30. Thailand is a founder member of the ASEAN and applies the ASEAN free-trade area rules, which essentially provide for tariff- and quota-free access for practically all goods into Thailand. As a member of ASEAN, Thailand applies the trade agreements signed with China, Japan, Korea, India, Australia, and New Zealand. It has also negotiated a number of bilateral trade agreements, with Australia, Japan, New Zealand, and India. Since the previous Trade Policy Review of Thailand, ASEAN has concluded trade agreements with India, Korea, Australia, New Zealand, and Japan while Thailand has not concluded any new bilateral agreements.

31. Thailand is also a participant in the Global System of Trade Preferences among Developing Countries (GSTP) and is participating in negotiations on the Bay of Bengal Initiative on Multi-Sectoral Technical and Economic Co-operation (BIMSTEC).<sup>15</sup>

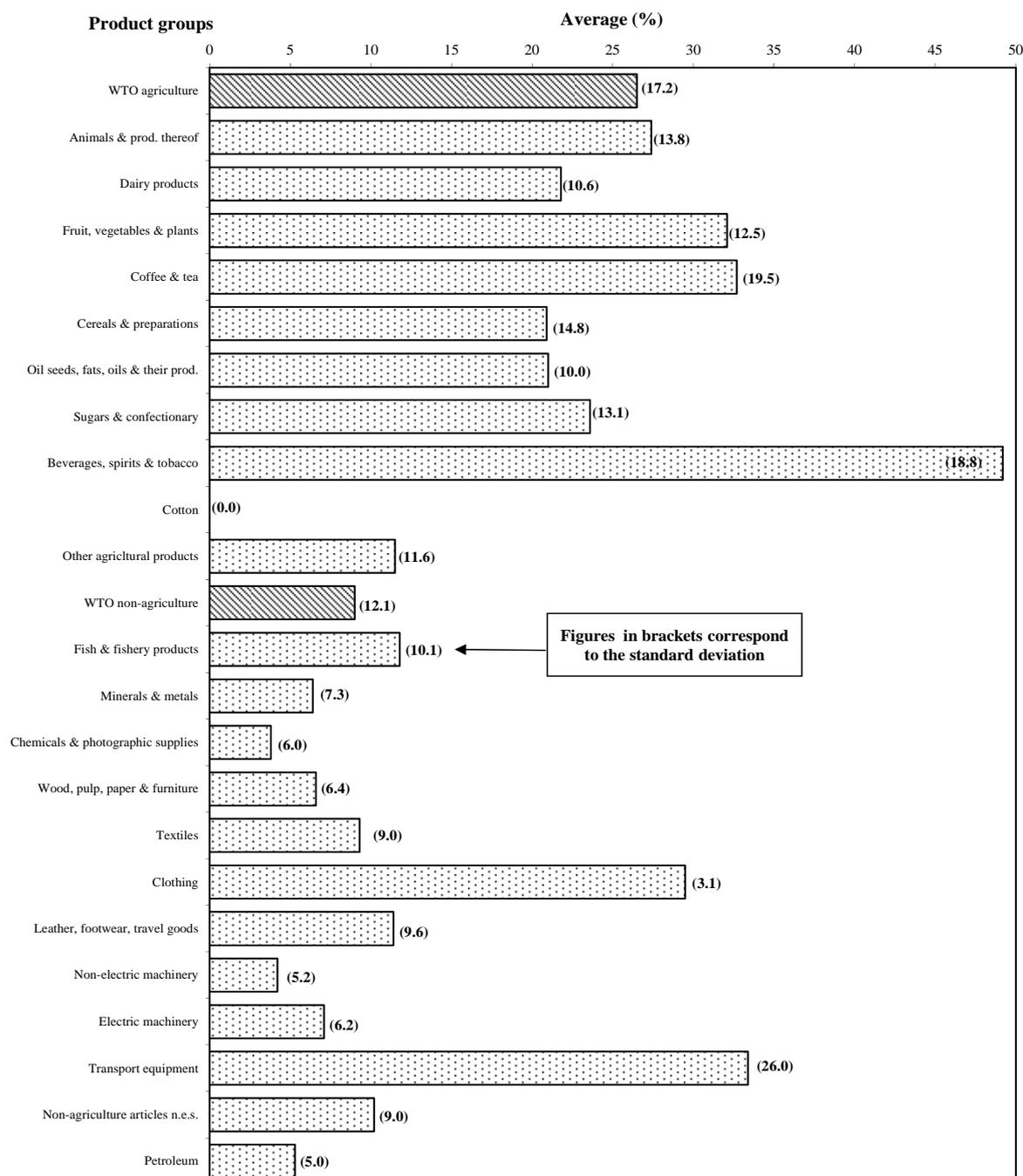
<sup>12</sup> WTO documents G/AG/N/THA/55, 63, 67 and 71.

<sup>13</sup> According to the authorities, the unbound agriculture tariff line is: HS 0505.90.10 (duck feathers); and the partially bound agriculture lines are HS 0102.10.00 (live bovine breeding animals), 0102.90.90 (Live bovine animals, other, other), 0207.13.00 (meat and edible offal, of poultry of heading 01.05, fresh, chilled or frozen, cuts and offal, fresh or chilled), 0404.10.91 (whey, fit for animal feeding, whey), 0404.10.99 (whey, fit for animal feeding, other), 0404.90.00 (whey, other), 0502.90.00 (pigs', hogs' or boars' bristles, badger hair and other brush-making hair, other), 0505.90.90 (feathers of a kind used for stuffing; down, other), 0506.90.00 (bones, other), 0713.31.10 (beans (*Vigna mungo* (L) Heper or *Vigna radiata* (L) Wilczek) suitable for sowing), 0713.31.90 (beans (*Vigna mungo* (L) Heper or *Vigna radiata* (L) Wilczek) other).

<sup>14</sup> For more details of preferential trade arrangements see Chapter II(5).

<sup>15</sup> WTO online database, "the Regional Trade Agreements Information System (RTA-IS)". Viewed at: [http://www.wto.org/english/tratop\\_e/region\\_e/rta\\_participation\\_map\\_e.htm](http://www.wto.org/english/tratop_e/region_e/rta_participation_map_e.htm) [May 2011].

**Chart III.2**  
**MFN applied tariff averages and dispersion by product groups, 2011**



Source: WTO Secretariat estimates, based on data provided by the authorities.

32. Under Thailand's bilateral free-trade agreements and under trade agreements between ASEAN and other countries, the degree of preference over MFN tariffs depends on the agreement. For imports from other ASEAN countries, there are currently only a few exceptions to duty-free access to Thailand, with a 5% tariff on fresh cut flowers, potatoes, non-roasted coffee, coffee husks, and copra.<sup>16</sup> In other agreements, both through ASEAN and bilaterally, Thailand has tended to retain protection for transport equipment, beverages and tobacco, vegetables, and footwear, while average tariffs, though less than the MFN average, remain significant (Table AIII.2).

**(iii) Other charges affecting imports**

33. Three products are subject to import surcharges, in some cases differentiating between imports from WTO members (and Laos) and from other countries. One is charged zero: high grade fishmeal with a protein content of over 60% is currently charged B 0.0 per tonne; maize (corn) for animal feed is charged B 180 per tonne for out-of-tariff-quota quantities imported from WTO members and Laos; and B 1,000 from other countries in any quantities; and soybean meal is charged B 2,519 per tonne from non-members of the WTO and not Laos.<sup>17</sup>

**(iv) Contingency measures**

**(a) Safeguards**

34. The Ministry of Commerce is the government agency responsible for policy on contingency measures generally, including safeguards. In August 2009, Thailand notified the Committee on Safeguards that the Safeguard Measures on Increased Imports Act B.E. 2550 (2007) had been enacted.<sup>18</sup> In responding to questions from one delegation, Thailand noted that, in the event of conflict between the Agreement on Safeguards and the Act, WTO obligations would take precedence.<sup>19</sup>

35. A Committee on Safeguard Measures has been established under the Act. The Committee is made up of representatives from: the Ministries of Commerce, Finance, Foreign Affairs, Agriculture and Co-operatives, Industry and Labour; the Office of Consumer Protection Board; and seven experts appointed by the Government. The expert members of the Committee are required to represent each of the specific fields of international trade, international economics, accounting and finance/fiscal, international trade laws, agriculture, industry and business administration.

36. A safeguard investigation may be initiated following a petition to the Department of Foreign Trade by a domestic producer of a like product. The petition must include evidence supporting the claim of increased imports and injury to the domestic industry. The Department of Foreign Trade is then required to review the petition and the evidence and, if it is satisfied that the petition and evidence are complete and correct, it passes them to the Committee for a determination. The

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<sup>16</sup> To be more precise: HS 0603.11.00 Roses, 0603.12.00 Carnations, 0603.13.00 Orchids, 0603.14.00 Chrysanthemums, 0603.19.00 Other; 0701.10.00 Seed potatoes, 0701.90.00 Other potatoes; 0901.11 Coffee, not roasted, not decaffeinated (0901.11.10 Arabica WIB or Robusta OIB, 0901.11.90 Other); 0901.12 Coffee, not roasted, decaffeinated (0901.12.10 Arabica WIB or Robusta OIB, 0901.12.90 Other); 0901.90.10 Coffee husks and skins; 1203.00.00 Copra.

<sup>17</sup> Commerce Ministry notification No.74, B.E. 2533 (1990) on imports, identifies the three products subject to import surcharges under the Export and Import Act, B.E. 2522 (1979); the current rates are in a ministry notification issued in 1997.

<sup>18</sup> WTO document G/SG/N/1/THA/3, 27 August 2009.

<sup>19</sup> G/SG/Q1/THA/2.

Department of Foreign Trade may also submit a petition to the Committee on its own initiative, based on evidence of increased imports and injury to domestic industry.

37. Following a determination by the Committee that there has been an increase in imports and injury to domestic industry, the Department of Foreign Trade is required to investigate whether the imports caused the injury. If the Committee deems it necessary, it may determine that a provisional safeguard be applied while an investigation takes place and until it reaches a final determination, a process that can take no longer than 270 days from the date of starting the investigation.

38. The Department of Foreign Trade notifies the initiation of an investigation by publishing it in the *Royal Gazette* and in the national press in English and Thai, as well as directly informing petitioners and other interested parties. The Act requires the Department to give importers, exporters, and other interested parties the opportunity to present their views and evidence. At the end of the investigation, the Department is required to present the results and an opinion to the Committee.

39. The Committee's final determination may impose a safeguard measure in the form of an additional duty, a quantitative restriction, or another measure to reduce the volume of imported goods so that the domestic producer(s) of the like product can implement an adjustment plan. The maximum period for the safeguard measure is four years, extendable if necessary to a total of ten years.

40. As of end-April 2011, Thailand had notified the Committee on Safeguards that it had applied provisional safeguard duties to imports of glass blocks (HS 7016 9000) from 15 January 2011.<sup>20</sup>

(b) Anti-dumping and countervailing measures

41. The legislative basis for anti-dumping and countervailing measures in Thailand is the Anti-dumping and Subsidized Import Act, B.E. 2542 (1999).<sup>21</sup> The Ministry of Commerce is the government agency responsible for policy and for conducting investigations while the Committee on Dumping and Subsidies is responsible for making provisional and final decisions.

42. An anti-dumping or countervailing duty investigation may be started on the initiative of the Committee or in response to a petition from the Department of Foreign Trade or from the domestic industry. According to the authorities, no investigation has yet been undertaken on the initiative of the Committee or the Department. Once started, a claim is first examined by the Committee on Dumping and Subsidies, which determines whether there is sufficient evidence of dumping or subsidy and injury of a causal link between them to warrant an investigation. The claim is then investigated by the Bureau of Trade Interest and Remedy in the Department of Foreign Trade in the Ministry of Commerce.

43. The start of an investigation is announced through its publication in the *Royal Gazette* and local newspapers (in Thai and English). In addition, the Department of Foreign Trade is required to inform petitioners, plus exporters and importers of the product, or their representatives, of the initiation of an investigation. The investigation includes opportunities for third parties to make presentations. The results of the investigation are submitted to the Committee, which is responsible for taking a final decision on whether to apply anti-dumping or countervailing duties and their amount. Like the Committee on Safeguard Measures, the Committee on Dumping and Subsidies is

<sup>20</sup> WTO documents G/SG/N/7/THA/1/Suppl.1; G/SG/N/8/THA/1/Suppl.1; and G/SG/N/11/THA/1/Suppl.1, 28 January 2011.

<sup>21</sup> WTO documents G/ADP/N/1/THA/4 and G/SCM/N/1/THA/4, 20 December 1999; and G/ADP/N/1/THA/4/Corr.1 and G/SCM/N/1/THA/4/Corr.1, 18 July 2000.

made up of representatives of the relevant government agencies and one expert each from the areas of international trade, economics, accounting, law, agriculture, and industry.

44. The Anti-dumping and Subsidized Import Act allows appeals to the Court of Intellectual Property and International Trade. Since 1999, Committee determinations have been challenged four times, with eight on-going cases. Of the cases completed by the Court, one is on appeal to the Supreme Court (as of end-June 2011), one was reversed, one approved, and one withdrawn. Between 1 January 2007 and 31 May 2011, Thailand initiated six anti-dumping investigations, five of which involved imports from China and one involved imports from Malaysia. It has also reviewed and continued to apply anti-dumping duties in 19 cases and terminated them in five cases. Steel products continue to be the main focus of anti-dumping measures (Table III.2) and China the main source of imports subject to anti-dumping measures and investigations.

**Table III.2**  
**Anti-dumping measures**

Country/ Customs Territory	Product	Initiation of original investigation	Date of provisional measure	Date of imposition final	Date of extension	Date of termination
Algeria	Flat hot rolled steel	08-07-02	18-11-02	27-05-03	23-05-09	
Argentina	Flat hot rolled steel	08-07-02	18-11-02	27-05-03	23-05-09	
China	Citric acid	17-03-03	11-09-03	13-01-04	23-01-10	
	Glass block	19-07-06	05-04-07	06-08-07		
	H-sections	11-04-01	20-07-02	10-10-02	10-10-08	
	Sodium Triphosphate	23-05-08	20-03-09	18-07-09		
	Woven fabrics	04-10-07	13-09-08	15-01-09		
	Ceramic flags and paving, hearth, wall tiles, mosaic cubes	03-12-09	none	02-06-11		
	Flat hot rolled	16-06-10	17-02-11			
Czech Republic	Glass block	04-10-07	09-08-08	15-01-09		
EU	Flat cold-rolled stainless steel	15-02-02	03-08-02	13-03-03		19-03-09
India	Flat hot rolled steel	08-07-02	18-11-02	27-05-03	23-05-09	
Indonesia	Flat hot rolled steel	08-07-02	18-11-02	27-05-03	23-05-09	
	Glass block	09-08-04	24-03-05	05-08-05		04-08-10
Japan	Flat cold-rolled stainless steel	15-02-02	03-08-02	13-03-03	19-03-09	
	Flat hot rolled steel	08-07-02	18-11-02	27-05-03	23-05-09	
Kazakhstan	Flat hot rolled steel	08-07-02	18-11-02	27-05-03	23-05-09	
	Cold rolled carbon steel sheet and strip in coils and cut to length	27-07-01	20-07-02	25-01-03		25-01-08
Korea, Rep. of	Flat cold-rolled stainless steel	15-02-02	03-08-02	13-03-03	19-03-09	
	Flat hot rolled steel	08-07-02	18-11-02	27-05-03	23-05-09	
Malaysia	Cathode ray tubes	25-06-04		22-10-05		30-10-07
	Flat hot rolled steel	16-06-10	17-02-11			
Romania	Flat hot rolled steel	08-07-02	18-11-02	27-05-03	23-05-09	
Russian Federation	Flat hot rolled steel	08-07-02	18-11-02	27-05-03	23-05-09	
	Cold rolled carbon steel sheet and strip in coils and cut to length	27-07-01	20-07-02	25-05-03		25-01-08
Slovak Republic	Flat hot rolled steel	08-07-02	18-11-02	27-05-03	23-05-09	

Table III.2 (con'td)

Country/ Customs Territory	Product	Initiation of original investigation	Date of provisional measure	Date of imposition final	Date of extension	Date of termination
South Africa	Flat hot rolled steel	08-07-02	18-11-02	27-05-03	23-05-09	
Chinese Taipei	Flat cold-rolled stainless steel	15-02-02	03-08-02	13-03-03	19-03-09	
	Flat hot rolled steel	08-07-02	18-11-02	27-05-03	23-05-09	
Ukraine	Flat hot rolled steel	08-07-02	18-11-02	27-05-03	23-05-09	
Venezuela	Flat hot rolled steel	08-07-02	18-11-02	27-05-03	23-05-09	

Note: Does not include cases that have been initiated only.

Source: WTO notifications; and the Thai authorities.

45. Thailand has not notified the WTO Committee on Subsidies and Countervailing Measures of the initiation of any investigation or application of any countervailing duty measures.

**(v) Non-tariff border measures**

**(a) Import licensing and prohibitions**

46. Thailand's system of import restrictions involving licensing and prohibitions remained generally unchanged during the review period. Conditions attached to import licensing on various items tend to be complex and opaque, and in some cases appear equivalent to quantitative restrictions (Table III.3). A number of import restrictions are in force for economic purposes, including on several additional products made subject to import licensing or prohibition. Infant industry protection has been the main objective behind import restrictions since the 1970s.

**Table III.3**  
**Products subject to import licensing and prohibition, 2011**

Commodity	HS code	Rationale	Measures and condition
Yellowfin tuna	0302.32	Environmental protection	Import certificate required from the Department of Fishery
Milk and cream	04.01, 2202.90	Comply with market access commitment under the Agriculture Agreement	Tariff quota
Milk and cream in powder	0402.10.0007	Comply with market access commitment under the Agriculture Agreement	Tariff quota
Potatoes	0701	Comply with market access commitment under the Agriculture Agreement	Tariff quota
Onion	0703.10.0119, 0712.20.0104, 0712.20.0200	Comply with market access commitment under the Agriculture Agreement	Tariff quota
Garlic	0703.20.0007, 0712.90.0115, 0712.90.0128	Comply with market access commitment under the Agriculture Agreement	Tariff quota
Coconut	0801.11.0000, 0801.19.0007	Comply with market access commitment under the Agriculture Agreement	Tariff quota

Table III.3 (cont'd)

Commodity	HS code	Rationale	Measures and condition
Dry longan	0813.4	Comply with market access commitment under the Agriculture Agreement	Tariff quota
Coffee	0901, 2101.10	Comply with market access commitment under the Agriculture Agreement	Tariff quota
Tea	09.02	Comply with market access commitment under the Agriculture Agreement	Tariff quota
Pepper	0904.11.0003, 0904.12.0004	Comply with market access commitment under the Agriculture Agreement	Tariff quota
Maize (corn)	1005.90	Comply with market access commitment under the Agriculture Agreement	Tariff quota, import surcharge for non-WTO members
Rice	1006.10, 1006.20, 1006.30, 1006.40	Comply with market access commitment under the Agriculture Agreement	Tariff quota
Soyabeans	1201.001.000, 1201.009.001	Comply with market access commitment under the Agriculture Agreement	Tariff quota
Copra	1203.00.0005	Comply with market access commitment under the Agriculture Agreement	Tariff quota
Onion seeds	1209.91.0106	Comply with market access commitment under the Agriculture Agreement	Tariff quota
Soyabean oil and its fractions	1507.10.0001, 1507.90.0006	Comply with market access commitment under the Agriculture Agreement	Tariff quota
Palm oil and its fractions	1511, 1513.210004, 1513.29.0007	Comply with market access commitment under the Agriculture Agreement	Tariff quota
Coconut oil	1513.11.0008, 1513.19.0005	Comply with market access commitment under the Agriculture Agreement	Tariff quota
Cane or beet sugar	1701	Comply with market access commitment under the Agriculture Agreement	Tariff quota
Fish-meal with protein content less than 60%	2301.200.106	Stabilize price of raw material used for animal food	Non-automatic licensing: import not generally allowed
Fish-meal with protein content more than 60%	2301.200.106	Stabilize price of raw material used for animal food	Import surcharge
Oil cake residues, from the extraction of soyabean oil	2304.00.0008	Stabilize price of raw material used as animal food	Tariff quota, import surcharge for non-WTO members
Marble (except marble block of 50x50x50 cm)	2515	Encourage and protect domestic industry	Non-automatic licensing: import not generally allowed
Gasoline	2710.001	Monitoring current fuel price	Automatic licensing, only for authorized importers

Table III.3 (cont'd)

Commodity	HS code	Rationale	Measures and condition
Kerosene	2710.002	Monitoring current fuel price	Automatic licensing, only for authorized importers
High speed diesel oil	2710.003	Monitoring current fuel price	Automatic licensing, only for authorized importers
Naphtha	2710.005, 2710.009	Monitoring current fuel price	Automatic licensing, only for authorized importers
LPG gas	2711.120, 2711.130, 2711.140, 2711.190	Monitoring domestic consumption	Automatic licensing, only for authorized importers
Potassium permanganate	2841.61	Public morals, drug suppression	Automatic licensing, only for registered importers
Clenbuterol	2922.199	Public health	Non-automatic licensing: import is permitted with approval of the Food and Drug Administration
Albuterol or Salbutamol	2922.509	Public health	Non-automatic licensing: import permitted with approval of the Food and Drug Administration
Caffeine	2939.30, 3003.40	Public health, social security	Restriction, allowed only with certificate from the FDA, or other authority concerned
Waste and scrap of plastics	3915	Environmental and public health	Non-automatic licensing: with approval of the Department of Industrial Works
Wood sawn or chipped	4403, 4407 — 4421	To facilitate international trade transaction	Automatic licensing, certificate of origin, export certificate from exporting country
Raw silk	5002	Accommodate to current situation, industry protection	Tariff quota
Silk yarn	5004	Accommodate current situation, industry protection	Automatic licensing, with conditions set by Department of Foreign Trade
Garments	61.01 to 61.14 61.17.90, 62.01-62.11, 62.17.90	Compliance with ATC commitment until its expiry in 2004	Automatic licensing
Worked monumental or building stone	6802	Industry protection	Non-automatic licensing: import not generally allowed
Used motorcycle engines	8407.31, 8714.19, 72.04, 76.02	Public health and safety	Absolutely prohibited
Used diesel engines with displacement of 331-1,110cc.	8408.90	Public health and safety	Non-automatic licensing: import not generally allowed
Intaglio printing machinery	8443.500	To prevent making of counterfeit money	Automatic licensing
Chain saws	8467.81, 8467.91, 8508.20, 8508.90	To prevent smuggling of logging, forest conservation	Department of Foreign Trade authorizes the Department of Forestry to grant import permits
Passenger cars (prototype)	8702.101, 8702.901	Industry protection, foreign currency reservation	Import not generally allowed, except as prototype for assembly or production

Table III.3 (cont'd)

Commodity	HS code	Rationale	Measures and condition
Used motor vehicles	8703.21, 8703.229, 8703.239, 8703.249, 8703.319, 8703.329, 8703.339	Public health, environmental protection	Non-automatic licensing: import not generally allowed, except for imports for re-export or import by individual
Motor vehicles for the transport of 30 or more persons	8702.101, 8702.901	Industry protection, foreign currency reservation	NAL: import not generally allowed, except as prototype for assembly or production
Used motorcycles	8711	Public health	Import not generally allowed
Colour photo-copying apparatus	9009.110, 9009.120	To prevent making of counterfeit money	Automatic licensing
Game machines, coin or disc operated	9504.30, 9504.901, 9504.909	Public moral	Prohibited
Original sculptures and statuary, in any materials	9703.009	To prevent smuggling of historical objects or antiques	Non-automatic licensing: Department of Foreign Trade authorizes the Department of Fine Art to grant licences
Used machines for multimedia production		To prevent the violation of intellectual property	Non-automatic licensing
CFC refrigerators		Public health and environmental protection	Import prohibited
Glazed ceramic wares		Public health	Non-automatic licensing: import allowed on case-by-case basis
Gold		Economic security and stability	Non-automatic licensing: Department of Foreign Trade authorizes the Department of Finance to grant licences
Counterfeit products		To prevent import of imitation and counterfeit products	Absolutely prohibited
Medals, coins		To prevent making of counterfeit medals and coins	Non-automatic licensing: import is allowed only by the Minister of Finance and other authorized entity
Goods duplicating registered products		To prevent imports that violate registered product rights	Absolutely prohibited
Drug and pharmaceutical chemicals in 16 items, 154 categories (Aristolochia spp., Chloramphenicol, Chloroform, Chlorpromazine, Colchicin, Dapsone, Nitrofurans, Diethylstilbestrol, Sulfonamides, Fluoroquinolones, Glycopeptides, Dimetridazole, Metronidazole, Ronidazole, Ipronidazole, Nitroimidazoles)		Economic security, public health, to accommodate domestic production	Automatic licensing, with import certificate from authorities concerned

Source: Department of Foreign Trade online information. Available at: [http://www.dft.moc.go.th/import\\_index.htm](http://www.dft.moc.go.th/import_index.htm) (in Thai only); and information provided by the authorities.

47. The legal authority for regulating imports is the Export and Import Act B.E. 2522 (1979). This gives the Minister of Commerce the power to restrict imports with Cabinet's approval for

economic stability, public interest, public health, national security, peace and order, morals, or for any other reason in the national interest. Imports may be prohibited "absolutely" or "conditionally". In the latter case (e.g. those requiring non-automatic licensing), they are allowed if specified conditions are satisfied. Various other laws include import restrictions. Under the Investment Promotion Act, the Board of Investment may ask the Ministry of Commerce to ban imports of goods competing with those produced by a domestic industry, if the Board is of the view that other forms of protection are not sufficient to assist the industry. Imports may also be prohibited under the various laws in place for health and safety reasons.

#### *Import licensing*

48. Products subject to non-automatic licensing currently include the 24 agricultural items under tariff quota (section (ii)(f)) and processed goods (including certain fishmeal, raw silk, used diesel engines, certain buses, chainsaws, marble, plastic wastes, and certain antiques or objects of art) (Table III.3). An automatic import licensing system currently applies to certain garments (i.e. unfinished garments, parts or components except collars, cuffs, waist bands, pockets, and cuffs for trousers), intaglio printing machines, and colour photocopying machines. Product coverage can be changed through Ministry of Commerce notifications.

49. In September 2010, Thailand provided its third replies to the WTO Import Licensing Questionnaire.<sup>22</sup> Thailand notified its licensing legislation as required under Articles 1.4(a) and 8.2(b) of the Import Licensing Agreement in 2007 (document G/LIC/N/1/THA/1).

#### *Import prohibitions*

50. In general, import prohibitions are used only to protect public morals, national security, human, animal, or plant life, health, and intellectual property rights, in accordance with GATT Article XX exceptions. Products that are absolutely prohibited include counterfeit goods and equipment for their manufacture, used motorcycle engines, game machines (coin or disc operated), and household refrigerators using CFC in the production process (Table III.3). Imports of a wide range of endangered fish, molluscs, amphibians, and coral are banned under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).<sup>23</sup>

51. To prevent illegal logging, since 2005 the Department of Foreign Trade has prohibited import of logs and sawn wood made of teak trees, rubber trees or forbidden trees from the border of Tak and Kanchanaburi provinces. Bans (based on UN Resolutions) on imports of diamonds, logs, and wooden products from Liberia were lifted in 2007, and on diamonds from Sierra Leone in 2007 and 2003. Thailand accepts the Kimberly Certification Process. For SPS and TBT measures affecting imports see section (vi) below.

#### (b) Import quotas

52. According to the authorities, Thailand maintains no import quotas apart from its commitments under the Agreement on Agriculture (Table III.3).

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<sup>22</sup> Article 7.3 of the Agreement on Import Licensing Procedures requires all members to answer the Questionnaire on Import Licensing Procedures by 30 September each year (See WTO documents G/LIC/16, 13 November 2006, and G/LIC/N/3/THA/3, 30 September 2010).

<sup>23</sup> WTO (2008); and Economist Intelligence Unit (2010), p. 92.

(vi) **Technical measures**

(a) Technical barriers to trade

53. Several bodies are responsible for different aspects of technical regulations and standards in Thailand:

- The Thai Industrial Standards Institute (TISI), under the Ministry of Industry, is responsible for developing national standards, certification, monitoring the quality of products (including food products) and services, international cooperation (bilaterally and multilaterally), and establishing a national single network on standardization. The Institute was established in 1969 under the Industrial Product Standards Act BE 2511 (1968);<sup>24</sup>
- The National Bureau of Agricultural Commodity and Food Standards (ACFS), under the Ministry of Agriculture and Cooperatives, is responsible for developing food standards to protect consumers against health hazards from food consumption, under the Food Act B.E. 2522 (1979); accreditation of certification bodies; international cooperation; and food standards control;<sup>25</sup>
- The Ministry of Commerce is responsible for policy and legislation on metrology while the National Metrological System Development Act, B.E.2540 (1997) established the National Institute of Metrology (Thailand), in the Ministry of Science and Technology, which is responsible for implementation;<sup>26</sup> and
- The Office of the National Accreditation Council of Thailand, the Department of Medical Service, the Department of Science Service, and the ACFS are responsible for accreditation of organizations for conformity assessment.

54. The TISI is the designated inspection body for several countries with which Thailand has standards related agreements, including Australia on automotive parts<sup>27</sup>; as well as more general mutual recognition agreements in the Japan-Thailand Economic Partnership Agreement, the Thailand-Australia Free Trade Agreement, and the Thailand-New Zealand Closer Economic Partnership Agreement. It also has memoranda of understanding with the Turkish Standards Institution, and the American national Standard Institute.<sup>28</sup> The MoU with the Bureau of Indian Standards expired on 10 April 2010. Thailand is a member of the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), and the International Telecommunications Union. It is also active in regional standards organizations such as the Pacific Area Standards Congress, and the ASEAN Consultative Committee for Standards and Quality.

55. Thailand is also a party to several plurilateral mutual recognition agreements, such as the APEC Electrical and Electronic Equipment Mutual Recognition Agreement (Thailand is a participant in Part 1 to provide information on mandatory requirements but not Part 2 on mutual acceptance of test reports)<sup>29</sup>, and the APEC-TEL MRA on conformity assessment of telecommunications

<sup>24</sup> Viewed at: <http://www.tisi.go.th/eng/> [May 2011].

<sup>25</sup> Viewed at: <http://www.acfs.go.th/eng/index.php> [May 2011].

<sup>26</sup> Viewed at: <http://www.most.go.th/eng/index.php/agencies-under-most/detail-nimt> [May 2011].

<sup>27</sup> WTO document G/TBT/10.7/N/22/Rev.1, 22 June 1999.

<sup>28</sup> Viewed at: <http://app.tisi.go.th/FTA/index.html#mra> [May 2011].

<sup>29</sup> Viewed at: [http://www.apec.org/Groups/Committee-on-Trade-and-Investment/Sub-Committee-on-Standards-and-Conformance/apec\\_eemra.aspx](http://www.apec.org/Groups/Committee-on-Trade-and-Investment/Sub-Committee-on-Standards-and-Conformance/apec_eemra.aspx) [May 2011].

equipment.<sup>30</sup> It has also signed the Pacific Accreditation Cooperation Multilateral Recognition Arrangement and IAF Multilateral Recognition Arrangement, the Asia Pacific Laboratory Accreditation Cooperation Multilateral Recognition Arrangement, the International Laboratory Accreditation Cooperation Multilateral Recognition Arrangement, and the Asia Pacific Legal Metrology Forum Memorandum of Understanding.

56. The WTO enquiry point for technical regulations relating to industrial products is the TISI, and for food and agricultural products it is the National Bureau of Agricultural Commodity and Food Standards (ACFS). Thailand has accepted the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 of the TBT Agreement.<sup>31</sup> From 1 January 2007 to 31 May 2011, Thailand made 189 notifications to the WTO Committee on Technical Barriers to Trade (including addenda and corrigenda) with an additional 11 by the EU giving unofficial translations of the details of some notifications by Thailand. Most of the notifications were for measures to address safety or environmental protection. Thailand is an active member of the TBT Committee. Since 1 January 2007, along with other Members, it has raised concerns about measures taken by the EU on: proposed measures affecting the fire performance of construction materials; the registration, evaluation and authorization of chemicals (REACH); dangerous chemical substances; the classification, labelling, and packaging of substances and mixtures; accreditation and market surveillance relating to the marketing of products; as well as measures by Brazil on toys. Thailand has also replied to other Members' concerns on several issues, including: labelling requirements for snack food; mandatory certification of steel products; and health warnings on alcoholic beverages.<sup>32</sup>

57. As of 31 May 2011, the TISI had established a total of 2,979 Thai Industrial Standards of which 2,718 were not compulsory, 99 were compulsory, and 162 had been withdrawn. Of the 99 compulsory standards, over half are for construction materials or electrical/electronic equipment. Compliance with non-compulsory standards entitles the manufacturer of the product to affix a label indicating that the product meets the appropriate standards. Products subject to compulsory standards are required to comply with the standard and show the mandatory certification mark.

58. In developing standards and technical regulations, the TISI works with other government agencies and private-sector organisations. The network of agencies and organizations depends on the standard and may include: the Department of Alternative Energy Development and Efficiency; the Department of Industrial Works; the Engineering Institute of Thailand; the National Electronics and Computer Technology Center; the Federation of Thai Industries; and other institutions with which the TISI has memoranda of understanding. A technical committee, made up of the responsible national standards body and other interested parties, develops a draft standard, which is then circulated for comment with final approval by Industrial Products Standards Council.<sup>33</sup> The comments of other countries are taken into account through the WTO TBT Committee notification

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<sup>30</sup> Viewed at: [http://www.apec.org/en/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Working-Groups/Telecommunications-and-Information/APEC\\_TEL-MRA.aspx](http://www.apec.org/en/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Working-Groups/Telecommunications-and-Information/APEC_TEL-MRA.aspx) [May 2011]

<sup>31</sup> WTO document G/TBT/CS/N/21, 22 November 1995.

<sup>32</sup> See WTO documents G/TBT/M/41 to 51.

<sup>33</sup> Sirilarpyos (2010). The Industrial Products Standards Council is chaired by the Permanent Secretary for Industry and representatives from TISI, the Department of Industrial Works, the Department of Industrial Promotion, the Ministry of Agriculture and Cooperatives, the Ministry of Interior, the Ministry of Commerce, the Ministry of Sciences, Technology and Energy, the Ministry of Public Health, the Customs Department, Thailand Institute of Scientific and Technological Research, the Office off the Board of Investment, the Office of the National Economic and Social Development Board and up to six qualified persons appointed by the Council of Ministers.

and comment procedures. The TISI's work programme, listing draft standards and the stage of development, is published biannually and available online.<sup>34</sup>

59. Producers and importers of products subject to mandatory standards require a licence to indicate compliance with the standard and sell the product in Thailand. Applications for an import licence, along with samples and a fee must be given to the TISI for assessment for conformity and of the quality control system. A fee of B 10,000 is charged for a licence to display the Standards Mark; to manufacture the product that must comply with the standard; or to import the product that must comply with the standard. The process can take up to 42 days before a licence is delivered. A similar process must be followed for licences to use quality labels indicating compliance with voluntary standards.<sup>35</sup> Manufacturers that have been awarded ISO 9000 certification may be exempted from assessment of their quality control system.<sup>36</sup> However, the TISI may conduct additional assessments on items if the certified quality management system differs from the particular requirements for product certification and the general requirements for product quality control.<sup>37</sup>

60. For export, the TISI maintains a list of organizations certified as competent to provide export certificates and those accredited as competent to certify quality systems (ISO 9000); environmental management systems (ISO 14000), inspection services (ISO/IEC 17000), laboratories (ISO/IEC 17025), and personnel and training registration.

(b) Sanitary and phytosanitary measures

61. As Thailand is a major exporter of agricultural and fisheries products, SPS issues are of serious concern. For example, in 2006 exports of chicken were sharply reduced following outbreaks of avian flu. Due to measures taken by the Government, Thailand has had no further outbreaks of bird flu since 2008.

62. Responsibility for sanitary and phytosanitary measures is divided between a number of government agencies:

- The National Bureau of Agricultural Commodity and Food Standards (ACFS) is responsible for setting standards for agricultural systems, commodity and food items and food safety; for accreditation of certification bodies; for food standard controls; and for promoting compliance with standards on farms and in food establishments;<sup>38</sup>
- Animal health and imports of some animal products are the responsibility of the Department of Livestock Development,<sup>39</sup> and the Department of Fisheries in the Ministry of Agriculture and Cooperatives;
- Plant health is the responsibility of the Department of Agriculture in the Ministry of Agriculture and Cooperatives; and
- Food safety is the responsibility of the Food and Drug Administration (FDA) of the Ministry of Public Health.

<sup>34</sup> Viewed at: [http://203.154.78.183/work\\_prg/work\\_prg.html](http://203.154.78.183/work_prg/work_prg.html) [May 2011].

<sup>35</sup> TISI online information. Viewed at: [http://app.tisi.go.th/license/diagram\\_c\\_e.html](http://app.tisi.go.th/license/diagram_c_e.html) [May 2011].

<sup>36</sup> WTO (2008).

<sup>37</sup> Criteria for product certification are available at: [http://www.tisi.go.th/eng/index.php?option=com\\_content&view=article&id=39&Itemid=4](http://www.tisi.go.th/eng/index.php?option=com_content&view=article&id=39&Itemid=4) [May 2011].

<sup>38</sup> ACFS online information. Viewed at: <http://www.acfs.go.th/eng/index.php> [March 2011].

<sup>39</sup> WTO document G/SPS/N/THA/92 of 29 October 2002.

63. Thailand is an active participant in the SPS Committee in the WTO, a member of the World Organisation for Animal Health (OIE), a contracting party to the International Plant Protection Convention (IPPC), and a member of the Codex Alimentarius on food safety. The WTO enquiry point and the notification authority is the National Bureau of Agricultural Commodity and Food Standards (ACFS).<sup>40</sup> According to the authorities, Thailand generally follows standards set by the OIE, Codex Alimentarius, and IPPC (where they exist). However, it has also been reported that animal health standards are sometimes stricter than those established by OIE.<sup>41</sup>

64. The FDA in Thailand is responsible for surveillance of food production and imports, pre- and post-marketing control, research, and labelling, as well as food safety. New regulations are based on an analysis of the risk assessment, risk management, and risk communication. Draft regulations are subject to a public hearing and are notified to the SPS Committee in the WTO before being approved by the Food Committee on the FDA, which includes consumer and industry representatives. The regulations must be endorsed by the Minister of Public Health before becoming effective.<sup>42</sup>

65. In the period 1 January 2007 to end-April 2011, Thailand made 42 regular notifications to the WTO Committee on Sanitary and Phytosanitary Measures (including revisions), and 14 emergency notifications along with 28 addenda and corrigenda. Most of the emergency notifications referred to announcements of disease outbreaks or contaminated food in other countries.<sup>43</sup>

66. There have been no changes to Thailand's legislative framework for SPS measures. Under the Food Act B.E. 2522 (1979), food products are classified into four groups, in descending order of risk, with different requirements for registration, labelling, and obligatory standards:<sup>44</sup>

- Group 1 for Specifically Controlled Foods is for food products that require registration and must meet specifications set by the FDA as well as packaging and labelling requirements. Group 1 covers 14 food products, mainly dairy products;
- Group 2 is Standardized Foods that are required to abide by specific standards relating to quality but where no registration is required. This group covers 30 food products including edible oils, food supplements, tea, coffee, preserves, and seasoning;
- Group 3 is for Labelled Foods that are considered to be of lower risk than those in Groups 1 and 2 and, therefore, must carry labels for consumer information rather than meet specific quality/food safety standards. Group 3 covers 12 food products including, bread, meat products, flavourings, and ready to eat/cook foods; and
- Group 4 is for General Foods that are not in Groups 1 to 3. Registration for production or imports is not required but such foods must still meet, and are monitored for, specific hygiene, safety, labelling, and marketing requirements.<sup>45</sup>

<sup>40</sup> WTO SPS Information Management System. Viewed at: <http://spsims.wto.org/> [March 2011].

<sup>41</sup> USDA Foreign Agriculture Service (2010a).

<sup>42</sup> Presentation by Dr Parinyasiri, T (2010), Thai FDA Regulation on Food. Viewed at: [http://www.anchanthailand.com/asp/view\\_doc.asp?DocCID=2599](http://www.anchanthailand.com/asp/view_doc.asp?DocCID=2599).

<sup>43</sup> WTO online information, "SPS Information Management System". Viewed at: [http://www.wto.org/english/tratop\\_e/spis\\_e/spis\\_e.htm](http://www.wto.org/english/tratop_e/spis_e/spis_e.htm)

<sup>44</sup> An unofficial translation into English is available from the Ministry of Public Health. Viewed at: [http://www2.fda.moph.go.th/exporters/frm\\_fd\\_eng.asp](http://www2.fda.moph.go.th/exporters/frm_fd_eng.asp) [March 2011].

<sup>45</sup> USDA Foreign Agriculture Service (2010a).

67. Thailand prohibits imports of several food products on health grounds. The list includes foods containing several additives, including some sweeteners, along with puffer fish, and some types of genetically modified maize.

68. All importers and manufacturers of food products must obtain a licence from the Food Control Division of the FDA, which must be renewed every three years. If all documentation supporting the application is correct, the process takes about 7 working days for import licences and 20-60 working days for manufacturing licences. Temporary import licences may be obtained for occasional imports of products that are not going to be sold, such as for trade shows. In addition to the import/manufacturing licence, product registration is required for products in Group 1, and product notification for products in Groups 2 and 3. If all documentation supporting the application is correct, the approval procedures take about 35-90 working days for products in Group 1, and 2-3 working days for products in the other two groups (except for dietary supplements and some beverages, which take 15-30 working days).

69. Certain food products, whether imported or domestically produced, must comply with the Code of Good Manufacturing Practice (GMP) (since July 2003) set out in Ministerial Notification No. 193, BE 2543 (2000) Re: Production Processes, Production Equipments, and Foods Storages.<sup>46</sup> The 57 products on the list include infant food, several dairy products, edible oils, tea, coffee, and food products of animal origin. Importers are required to show a certificate, from the responsible government agency or another institution recognized by an international accreditation agency, indicating that production standards are equivalent to Thailand's GMP Code, such as a code of good practice based on guidelines from Codex Alimentarius or ISO 9000.

70. The FDA is also responsible for control of food products after production, and import registrations and licences have been awarded through compliance monitoring and food surveillance. Compliance monitoring is through inspections of factories and other premises where food is stored, and sampling and testing of food products. The Food Analysis Division of the Department of Medical Science in the Ministry of Public Health is responsible for the analysis of food products to assess conformity with standards. The FDA is also involved in surveillance of food products in retail markets where samples are delivered to the Food Analysis Division for analysis.

71. All food products for public consumption must carry a label in Thai providing basic information on the product. For Specifically Controlled Foods, the label must be approved by the FDA before it is used. All labels must comply with Ministerial Notification on Labelling No. 194 BE 2543 (2000). In addition, food products claiming to have nutritional benefits and some snack food products are required to carry a label with information on nutrition.<sup>47</sup> Labelling declaring "containing GMO" is also required for products containing more than 5% ingredients derived from GMO products.

72. Imports of chilled or frozen meat must have an import permit from the Department of Livestock Development in the Ministry of Agriculture and Cooperatives and a health certificate from the country of origin. Upon arrival, each consignment of chilled and frozen meat must be inspected by the Animal Quarantine Station at the port of entry. Import fees for disinfection, sampling and inspection are B 10 per kg for poultry meat and B 5 per kg for other meats.

73. In January 2005, the import prohibition on meat and other products from bovine animals in countries that had recorded cases of BSE was replaced by a prohibition on imports of beef from

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<sup>46</sup> An unofficial translation into English is available from the Ministry of Public Health. Viewed at: [http://www.fda.moph.go.th/eng/eng\\_food/foodnotification.htm](http://www.fda.moph.go.th/eng/eng_food/foodnotification.htm) [March 2011].

<sup>47</sup> Ministerial Notification No. 182 of BE 2541 and Ministerial Notification No. 219 of BE 2544.

animals over 30 months old from these countries.<sup>48</sup> According to the authorities, deboned meat from cattle under 30 months old from the United States, Canada, Japan, and the Netherlands may be exported to Thailand provided bilateral negotiations and a risk assessment have been completed. It was also reported that, in January 2010, Thailand lifted its ban on imports of pork and pork products that had been put in place because of concerns about the H1N1 virus.<sup>49</sup>

74. Plants and plant products are divided into three categories: prohibited; restricted; and non-prohibited with different import procedures applying to each.<sup>50</sup>

- All imports of plants and plant products must be accompanied by a phytosanitary certificate from the competent authorities in the exporting country;
- An import permit is also required for prohibited articles and the plant quarantine officer must be notified when the consignment arrives at the port of entry;
- Imports of prohibited or restricted articles must be made through the plant quarantine station for inspection by the plant quarantine official; and
- A pest risk analysis is also required for imports of prohibited articles.

### **(3) MEASURES DIRECTLY AFFECTING EXPORTS**

#### **(i) Registration and documentation procedures**

75. As a general rule, there are no registration requirements for exporters. However, exports of a few products (mainly agricultural products, such as fresh longan, durian, apple juice, and orchids) require registration with the Department of Agriculture to ensure export quality and food safety; in most instances registration is required to meet the importing country's requirements.

76. Under the Customs Act B.E. 2469 (1926), all goods being exported or re-exported from Thailand are subject to Customs control and approval. Most export declarations are submitted via the e-Export system. In addition to export declaration data, the following documents must be submitted: invoice, packing list, export licences (if applicable), certificates of origin (if applicable), and other relevant documents such as catalogues, descriptions of products, ingredients, etc. Once the export declaration has been transmitted to the Customs computer system, it is subject to automatic processing, including data validation, data matching, and release status, as appropriate. Where applicable, export duties and taxes may be paid either through the e-Payment system or at banks.

#### **(ii) Export taxes, charges, and levies**

77. Under the Customs Act B.E. 2469 (1926) and the Customs Tariff Decree B.E. 2530 (1987), export taxes may be levied on a number of products, including hides of bovine animals, wood, rice, metal scrap, rubber, raw silk and silk yarn, and certain fish (Table III.4). Export duties consist of statutory rates and applied rates; applied rates involve both specific and *ad valorem* duties. In

<sup>48</sup> WTO document G/SPS/N/THA/140, 8 February 2006.

<sup>49</sup> USTR (2010b).

<sup>50</sup> Under the Plant Quarantine Act BE 2507 (1964), as amended by Act 2542 (1999) and Act 2551 (2008), and the Notification of Department of Agriculture Re: Criteria, Procedures and Conditions for the Importation or Bringing in Transit of Prohibited, Restricted and Unprohibited Articles, BE 2551 (2008). For an unofficial translation into English of the consolidated Plant Quarantine Act, see: <http://faolex.fao.org/faolex/> [March 2011].

January 2011, specific export duties were levied on certain by-products of animal hides, while certain wood and sawn wood products were subject to *ad valorem* export duties. Although applied rates tend to be lower than statutory rates, the persistence of relatively high statutory rates on key export products (e.g. rice and rubber), imparts an element of uncertainty in Thailand's trade regime, as export taxes could be reintroduced up to the level of the statutory rate. Furthermore, the imposition of export taxes could constitute a form of assistance to domestic downstream industries and, if they were applied to products Thailand is a major supplier of, could exacerbate world price fluctuations. The VAT rate on exports is zero.

**Table III.4**  
**Export duties, January 2011**  
(Baht and %)

Commodity	Applied rate	Statutory rate
Hides of bovine animals		
Raw hides	Zero	B 5 per kg
Other		
Parings, waste, and dust for use in the production of leather	B 0.4 per kg	B 4 per kg
Tanned hides	Zero	B 4 per kg
Other	B 4 per kg	
Wood, sawn wood, and articles made of wood		
Wood and sawn wood		
Phai ruak (bamboo) and coconut wood	5%	40%
Veneer	10%	40%
Other (except rubber wood, eucalyptus, wattle, etc.)	40%	40%
Articles of wood		
Unsuitable for other conversion	Zero	10%
Other	Zero	20%
Rice	Zero	10%
Metal scraps	Zero	50%
Rubber	Zero	40%
Raw silk and silk yarn	Zero	B 100 per kg
Fish, pulverized or only baked, unfit for human consumption	Zero	75%

Source: Customs Department online information. Viewed at: <http://igtfcustoms.go.th/igtfc/en/main-frame.jsp> [1 February 2011]; and data provided by the Thai authorities.

### (iii) Export prohibitions, restrictions and licensing

78. Under the Export and Import of Goods Act B.E. 2522 (1979), the Minister of Commerce, with the approval of the Cabinet, has the authority to specify classes of goods that are subject to export (and import) controls in order to safeguard economic stability, public health, national security, public order and morals, or "other benefits to the State". The Minister of Commerce is also empowered to control exports, mainly food staples, in order to prevent domestic shortages. Controls may involve export licensing, export surcharges, export quotas or outright prohibitions (Table III.5).

79. Exports of rice and sugar require an export licence under the Export Standards Act No. 2 B.E. 2522 (1979), administered by the Commodities Standards Office of the Ministry of Commerce, with the purpose of ensuring that these goods comply with set quality standards when being exported from Thailand. Other items require export licences under different laws enforced by other Ministries and governmental agencies<sup>51</sup>, mainly for safety, public health, narcotic drug control, protection of national resources and treasures, and financial security purposes. Membership in the relevant trade association may be required to obtain an export licence for certain agricultural goods. Exports of certain goods destined to the EU, such as textiles and clothing and some agricultural products require export licences or certificates. In accordance with the Kimberly Process Scheme, exports of rough

<sup>51</sup> In addition to the Ministry of Commerce, other Ministries exercising export controls include: Agriculture, Defence, Finance, Industry, Public Health, and Science and Technology.

diamonds require an export certificate from the Department of Foreign Trade before exportation from Thailand.

80. In general, export prohibitions and export quotas are imposed to comply with Thailand's international obligations for environmental, public health and intellectual property reasons, or to comply with bilateral agreement provisions (Table III.5). Thailand prohibits the exportation of counterfeit products and products that infringe copyrights. Exports of natural sand are prohibited in order to preserve national resources. Export prohibitions are imposed on all types of arms, military vehicles, and related hardware and spare parts to certain countries in compliance with the relevant United Nations resolutions. The authorities have indicated that the export licensing and quota allocation system applied on exports of automobiles to Chinese Taipei was terminated during the period under review.

81. Since its last Review, Thailand has eliminated export licensing on live horses, mules, and donkeys. In addition, the Ministry of Commerce abolished an automatic export licensing procedure for fuel oil and products thereof.<sup>52</sup> No significant changes have taken place in Thailand's export regime since 2007. Export licensing requirements on rice, elephants, and timber have been maintained for economic security reasons, and for the conservation of elephants and forest resources.<sup>53</sup>

82. Under Thailand's foreign exchange regulations, export proceeds equivalent to an amount of US\$50,000 or above must be received in Thailand immediately upon payment and within 360 days from the date of exportation. The proceeds must be converted into Thai currency or deposited in a foreign currency account with an authorized bank in Thailand within 360 days of receipt.<sup>54</sup>

**Table III.5**  
**Products subject to export licensing, registration requirements or prohibitions, 2011**

Commodity	HS	Rationale	Measures and condition
<b>Agriculture products</b>			
Elephants	0106	Animal preservation	NAL, with approval from Department of National Parks, Wildlife, and Plants
Ornamental fish (in 317 species)	0301.10	Animal preservation	NAL, with approval from Department of Fisheries
Live black tiger shrimp	0306	Prevent domestic shortages	Automatic licensing, with certificate from Department of Fisheries
Crustaceans (shrimp and octopus) frozen or chilled	0306, 0307, 1605, 1902	Requirement of importing nation (only exports to the U.S. and EU)	Exporter must be member of Thai Frozen Food Association
Pearl shell and its products	0307	Encourage local farming industries	NAL, with export certificate from Department of Fisheries
Fresh orchids for export to the EU	0603.10	According to bilateral agreement	Exporter must be registered with Department of Agriculture; and phytosanitary certificate required
Durian	0810.90	Regulate the export system	Automatic licensing, exporters must be registered with Department of Agriculture

Table III.5 (cont'd)

<sup>52</sup> APEC (2010), Chapter 2 (Non-Tariff Measures).

<sup>53</sup> Ministry of Commerce Notification on Exports of Rice, Elephants and Timber B.E. 2549 (2006).

<sup>54</sup> Bank of Thailand online information. Viewed at: <http://www.bot.or.th/English/ForeignExchangeRegulations/FXRegulation/Pages/ExchangeControlLaw.aspx> [2 February 2011].

Commodity	HS	Rationale	Measures and condition
Longans	0810.90	Regulate the export system	Exporter must be registered with Department of Agriculture, Ministry of Agriculture
Coffee	0901, 2101.10	Compliance with International Coffee Agreement	Automatic licensing
Rice	1006.10, 1006.20 1006.30, 1006.40	Prevention of domestic shortages, export control	Automatic licensing, with certificate from Department of Foreign Trade
Rice exported to the EU under tariff quota	1006.20, 1006.30, 1006.40	Comply with the Agreement between Thailand and the EU	Automatic licensing, export quota (EU)
Cassava starches	1108.14	Regulate the export system and comply with the Agreement between Thailand and the EU	Automatic licensing, with certificate from Department of Foreign Trade
Tuna in airtight containers	1604.14	Regulate the export system	Exporter must be member of Thai Food Processors Association
Sugar	1701	Monitor exports	Automatic licensing, exporters must be registered with Ministry of Industry
Canned pineapple and concentrated pineapple juice	2008.20, 2009.40	Regulate the export system	Exporter must be a member of Thai Food Processors Association, or Thai Pineapple Industry
Oil cake and other solid residue, resulting from extraction of ground-nut oil	2304, 2305	Prevent domestic shortages	Export is generally not allowed
Oil cake and other solid residue, resulting from extraction of soybean oil	2304.00.0008	Prevent domestic shortages	Export is generally not allowed
<b>Non-agriculture products</b>			
Potassium permanganate	2841.61	Public moral, prevention of narcotics	Automatic licensing: only with approval from Office of the Narcotic Control Board
Caffeine and its salt	2939.30, 3003.40	Public health	Automatic licensing: only with approval from FDA or Department of Industrial Works
Wood, sawn or chipped	4401, 4403, 4404, 4406, 4407	Forest conservation and prevention of domestic shortages	Export is generally not allowed, except pines and eucalyptus with approval from Director-General of Royal Forest Department
Wood charcoal	4402	Forest conservation	NAL: with approval from Royal Forest Department
Rubber woods	4403, 4404, 4406, 4407	Prevent domestic shortage	Automatic licensing
Rough diamonds	7102.10, 7102.21, 7102.31	Comply with the UN resolution (subject to the export certification issued by the DFT under the Kimberly Process Scheme)	Automatic licensing, with export certificate from the Department of Foreign Trade
<b>Non-categorized HS numbers</b>			
All types of arms, military vehicles, hardware and spare parts to Sierra Leone, Ethiopia, Eritrea, Liberia, Somalia, and Congo		Comply with the UN Resolution	Prohibited
Antique idols, graven images		Protect national treasures of artistic, historic or archaeological value	Automatic licensing, with export certificate from Department of Fine Arts
Buddha images		To protect national treasures of artistic, historic, and archaeological value	Automatic licensing, with export certificate from Department of Fine Arts

Table III.5 (cont'd)

Commodity	HS	Rationale	Measures and condition
Coal		Conserve exhaustible natural resources	NAL, allowed only for re-export, or coal imported to produce for exports; export certificate from the Department of Alternative Energy Development and Efficiency, Ministry of Energy
Counterfeit products		Prevent production of counterfeit products	Prohibited
Gold		Economy security and stability	Automatic licensing, with conditions set by Ministry of Finance
Goods duplicated from copyright products		Prevent exports of imitation products	Prohibited
Natural sand		Conserve exhaustible national resources	Prohibited
Silica sand or quartz sand		Conserve exhaustible national resources	Department of Foreign Trade authorizes the Department of Mineral Resources to grant licences
Textiles		Export items to the EU as from 2005	Bilateral agreement provisions

Note: NAL = Non-automatic licensing.

Source: Information provided by the authorities.

#### (iv) Export assistance and incentives

83. In November 2007, Thailand informed the WTO SCM Committee that all export subsidies had been terminated under the programmes for which it had been granted an extension of the transition period for the elimination of export subsidies.<sup>55</sup> Export subsidies under the Export Market Diversification Promotion Programme were terminated on 31 December 2003; export requirements for export processing zones under the Industrial Estate Authority of Thailand (IEAT) were phased-out on 1 January 2003<sup>56</sup>, and the export subsidies of the last four investment projects under the Board of Investment (BOI) Programme were discontinued in 2006.<sup>57</sup>

84. Thailand maintains several schemes to promote and facilitate exports, including bonded warehouses, duty drawback, and other provisions allowing for duty and tax refunds, as well as tax and non-tax privileges under the Industrial Estate Authority of Thailand Act (No. 4) B.E. 2550 (2007) and the Customs Free Zones scheme.

85. Goods may be imported into a bonded warehouse without payment of import and export duties and taxes if they are to be used as inputs in a production process for export or are themselves re-exported. The Customs Act provides for several types of bonded warehouses; in the manufacturing-type bonded warehouse, imported goods must be stored and used within two years from the date of importation.<sup>58</sup> If imported goods are removed from the bonded warehouse for domestic consumption, they are subject to the applicable import duties and taxes.

<sup>55</sup> WTO document G/SCM/N/155/THA, 12 November 2007.

<sup>56</sup> WTO documents G/SCM/N/123/THA and G/SCM/N/128/THA, 23 June 2005.

<sup>57</sup> WTO document G/SCM/N/155/THA, 12 November 2007.

<sup>58</sup> In a bonded warehouse for vessel repair and construction, materials, parts, and accessories may be stored for a three-year period after import; in a bonded warehouse for oil storage, petroleum may be stored for a period not exceeding six months; in the duty-free shop and storage of duty-free goods type bonded warehouse, goods may be stored for a two-year period from the date of importation, which may be extended if necessary;

86. A duty drawback scheme is provided under Section 19 *bis* of the Customs Act (No. 9) B.E. 2482 (1939), under which exporters may obtain a refund of import duties paid on imported raw materials that are used in the production, mixing, assembling or packing of goods and exported within one year. Claims for drawback must be made within six months from the date of export. Machinery, tools, moulds, and fuels for manufacturing are not eligible for duty drawback. The authorities have indicated that duty refunds under this scheme were equivalent to US\$273.5 million in 2007, US\$372.7 million in 2008, US\$438.4 million in 2009, and US\$420.7 million in 2010.

87. Under the Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act B.E. 2524 (1981), exported goods manufactured in Thailand are eligible for tax coupons, which may be used to pay taxes and duties. Tax and duty compensation for exports is set as a fixed percentage of the f.o.b. value and is calculated on both the proportion of raw materials/inputs used for production (according to the NESDB input/output Table), and their average tariff. In order to minimize the risk of over- or under-compensation, the compensation rate is regularly adjusted to reflect changes in the input/output ratio and the tariff rates on inputs. Items that are not eligible for tax coupons include minerals, goods subject to export duties or fees, goods exported as samples, and other goods declared as not eligible by the Committee for Tax and Duty Compensation of Exported Goods Produced in the Kingdom. According to the authorities, this programme aims to facilitate tax compensation, and the compensation provided must comply with the criteria and conditions prescribed in the 1981 Act. The authorities also indicated that compensation rates ranged from 0.01% to 3.86% in 2009.

88. The Industrial Estate Authority of Thailand (IEAT) Act B.E. 2522 (1979) was amended and re-enacted as the Industrial Estate Authority of Thailand (No. 4) B.E. 2550 (2007).<sup>59</sup> Under the 2007 Act, an I-EA-T Privilege scheme has been established, according to which industrial estates are divided into two zones: the General Industrial Zone, and the I-EA-T Free Zone, in lieu of the previous Export Processing Zone regime.

89. Investors in an I-EA-T Free Zone are entitled to a number of tax and non-tax privileges. Tax privileges include exemptions from import duty, VAT, and excise tax on factory construction materials, machinery, equipment, components, and raw materials necessary for the production of goods or for commercial purposes, as well as exemption from export duties and taxes. No export requirements are imposed as a condition to obtain these benefits. Non-tax privileges for I-EA-T Free Zone investors include the right to own land for their business operations, bring in foreign technicians and experts and their dependants, permission to remit foreign currencies, and the eligibility to bring supplies or raw materials for production into an I-EA-T Free Zone, without being subject to import permits, standard and quality controls, or any other control except for those under the Customs Act.<sup>60</sup> The 2007 IEAT Act provides tax burden relief for goods from the I-EA-T Free Zones sold to the local market; the raw materials and components are entitled to tax and duty exemptions if they are produced locally.<sup>61</sup>

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and in the general-type bonded warehouse, goods may be stored for two years from the date of importation, extendable for up to one year if necessary (e.g. in the case of "force majeure" or when the importer faces economic problems that cause delays). For the criteria and conditions for the bonded warehouse schemes see Customs online information. Viewed at: <http://www.customs.go.th/Customs-Eng/Bonded/Bonded.jsp?menuNme=FreeZone>.

<sup>59</sup> WTO document G/SCM/N/186/THA, 12 November 2009.

<sup>60</sup> Thai Customs Department online information. Viewed at: [http://www.customsclinic.org/index.php?option=com\\_content&view=article&id=399&Itemid=367&lang=en](http://www.customsclinic.org/index.php?option=com_content&view=article&id=399&Itemid=367&lang=en) [7 February 2011].

<sup>61</sup> Thai Customs Department online information. Viewed at: [http://www.customsclinic.org/index.php?option=com\\_content&view=article&id=399&Itemid=367&lang=en](http://www.customsclinic.org/index.php?option=com_content&view=article&id=399&Itemid=367&lang=en) [7 February 2011].

90. Exports from Thailand's I-EA-T Free Zones totalled B 246 billion in 2010, amounting to 6.3% of total merchandise exports (5.2% in 2007).<sup>62</sup> The main exports were electronic and electrical equipment, machines and parts, and motor vehicles (Table III.6).

**Table III.6**  
The top 10 export products from the I-EA-T free zones, 2010

N°	Type of industries	Export value (million Baht)
1	Electronic equipment	58,319.391
2	Machines and parts	56,748.734
3	Motor vehicles	35,535.594
4	Electrical equipment	18,574.960
5	Rubber and plastic	11,867.421
6	Laboratory instruments	6,979.477
7	Chemical	6,192.656
8	Cosmetic	5,825.014
9	Oil	5,525.290
10	Steel	5,275.040

*Source:* Information provided by the authorities.

91. The free zones (FZ) programme, introduced by the Customs Department in 2000 to promote investment in and exports from these zones, is still in force. Goods imported and move into an FZ for industrial or commercial operations are eligible for exemption from import duties, VAT, and excise tax as well as from export duties on re-exports, duty on waste and scrap, and yield loss, and standard and quality control requirements; they may also qualify for export tax refund/exemption schemes.<sup>63</sup> At present, there are 62 free zones in Thailand.

#### (v) Export financing and insurance

92. The state-owned Export-Import Bank of Thailand (EXIM Bank) provides a comprehensive range of credit and insurance facilities to promote exports of goods and services as well as domestic and overseas investment aimed at expanding Thailand's commercial base. Its facilities include working capital loans<sup>64</sup>, term loans, financing for overseas projects, export credit insurance, buyers/bank risk assessment, buyer's credit, and export insurance.<sup>65</sup> According to the authorities, the EXIM Bank holds approximately 1% of the export financing market and operates in a very competitive environment with commercial banks. Since the EXIM Bank must generate its own funds, it offers its credit and insurance facilities at market prices based on risk, so as to ensure that it can make a profit.

93. The EXIM Bank provides short-, medium-, and long-term credits, in Thailand and overseas, and in local or foreign currency. Export credit is offered pre- or post-shipment. The term of financing is determined by product type: for pre-shipment financing, it does not normally exceed 120 days, while term loans are available from 2 to 7 years. Under the EXIM Bank of Thailand Act B.E. 2536 (1993), any severe loss incurred by the Bank from export credit-insurance or business

<sup>62</sup> Information provided by the Industrial Estate Authority of Thailand. See also Industrial Estate Authority of Thailand (2009).

<sup>63</sup> For additional information on the FZ regime see Customs Department online information. Viewed at: [http://www.customsclinic.org/index.php?option=com\\_content&view=article&id=155&Itemid=202&lang=en](http://www.customsclinic.org/index.php?option=com_content&view=article&id=155&Itemid=202&lang=en).

<sup>64</sup> Working capital financing includes a broad range of facilities such as pre-shipment financing, express export credit, pre-shipment financing for small- and medium-sized enterprises, export supplier's credit, and packing credit, plus export-credit insurance.

<sup>65</sup> For terms and eligibility for these programmes see EXIM Bank online information. Viewed at: <http://www.exim.go.th>.

operations carried out in compliance with government policies or cabinet resolutions are to be compensated by the Ministry of Finance through the allocation of funds from the Government's annual budget.<sup>66</sup> The authorities have indicated that compensation would cover only severe losses from specific operations approved by the Government, and that this has never happened. The EXIM Bank is under the supervision of the Ministry of Finance.

94. The EXIM Bank offers several types of export-credit insurance covering commercial and political risks (not exchange rate fluctuations). It is the only financial institution providing short-term insurance. In February 2008, the Bank introduced its Exim Flexi export-credit insurance, which offers reduced premiums and faster approval, and covers up to 90% of loss realized. In addition, in March 2009, the Bank launched the EXIM 4 SMEs, an export-credit insurance scheme with discounted premium rates for small and medium-sized enterprises with export sales not exceeding B 100 million a year. In September 2009, the EXIM Bank joined in a Portfolio Guarantee Scheme with the Small Business Credit Guarantee Corporation (SBCG) to provide guarantees against non-performing loans (NPLs). Under this scheme, the EXIM Bank is able to expand its credits to SME exporters, with a required collateralized amount not exceeding 30% of the credit line.<sup>67</sup> An export credit facility plus premium-fee credit-insurance is available for exporters of goods destined for the ASEAN market and to China, Japan, Republic of Korea, India, Australia, and New Zealand.<sup>68</sup>

95. The EXIM Bank used to operate the Merchant Marine Financing scheme to provide credit to merchant marine businesses to buy or renovate ships. The programme, notified to the WTO SCM Committee<sup>69</sup>, was terminated in 2008.

96. At end 2010, on aggregate the EXIM Bank had approved B 159.4 billion in loans and B 18.3 billion in export credit insurance and investment insurance. The outstanding loans as of year-end 2010 amounted to B 56.5 billion and export credit insurance and investment insurance to B 33.3 billion. The Bank made a net profit of B 145 million in 2010, and its total assets were B 67.9 billion.<sup>70</sup> During the review period, the Bank continued to expand its domestic and overseas networks with other financial institutions with the aim of promoting Thai exports and investments.

#### **(4) OTHER MEASURES AFFECTING INVESTMENT AND TRADE**

##### **(i) Taxation**

97. In 2009/10 taxes represented about 79%, or B 1,614 billion, of total government revenue. The Revenue Code sets out most of the legal provisions covering tax in Thailand with the Revenue Department responsible for implementing the law and collecting tax in most cases. The main exceptions are excise tax collected by the Excise Department, customs duties collected by the Customs Department, and local taxes collected by the local administrative organizations. The Fiscal Policy Office in the Ministry of Finance is responsible for policy. In 2001, the Revenue Department began the introduction of the e-Revenue, and taxpayers can now process their returns and make payments on-line.<sup>71</sup>

<sup>66</sup> Section 23 and section 24 of the EXIM Bank of Thailand Act B.E. 2536 (1993).

<sup>67</sup> EXIM Bank of Thailand (2009).

<sup>68</sup> For terms and conditions for this facility see EXIM Bank online information. Viewed at: <http://www.exim.go.th/en/services/asianPlus6.aspx>.

<sup>69</sup> WTO document G/SCM/N/155/THA, 12 November 2007.

<sup>70</sup> Information provided by the EXIM Bank. See also EXIM Bank of Thailand (2009).

<sup>71</sup> Revenue Department (2010).

## (a) Direct taxes

98. Direct taxes on personal and corporate income represent around 42% (Table III.7) of total tax revenue.

99. Personal income tax in Thailand is levied on individuals, ordinary partnerships, or undivided estates and is charged on regular income, including dividends, interest on deposits in banks in Thailand, shares of profit, gains from transferring shares, rents, contracts, etc. A wide range of deductions and allowances is permitted, and the income tax rate is applied progressively with a top rate of 37% on annual incomes (net of deductions and allowances) over B 4 million. Income from dividends and interest payments from government bonds or financial institutions that are specified by law for lending to promote agriculture, commerce or industry, may be excluded from the calculation of income tax, provided a withholding tax is paid at source.<sup>72</sup>

100. Corporate income tax is levied on Thai companies on their worldwide net profits and on foreign companies, with some exceptions, on net profits from business in Thailand. A number of exceptional allowances are applied in calculating taxable profit, including 200% of expenses on research and development, job training, and equipment for disabled persons. In addition, initial capital allowances of 40% are applied to machinery and computers for small and medium-sized enterprises. The rate of tax varies from 10% to 30% depending on the size of the company, whether it is listed on the stock exchange or the Market for Alternative Investment.<sup>73</sup> Net profits from petroleum operations are taxed at 50%.

**Table III.7**  
Central government tax revenue by source, 2005/06-09/10  
(B million)

	2005/06	2006/07	2007/08	2008/09	2009/10 <sup>a</sup>
Total tax revenue	1,317,277	1,374,438	1,493,384	1,370,973	1,613,942
Taxes on income and profit	576,667	614,883	712,742	638,396	682,860
Payable by individuals	159,347	177,205	187,471	177,896	187,687
Payable by corporations and other enterprises	417,321	437,678	525,271	460,500	495,173
Taxes on goods and services	633,065	659,708	674,131	645,395	826,756
General taxes on goods and services	310,078	288,073	332,392	277,242	346,874
Value-added taxes	279,566	288,073	332,392	277,242	346,874
Sales Tax	30,512				
Excise tax	297,702	326,984	308,517	338,262	448,282
Profits of fiscal monopolies	5,835	8,210	6,095	10,170	4,879
Taxes on specific services	16,297	34,085	24,831	17,549	22,397
Taxes on use of goods, permission to use goods	3,154	2,355	....	2,173	4,323
Taxes on international trade	97,845	91,605	96,537	76,882	92,843
Import duties	93,748	87,440	96,041	76,482	92,675
Export duties	3,880	4,164	497	400	168
Other taxes	9,551	8,243	9,974	10,300	11,484

a Preliminary.

Source: Ministry of Finance online information. Viewed at: [http://dw.mof.go.th/foc/gfs/database/C1\\_CentralGovernments.html](http://dw.mof.go.th/foc/gfs/database/C1_CentralGovernments.html) [May 2011].

<sup>72</sup> For further information on personal income tax see Revenue Department online information. Viewed at: <http://www.rd.go.th/publish/6045.0.html> [May 2011].

<sup>73</sup> For further information on corporate income tax see Revenue Department online information. Viewed at: <http://www.rd.go.th/publish/6044.0.html> [May 2011].

101. Foreign companies engaged in international transport or receiving income from Thailand while not engaged in business in the country pay tax at 3% on gross receipts while foreign companies disposing of profit out of Thailand pay tax at 10% on the amount disposed.<sup>74</sup>

102. The Specific Business Tax (SBT) applies to certain types of activities that are exempt from VAT, such as banking, life insurance, real estate, pawn brokering, and repurchasing agreements. The tax is applied to total income from these activities at 2.5% or 3% depending on the activity.<sup>75</sup>

(b) Indirect taxes

*Excise duties*

103. Excise duties are an important source of government revenue contributing over a quarter of the total tax take. The range of goods subject to excise duties is quite broad, covering 22 different categories, including telecommunications services and ozone depleting substances as well as alcohol, cigarettes, cars, and motorcycles.

104. The rate of excise duty varies from one product to another and may be *ad valorem*, specific, or the higher of an *ad valorem* or a specific duty. The *ad valorem* rates can be as high as 90% (for cigarettes).<sup>76</sup> The excise duty on cars varies depending on several factors including engine size, power, and type of fuel. *Ad valorem* excise duties are based on the c.i.f. value of imports plus import duties and additional fees. Excise duties on domestic production are based on the ex-factory price of the goods or gross receipts of the service.

105. It would appear that, in some cases, different excise duties are imposed on similar products, for example, some distilled spirits ("special spirits") have an excise duty of B 400 per litre of pure alcohol, while alcohol mixtures are taxed at B 300 and white spirits at B 120 per litre of pure alcohol. However, according to the authorities, duties on alcoholic beverages are currently under reform with the objective of promoting transparency and equity.

*Value-added tax*

106. Value added tax accounts for more than a quarter of total tax revenue. The standard rate of VAT is 7% and applies to all goods and services, with exemptions only for books, education, hospitals, unprocessed agricultural products, fertilizers, animal feeds, pesticides, and certain other social goods and services. Also exempted are small businesses with a turnover of less than B 1.8 million, goods exempted from import duties, and imports intended for re-export. VAT on imports is charged on the c.i.f. price plus import duty plus excise duty plus other taxes and fees (if any). A zero rate of VAT is charged on exports of goods and services, air and sea vessels engaged in international transport, and the supply of goods and services between bonded warehouses or enterprises located in free zones (section (3)).<sup>77</sup>

<sup>74</sup> Oxford Business Group (2011), p. 241; and Sections 67 and 70 of the Tax Code.

<sup>75</sup> For further information on the Special Business Tax see Revenue Department online information. Viewed at: <http://www.rd.go.th/publish/6042.0.html> [May 2011].

<sup>76</sup> For the various rates of excise duties (in Thai) see Excise Department online information. Viewed at: [www.excise.go.th](http://www.excise.go.th); and, for some products (in English) Thai Board of Investment online information. Viewed at: [http://www.boi.go.th/english/how/tax\\_rates\\_and\\_double\\_taxation\\_agreements.asp](http://www.boi.go.th/english/how/tax_rates_and_double_taxation_agreements.asp) [May 2011].

<sup>77</sup> Revenue Department online information. Viewed at: <http://www.rd.go.th/publish/6043.0.html> [May 2011].

107. It has been noted that there are some inconsistencies between the application of VAT on imports and on domestically produced cigarettes, resulting in a higher tax charge on imports.<sup>78</sup>

(c) Paying taxes

108. In addition to income tax, excise duties, and value added tax, companies and individuals are also potentially liable for stamp duties and local taxes. Although in many cases the rates of tax are not necessarily high the structures of different taxes, particularly excise duty, are complex and completing forms and estimating tax liabilities is time-consuming. According to reports, in 2010 it took 264 hours to prepare, file, and pay taxes, which was well above the East Asia/Pacific region average of 218 hours and contributed to Thailand's low ranking of 91 out of 183 economies.<sup>79</sup> However, as already noted, a considerable effort has been made to simplify and facilitate tax assessment, filing of returns, and payments, with many documents available for completion on-line.

(ii) Investment incentives

109. There has been no substantial change to the broad range of incentives offered for investment. Most of the incentives are tax-related but a number of legal guarantees and other provisions are in place to encourage investment. The non-tax incentives include permits to own land and to transfer money out of Thailand. Despite the wide range of incentives, Thailand continues to maintain a number of restrictions on foreign shareholdings, in particular, projects in agriculture, animal husbandry, fisheries, mineral exploration, and mining, as well as certain services, including some telecommunications and financial services (Chapter IV(4)) and those related to land trading, media, and trading in antiques. In these cases at least 51% of registered capital must be in Thai hands.

110. As notified the WTO Committee on Subsidies and Countervailing Measures<sup>80</sup>, Thailand's basic legislation on investment promotion is contained in the Investment Promotion Act B.E. 2520 (1977) as amended by the Investment Promotion Act (No.2) B.E. 2534 (1991), and the Investment Promotion Act (No.3) B.E. 2544 (2001).<sup>81</sup>

111. In November 2009, the Board of Investment (BOI) opened the "One Start One Stop" centre, which brought together all the state agencies responsible for the permits and licences necessary to establish an enterprise and undertake investment in Thailand. In order to qualify for tax incentives by the BOI, a project must meet the following criteria:

- have value-added components of at least 20% of sales revenue, except for the manufacture of electronic products, and agriculture-related projects;
- have a debt to equity ratio of no more than three to one for a new project, while expansion projects are considered on a case-by-case basis;
- only new machinery is installed, while used machinery may be used only if certified as reliable and approved by the BOI;
- provision is made for environmental protection; and
- projects with investment capital of more than B 80 million must submit a feasibility study to the BOI for approval.

<sup>78</sup> WTO documents DS371/\*, Panel and Appellate Body reports, "Thailand - Customs and Fiscal Measures on Cigarettes from the Philippines".

<sup>79</sup> World Bank Group online information, "Doing Business". Viewed at: <http://www.doingbusiness.org/> [May 2011].

<sup>80</sup> WTO document G/SCM/N/186/THA, 12 November 2009, p.3-4.

<sup>81</sup> For the consolidated legislation (in English) see BOI online information. Viewed at: [http://www.boi.go.th/english/download/boi\\_forms/proact\\_eng.pdf](http://www.boi.go.th/english/download/boi_forms/proact_eng.pdf) [May 2011].

112. The incentives granted to investment projects depend on the region of the country and the location of the project. In all cases, approved projects qualify for a five-year exemption from import tariffs on raw material and essential goods used in manufacturing exported products. In addition:

- (a) in Zone 1, i.e. the more developed areas (Bangkok and the bordering provinces)<sup>82</sup>, the incentives include:
- a 50% reduction in import tariffs on machinery where the tariff is more than 10%; and
  - for projects inside industrial estates or promoted industrial zone, a two year exemption for investments of more than Bt 10 million in industrial zones or three years if the project succeeds in getting ISO 9000 or 14000 certification within two years of start-up.
- (b) in Zone 2, i.e. the provinces around Zone 1 plus Phuket in the south<sup>83</sup>:
- a 50% reduction in import tariffs on machinery where the tariff is more than 10% or, for projects located within industrial estates or promoted industrial zones, exemption; and
  - a three-year exemption from corporate income tax, or a six-year exemption for projects inside industrial estates or promoted industrial zone with capital investment of more than B 10 million in industrial zones or seven years if the project succeeds in obtaining ISO 9000 or 14000 certification within two years of start-up.
- (c) in Zone 3, which covers the rest of the country:
- a seven-year exemption from corporate income tax for projects with a capital investment of at least B 10 million or eight years if the project succeeds in obtaining ISO 9000 or 14000 certification within two years of start-up;
  - an additional 25% capital allowance on the cost of infrastructure or construction costs over a period of up to ten years;
  - a 50% reduction in corporate income tax on profits for five years after the exemption period;
  - twice the cost of electricity and water may be counted against revenue for ten years from the date of first revenue;
  - a reduction of 75% on import tariffs for five years on raw materials and essential goods that cannot be sourced in Thailand and are used in manufacturing for the domestic market; and
  - in addition, projects in some provinces in Zone 3 qualify for further incentives, such as a double allowance for the cost of transport, and in some others, projects do not qualify for the reduction in import tariffs for sales to the domestic market.

113. Companies may qualify for incentives for relocating to less developed zones and for specific activities. In April 2010, the BOI announced the introduction of a set of tax-based incentives for investments in sustainable development that apply throughout the country except in Bangkok (BOI Announcement No. 2/2553). The incentives are similar to those available for investment projects in Zone 3 and cover a wide range of activities relating to biofuels, energy conservation, high technology

<sup>82</sup> Bangkok, Nakhon Pathom, Nonthaburi, Pathum Thani, Samut Prakan, and Samut Sakhon.

<sup>83</sup> Ang Thong, Ayutthaya, Chachoengsao, Chon Buri, Kanchanaburi, Nakorn Nayok, Ratchaburi, Samut Songkhram, Saraburi, Suphanburi, Phuket, and Rayong.

products, agriculture equipment, and biotechnology. Incentives are also available under the Skill, Technology and Innovation (STI) Scheme (BOI Announcements No.3/2549, 6/2552 and 11/2552), and to promote research and development cooperation between the industrial sector and educational institutions (Announcement No. 1/2550).<sup>84</sup>

114. According to the authorities, the tax forgone on BOI approved investments is hard to quantify and they were unable to provide an estimate.

115. Foreign investment in Thailand fell sharply in 2009 following the global financial crises. However, despite civil unrest, it picked up again in 2010 although the value of investment remained well below the level in 2007 (Table III.8). In September 2009, following a ruling by the Administrative Court, a number of projects in the Map Ta Phut industrial zone were suspended because health and environmental studies had not been completed and public hearings had not been held. The Supreme Administrative Court allowed all but two projects to resume by September 2010 and the Government started to set up an independent authority to oversee health impacts of investment projects.<sup>85</sup>

**Table III.8**  
**Investment in BOI approved projects**

	2007	2008	2009	2010
Total investment (number of projects)	1,342	1,253	1,003	1,566
Total investment (million Baht)	744,491	499,727	281,385	491,279
Total foreign investment (number of projects) <sup>a</sup>	836	838	614	856
Total foreign investment value (million Baht)	505,612	351,142	142,077	279,233
- 100% Foreign (number of projects)	479	496	361	558
- 100% Foreign (million Baht)	238,004	159,771	87,736	183,551
- Joint-Venture (number of projects) <sup>b</sup>	357	342	253	298
- Joint-Venture (million Baht)	267,608	191,371	54,341	95,682
100% Thai (number of projects)	452	400	344	629
100% Thai (million Baht)	220,369	133,408	73,697	156,741
Other investment (number of projects) <sup>c</sup>	54	15	45	81
Other investment (million Baht)	18,510	15,177	65,611	55,305

Note: Foreign investment projects refer to projects with foreign capital of at least 10%. Joint-venture projects refer to joint projects between local Thai investors and foreign partners with foreign capital of at least 10%. Other investment projects refer to joint ventures between local Thai investors and foreign partners with foreign capital of less than 10%.

Source: International Affairs Bureau, BOI.

116. The BOI has never invoked Section 49 or 50 of the Investment Promotion Act, which authorize it to protect investments from foreign competition by charging additional import fees up to 50% of the insurance and freight charges for up to a year or, if this is not sufficient, banning imports of similar products.

### (iii) Competition policy

117. There has not been any major change in Thailand's competition policy since its last Trade Policy Review. The basic legislation regulating anti-competitive practices remains the Trade

<sup>84</sup> BOI online information. Viewed at: [http://www.boi.go.th/english/about/law\\_and\\_regulations.asp](http://www.boi.go.th/english/about/law_and_regulations.asp) [May 2011].

<sup>85</sup> Economist Intelligence Unit (2010), p. 24.

Competition Act B.E. 2542 (1999).<sup>86</sup> In addition, several other Acts may affect competition by seeking to protect the consumer and by affecting how businesses behave and interact, such as:

- the Unfair Contract Terms Act B.E. 2540 (1997), which provides a legal basis on which the courts determine whether the terms of a contract are unfair and gives them the power to intervene by limiting or voiding such unfair terms<sup>87</sup>;
- the Prices of Goods and Services Act B.E. 2542 (1999), which gives legal basis for price controls and prescribes certain business practices as infringements on the operation of a free market (section (iv));
- the Direct Sales and Direct Marketing Act B.E. 2545 (2002), which entered into force in 2007, regulates direct sales through the internet;<sup>88</sup> and
- the Liability for Damages Arising from Unsafe Products Act B.E. 2551 (2008), which established consumer courts and made producers and importers liable for selling unsafe products and put the burden of proof on them rather than on consumers.<sup>89</sup>

118. The Trade Competition Act is implemented by the Office of the Trade Competition Commission in the Department of Internal Trade in the Ministry of Commerce. The Commission is chaired by the Minister of Commerce and includes representatives of the Ministries of Commerce and Finance along with other members appointed by the Council of Ministers. The Act does not apply to central, provincial or local administration, state trading enterprises, farmers' groups, co-operatives or co-operative societies, or businesses prescribed by Ministerial Regulations to have an exemption from the Act. The Act prohibits several types of anti-competitive behaviour, including:

- abuse of a dominant position such as fixing buying or selling prices, applying conditions or restrictions to sales or purchases, or restricting supply of goods or services. In February 2007, the Commission defined a dominant position as being a market share of more than 50% over a 12-month period, 3 companies having a combined market share of more than 75% with each player having at least 10%;<sup>90</sup>
- mergers that may result in monopoly or unfair competition;
- agreements between businesses that amount to a monopoly, or a reduction or restriction of competition;
- agreements that restrict purchase of goods or services from overseas; and
- unfair business practices.

119. Since 1999, the Trade Competition Commission has received 77 complaints and made decisions in 66 cases (Table III.9). Some notable cases include:

- alleged excessive pricing by a cable television monopoly, which the Commission found was outside its jurisdiction and passed to the Mass Communication Organization of Thailand;

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<sup>86</sup> A tentative translation into English of the Act is available from the Department of Internal Trade. Viewed at: <http://www.dit.go.th/diteng/contentmain.asp?deptid=&catid=108> [May 2011].

<sup>87</sup> Viewed (in English) at: <http://www.coj.go.th/eng/LawsEng1/DE1.html> [May 2011].

<sup>88</sup> Viewed (in English) at: <http://www.thailawforum.com/database1/direct-sales-act.html> [May 2011].

<sup>89</sup> Viewed (in English) at: <http://www.thailawforum.com/database1/Thailand-Product-Liability-Act.html> [May 2011].

<sup>90</sup> Office of the Trade Commission (2007).

- an alleged tie-in of sales of beer with a liquor made by the same producer. The Commission found a breach of the Trade Competition Act but did not take any legal action in the absence of any notification defining a dominant position;
- allegations by domestic suppliers and retail outlets that foreign retail companies engaged in unfair business practices, such as mandatory enrolment in price promotion schemes and preferential treatment for own-brand products. The case resulted in the Commission issuing "Guidelines for Unfair Trade Practices in the Wholesale/Retail Business".<sup>91</sup> As of end-June 2011, at the request of the Commission, the Inquiry Sub-committee is investigating grounds for action in this case
- alleged exclusive dealing in the motorcycle market, where a foreign manufacturer that held a market share of 80% in Thailand, prohibited retail outlets from selling or displaying other brands in the same outlet. The Commission found this to be an unfair business practice because the unequal bargaining power between the manufacturer and retailer enabled it to impose conditions that restricted competition.<sup>92</sup>

**Table III.9**  
Cases referred to the Trade Competition Commission

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Abuse of dominant position	1	2	3	2	3	0	0	0	3	0	1	0
Mergers and acquisitions	0	0	0	0	0	0	0	0	0	0	0	0
Restrictive Agreements	0	0	1	1	8	3	2	1	1	0	0	0
Unfair trade practices	1	2	3	4	2	9	7	6	5	4	0	1

Source: Data provided by the authorities.

120. If the Commission finds a breach of the Trade Competition Act, it may refer the case to the public prosecutor who may pursue it through the courts; as of end-June 2011, only one such case has been referred to the public prosecutor.

121. Failure to comply with the Act can result in fines of up to B 6 million and imprisonment for up to three years. However, according to one report, the Trade Competition Act is seen as having little impact on business practices due to poor transparency in administration and enforcement of the law, the broad discretionary authority of the Commission, opaque rules for its implementation, and an ineffective structure and composition of the Commission.<sup>93</sup> Another report reached a similar conclusion and cited the high level of political influence and lack of independence in a Trade Commission chaired by a Minister and including representatives of trade associations that tend to represent large enterprises.<sup>94</sup>

122. The authorities stated that they had organized a number of meetings with interested parties, including the Board of Trade, the Federation of Thai Industries, lawyers, academics, and consumers, along with the ASEAN Regional Guidelines on Competition Policy, for possible revisions to the law and its implementation.

<sup>91</sup> Viewed (in English) at: [http://gis.dit.go.th/otcc/contentmain\\_en.asp?typeid=13](http://gis.dit.go.th/otcc/contentmain_en.asp?typeid=13) [May 2011].

<sup>92</sup> Nikomborirak (2008).

<sup>93</sup> Mayer Brown JSM (2010).

<sup>94</sup> Nikomborirak (2008).

**(iv) Price controls**

123. The Prices of Goods and Services Act B.E. 2542 (1999) established a Central Commission on Prices of Goods and Services (CCP) in the Department of Internal Trade (DIT) in the Ministry of Commerce. The Commission is chaired by the Minister of Commerce and includes representatives from the private sector and academics.<sup>95</sup> The Commission has the authority to set out the goods and services subject to price controls, and to set controls for the sale or purchase prices on these goods and services. It is required to ensure that there is a sufficient supply of goods and services subject to price controls to meet domestic demand, to consider complaints about unfair price practices, and to set out procedures and conditions relating to the display of prices for goods and services. In addition to the Central Commission, the Act set up provincial commissions to regulate prices in each province.

124. The CCP monitors prices of 205 goods and 20 services divided into three categories (Table III.10): the Sensitive List of goods and services whose prices are monitored daily because they are expected to increase in the near future; the Priority Watch List of goods and services that are monitored twice a week; and the Watch List of goods and services that are monitored twice a month.

125. Based on its monitoring of price fluctuations, the CCP has the power, under the Prices of Goods and Services Act, to apply price controls on goods and services. According to the authorities, the objective of applying price controls is to prevent unfair price fixing or unfair trade practices. The CCP maintains three lists of products subject to varying degrees of price control: the Controlled List of 39 goods and 2 services for which the CCP imposes maximum prices<sup>96</sup>; the Administered List of 205 goods and 20 services for which manufacturers must have approval from the Commission before raising prices or give advance notice of a change in prices; and the Price Display List of 232 goods and 47 services for which retailers must display the price of goods and services.

126. The Commission also has the power to require the producer, distributor, purchaser for redistribution, or the importer for redistribution of goods or services, to display the prices of goods and services and it may prescribe rules, procedures, and conditions for such display.

127. The previous TPR report on Thailand stated that: "In general, most manufacturers follow the DIT's requests as the DIT may take legal or administrative actions against those who do not and if the manufacturers still do not comply, their products will be reclassified into the Controlled List to more stringent requirements." According to the authorities, products in the Administered List may be reclassified onto the Controlled List when necessary and based on the circumstances of a particular case.

128. The Ministry of Commerce may also ask manufacturers and retailers to freeze or cap prices voluntarily. In February 2008, 300 producers of consumer goods agreed to freeze prices for six months and in December 2010, 200 manufacturers agreed to freeze retail prices until

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<sup>95</sup> A tentative translation into English of the Act is available from the Department of Internal Trade. Viewed at: <http://www.dit.go.th/diteng/contentmain.asp?deptid=&catid=108> [May 2011].

<sup>96</sup> Products on the controlled list include pig meat, garlic, instant coffee, rice husk, condensed milk, yoghurt, milk powder, sugar, edible oils, bread, preserved food, shampoo, detergents, washing up liquid, soap, paper cartons, printing and writing paper, adhesive paper, tissue paper, automotive batteries, motorcycle tyres, vehicle seats, cement, power cords, rebar steel, LPG, fuel oil, fertilizer, corn, cassava, animal foods, plant disease and pest products. Translated from Department of Internal Trade online information, "List of goods and services over the year 2553". Viewed at: <http://www.dit.go.th/contentdetail.asp?typeid=9&catid=102&ID=2290> [July 2011].

end-March 2011.<sup>97</sup> Although these controls are voluntary, it has been stated that the threat of applying price controls is used to encourage producers to apply voluntary caps on prices.<sup>98</sup>

**Table III.10**  
**Products and services subject to monitoring, October 2006**

List	Products
<b>Goods</b>	
Sensitive	1. Gasoline oil, 2. Diesel oil, 3. Milk powder, 4. Fresh milk, 5. Wire/cable
Priority Watch	1. Sugar, 2. Fertilizer, 3. Animal feed, 4. Tyre, 5. Cement, 6. Galvanized iron, 7. Steel rod, 8. Section, 9. Steel sheet (hot/cold/roll and stainless)
Watch	1. Fresh chicken, 2. Eggs, 3. Duck eggs, 4. Beef, 5. Pork, 6. Tiger shrimp, 7. White shrimp, 8. Short-bodied mackerel, 9. Catfish, 10. Nile tilapia, 11. Steamed short-bodied mackerel, 12. Morning glory, 13. Chinese broccoli, 14. Coriander, 15. Green onion, 16. Chilli, 17. Lemon, 18. Noodle, 19. Napa cabbage, 20. Cabbage, 21. Mustard leaf, 22. Clam mussels, 23. Rice, 24. Yogurt, 25. Soybean milk, 26. Sweetened condensed milk, 27. Sweetened creamer, 28. Instant coffee, 29. Artificial cream, 30. Ice, 31. Soft drink/soda, 32. Drinking water, 33. Canned fruit juice, 34. Instant tea, 35. Instant coffee, 36. Seal fruit, 37. Seal vegetable, 38. Instant chocolate drink (water and powdered), 39. Salt, 40. Cooking oil, 41. Fish sauce, 42. Soy sauce, 43. Vinegar, 44. Soy bean sauce, 45. Oyster sauce, 46. Ketchup, 47. Chilli sauce, 48. Sweet chilli sauce, 49. MSG (Mono Sodium Glutamate), 50. Flour, 51. Tapioca flour, 52. Thin dried noodle, 53. Glass noodle, 54. Semi instant food, 55. Seasoning, 56. Instant food, 57. Pepper, 58. Soybean sauce, 59. Coconut milk, 60. Body lotion, 61. Cleansing foam, 62. Soap, 63. Shampoo, 64. Conditioner, 65. Hair gel, 66. Hair dye, 67. Air freshener, 68. Talcum powder, 69. Detergent, 70. Cleansing detergent, 71. Stained remover, 72. White bleach, 73. Softener, 74. Iron starch, 75. Dishwashing product, 76. Toilet cleaner, 77. Floor cleaner, 78. Furniture cleaner, 79. Shoe polisher, 80. Toothpaste, 81. Toothbrush, 82. Sanitary napkin, 83. Diaper, 84. Cotton bud, 85. Battery (use for electronic appliance), 86. Razor blade, 87. Insecticides, 88. Paper pulp, 89. Craft paper, 90. Sheet board, 91. Printing paper, 92. Proof paper, 93. Toilet paper, 94. Notebook, 95. Light bulb, 96. Hair dryer, 97. Electric fan, 98. Rice cooker, 99. Refrigerator, 100. Television, 101. Electric kettle, 102. Grinding machine, 103. Iron, 104. Air conditioner, 105. Washing machine, 106. Vacuum cleaner, 107. Water heater, 108. Purifier, 109. Tape and CD player, 110. Microwave, 111. Pumping machine, 112. Passenger car, 113. Small truck, 114. Motorcycle, 115. Bicycle, 116. Lubricant filter, 117. Air filter, 118. Brake, 119. Motorcycle tyre, 120. Bicycle tyre, 121. Battery (use for vehicle), 122. UV protection film, 123. Motorcyclist helmet, 124. Wall tile and floor tile, 125. Roof tile, 126. Gypsum board, 127. Heat protection board, 128. Cement floor, 129. Mirror, 130. Cement pipe, 131. PVC pipe, 132. Aluminium pipe, 133. Aluminium extrusion, 134. Plywood, 135. Nail, 136. Painting colour, 137. Rock, 138. Sand, 139. Brick, 140. Light block, 141. Block concrete, 142. Finished concrete, 143. Concrete floor product, 144. Tank, 145. Fat screen tank, 146. Lubricant, 147. Bunker oil, 148. Bio diesel gas, 149. Cooking gas, 150. Liquefied petroleum gas, 151. Plastic basin, 152. Plastic bag, 153. Carry plastic bag, 154. Garbage bag, 155. Wrapping plastic bag, 156. NGV, 157. Analgesic, 158. Cold relief medicine, 159. Muscular pain relief, 160. Wound solution, 161. Plastic adhesive bandage, 162. Cotton, 163. Two wheel walk-behind tractor, 164. Farm tractor, 165. Lawn mower, 166. Rice combine harvester, 167. Water pump, 168. Slan, 169. Hoe, 170. Spade, 171. Hand grass shears, 172. Pesticides, 173. Pesticides sprayer, 174. Food package foam, 175. Tin plate, 176. Tin free, 177. Student bag, 178. Student uniform, 179. Student socks, 180. Student shoes, 181. Water filter, 182. Cassette tape, video tapes, compact disc, 183. Mobile phone, 184. Mobile phone battery, 185. Filling card, 186. Gold ornaments and gold bullion
<b>Services</b>	
Sensitive	Delivery services (document, package, and fax)
Priority Watch	Repair service
Watch	1. Ticket service, 2. Flower arrangement, 3. Watch, clock, and shoes repair, 4. Laundry service, 5. Barber shop, 6. Fixing clothes 7. Electronics, water, and telephone, 8. Photocopy service, 9. Develop service, 10. Parking service, 11. Refill and changing oil, 12. Pet care, 13. Gym, swimming pool, and tennis/badminton court, 14. Barber shop, 15. Cassette tapes, video tape, and compact disc, 16. Apartment, hotel and accommodation rental, 17. Book rental

Source: Department of Internal Trade online information. Viewed at: [http://www.dit.go.th/uploadnew/2007118E367\\_200\\_items.pdf](http://www.dit.go.th/uploadnew/2007118E367_200_items.pdf) [May 2011].

<sup>97</sup> Economist Intelligence Unit (2010), p. 82.

<sup>98</sup> *Business Report Thailand*, "A cap on controls", 14 May 2011. Viewed at: <http://www.businessreportthailand.com/a-cap-on-controls-12802> [May 2011].

**(v) Government procurement and countertrade**

**(a) Government procurement**

129. At present, Thailand is neither a signatory nor an observer to the WTO Plurilateral Agreement on Government Procurement. According to the authorities, Thailand is considering whether to become an observer as a possible first step towards full membership.

130. The legislative basis for government procurement in Thailand is set out in several sets of regulations, including: Office of the Prime Minister Regulations on Procurement B.E. 2535 (1992), which has been amended seven times, most recently in 2009. The Regulations are the core body of law for procurement by central government and provincial administrative bodies. The 2002 amendment made a number of changes, in particular it implemented electronic auction (e-Auction) and the 2009 amendment changed the membership of the Procurement Committees; Office of the Prime Minister Regulations Regarding Electronic Procurement B.E. 2549 (2006); Ministry of the Interior Regulations Regarding Procurement for Local Administrative Organisations B.E. 2538 (1995); The legislative acts establishing large state enterprises and other public entities with their own procurement regulations; The Public Tendering Offenses Act B.E. 2542 (1999), which covers both the private and public sectors; and Audit Committee on Fiscal and Budgetary Discipline Regulations B.E. 2544 (2001).

131. Several other pieces of legislation include provisions that could have a bearing on public procurement, such as the Royal Decree on Good Governance in Public Sector B.E. 2546 (2003), which requires government agencies to take into account the quality and maintenance costs of goods and services in awarding contracts. Similarly, the Organic Act on Counter Corruption B.E. 2542 (1999) and B.E. 2544 (2011) apply to government procurement contracts, and the National Anti-Corruption Commission (NACC) may investigate claims of corruption. In addition, some rules apply to all public procurement, such as cabinet resolutions on local preferences.<sup>99</sup>

132. For Central Government procurement, the Public Procurement Management Committee (made up of representatives of various government agencies) is responsible for oversight of the system, while the Office of Public Procurement Management in the Comptroller General's Department in the Ministry of Finance is responsible for day-to-day implementation and regulation. Other agencies responsible for the administration of government procurement include: the Bureau of the Budget (responsible for the budget planning, allocation, and evaluation); the Comptroller General's Department (budget disbursement); the Department of Special Investigation (inspection of the procurement process); the Thai Industrial Standards Institute (registration of products subject to industrial standards requirements in order to be eligible for preference margins); Office of the Auditor General (procurement audit); Office of the National Anti-Corruption Commission (inspection of the procurement process); the Administrative Court (the jurisdiction of administrative cases involving such matters as a dispute in relation to unilateral administrative acts); and the Office of Ombudsman (an alternative for complaint and bid protest).

133. The Department of Local Administration in the Ministry of the Interior is responsible for overseeing procurement by local government organizations and the State Enterprises Policy Office in the Ministry of Finance is responsible for overseeing procurement by state-owned enterprises.

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<sup>99</sup> APEC (2010), Chapter 9.

134. According to the authorities, the core principles for government procurement remain openness, transparency, fairness, efficiency, accountability, value for money, private sector participation, and local industry development.<sup>100</sup>

135. Six principal procurement methods are used in Thailand. The method used depends on several factors, including the value of the contract, the procuring entity, and the urgency of procurement:

- price agreement, or negotiation for procurements of less than B 100,000;
- price inquiry, or price search for contracts of between B 100,000 and B 2 million;
- open bidding for contracts of more than B 2 million;
- electronic bidding (e-Auction), also for contracts of more than B 2 million;
- special methods, which are used by government agencies specified in Regulations for Local Administrative Organisations B.E. 2538 (1995); and
- special-case methods for procurement contracts worth more than B 100,000 where other methods are not suitable, such as in cases of repeat procurements or where a delay may cause problems for the procuring agency.

136. The use of different methods has changed over the past few years with electronic bidding becoming more common as price search and open bidding have declined (Table III.11). In 2010, 40% of the value of tenders awarded were based on electronic bidding. However, the use of different methods varies widely from one government agency to another. Among the top seven agencies responsible for B 301 billion or over 80% of the total value of government procurement, the use of e-Auction varied from 54% of total value for the Ministry of Transport to 19% for the Ministry of Natural Resources and Environment, while price negotiation varied from 41% for the Ministry of Public Health to 3.3% for the Ministry of Defence.<sup>101</sup>

**Table III.11**  
Public procurement by method, 2005-09  
(% of price)

	2005	2006	2007	2008	2009
Negotiation	17.8	14.8	13.9	14.9	17.1
Price search	21.5	16.1	13.9	12.0	12.0
Open bidding	30.7	26.9	16.8	10.7	9.4
Electronic bidding	10.1	24.9	34.1	37.2	36.0
Special methods	12.3	11.6	14.1	17.0	17.0
Special-case methods	7.6	5.8	7.2	8.2	8.6
Other	0.0	5.8	7.1	6.2	6.1

Source: Khoman, S. (2010), *Thailand Public Procurement, Overview: Procurement Cases and Design Problems*, presentation at the Asia Pacific Procurement Partnership Initiative 30 November to 1 December 2010.

<sup>100</sup> APEC (2010), Chapter 9.

<sup>101</sup> The top seven were the ministries of Transport, Agriculture and Cooperatives, Defence, Education, Public Health, Natural Resources and the Environment, and the Central Fund.

**Table III.12**  
**Public procurement by agency and method, 2010**  
(Million Baht)

Agency	Negotiation	Price search	Open bidding	Electronic bidding	Special methods	Special case methods	Other	Total
Ministry of Transport	4,557	9,303	18,257	54,501	3,974	862	3,936	95,390
Ministry of Agriculture and Cooperatives	8,298	8,548	2,670	27,802	4,932	1,715	2,114	56,080
Ministry of Defence	1,778	3,877	900	16,996	18,449	11,062	55	53,119
Ministry of Education	10,176	12,639	3,714	14,235	4,266	805	220	46,054
Central Fund	1,136	2,367	1,115	3,559	7,321	1,037	967	17,502
Ministry of Public Health	6,970	1,937	1,221	3,363	2,556	682	61	16,790
Ministry of Natural Resources and Environment	1,492	7,870	1,740	3,044	1,389	155	523	16,213
Other public agencies	11,680	4,311	5,185	23,035	16,421	5,066	3,563	69,260

Source: Thai authorities.

137. In addition to the requirements applying to procurement methods, contracts require authorization. The level of authorization depends on the value of the contract and the method of procurement used. For procurement based on negotiation, price search or open tendering, the head of the department may authorize contracts of up to B 50 million, the Permanent Secretary for contracts of B 50-100 million, and the Minister for contracts of more than B 100 million. For special-case methods the thresholds are halved, except where prior approval has already been given by the Prime Minister or the Cabinet. A similar structure applies to procurement by local administrative organizations, for example, the mayor of a municipality may approve contracts of up to B 300 million and the Governor for contracts exceeding this value.

138. The legislation on Government procurement includes some preferences for domestic suppliers of goods and services, particularly small- and medium-sized enterprises. The Regulations on Procurement B.E. 2535 emphasize: the use of products made in Thailand and Thai producers (Part 2, Section 2, Articles 16 and 17); promote the use of Thai advisors (Article 74); and, as part of official health policy, give preferences to the Government Pharmaceutical Organization where the price differential does not exceed 3% of a reference price established by the Ministry of Public Health (Articles 60-64).<sup>102</sup> Some reports continue to state that government agencies or state enterprises have the right to accept or reject bids at any time and may also modify the technical requirements during the bidding process. The latter provision allegedly allows considerable leeway in managing tenders. It was also reported that private-sector representatives have expressed concern regarding a government decision to remove arbitration clauses from concessions and government contracts.<sup>103</sup> In the previous TPR Report on Thailand, the authorities indicated that all dispute settlement could be made through the administrative or judiciary courts governed by Thai laws.<sup>104</sup>

<sup>102</sup> Khoman (2009).

<sup>103</sup> USTR (2010a).

<sup>104</sup> The Thai authorities also noted that a procurement agency may reject the lowest price bid if there is proven evidence that the quality and qualification of items or services to be procured are not the same as those specified in the procurement documents and are not beneficial to the Government. In addition, after bidding, but before signing a contract or agreement, if it is to the benefit of the Government to alter essential details or conditions contained in the bid documents, which lead to any advantage or disadvantage among the bidders, the head of the government agency may cancel the bid. Other cases where the lowest bid may be rejected or conditions changed are also specifically set out in legislation and include wrongdoing during the bidding process, if there is a derived joint benefit between the procuring agency and the bidder, if the winning bid exceeds the budget or if the bidding specifications are discriminatory. Furthermore, the Office of the Auditor

139. In order to improve transparency, ease of use, accessibility for businesses, and public procurement policy, an electronic government procurement (e-GP) system is being developed. The first phase was completed in April 2010 and the second phase is to be introduced in August 2011; no date has been set for the third phase.

140. An Electronic Procurement Information Center (EPIC) has been set up under the first phase (e-Auction). Its five components are: a registration management centre; the operation system; an information disclosure centre; a management information system; and a help desk for users. The e-Auction provides an online sealed-bid auction system through 12 service providers licensed by the Comptroller General's Department. The second phase will extend e-GP to cover all steps of the procurement process as well as the contract management and grading systems. It is also to interface with related agencies and systems, including the Government Financial Management Information System (GFMIS), commercial banks for bank guarantees, and the Thai consultant data centre. The third phase (e-Market), is intended to create a system that integrates buyers, suppliers, distributors, and service providers.<sup>105</sup>

141. The previous Review of Thailand highlighted ongoing concerns about corruption in public procurement, which had been highlighted in several reports. Although there is a comprehensive legal and institutional framework in place to oversee public procurement it is dispersed through a number of pieces of legislation and agencies. It was in recognition of this problem that the e-Auction system was developed in addition to government and private-sector campaigns against corruption.

142. According to the authorities, one of the main tools for tackling the possibility of corruption is transparency and competition, along with fair prequalification procedures. All of Thailand's laws, regulations, and policy guidelines on public procurement are published in the *Royal Gazette* as well as being posted on several official websites. The actual procurements contracts from central government agencies must also be posted on the Thai Government Procurement website (Thai only), which also gives access to the e-Auction system and provides information on selection criteria (such as price and bidders' qualifications), the results of the auction, and details for the decision.<sup>106</sup> Thai officials are also required to abide by codes of conduct, both specifically concerning public tendering and more generally.<sup>107</sup> Bribery is a penal offence and is punishable by fines and prison sentences, while the Transaction Committee, established under the Anti-Money Laundering Act B.E. 2542 (1999), may ban any transaction where there are grounds for suspicion of bribery; assets may be frozen and forfeited.<sup>108</sup>

143. Inspection of fulfilment of procurement contracts, by the Materials Inspection and Acceptance Committee, and auditing of accounts by the Office of the Auditor General are intended to reduce the probability of corruption. Complaints may be taken to the National Anti-Corruption Commission, the Public Procurement Management Committee or the Auditor General.

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General and the Office of the National Anti-Corruption Commission has the right to revoke a bid in cases of wrongdoing during the bidding process. Appeals may be made through the head of the procuring agency, the office of the Auditor General, the Office of the National Anti-Corruption Commission or the Office of the Ombudsman.

<sup>105</sup> Comptroller General's Department (2010).

<sup>106</sup> Online information. Viewed at: [http://www.gprocurement.go.th/wps/portal/index\\_EGP](http://www.gprocurement.go.th/wps/portal/index_EGP) [May 2011].

<sup>107</sup> For example, the Anti-Money Laundering Act B.E. 2542 (1999), the Organic Act on Counter Corruption B.E. 2542 (1999), the Royal Decree on Good Governance in State Administration B.E. 2546 (2003), the Civil Service Act B.E. 2535 (1992), and the Civil Service Ethic Standards.

<sup>108</sup> Vasantasinh (2008).

(b) Countertrade

144. Countertrade and barter are no longer used for procurement, and the relevant policy regulations were repealed in early 2007. However, it has been reported that countertrades are used occasionally, for example with countries that have difficulties obtaining commercial banks to accept letters of credit.<sup>109</sup>

(vi) Intellectual property rights

145. Thailand has been a member of the World Intellectual Property Organization since 1989 and a party to the Berne Convention for the Protection of Literary and Artistic Works since 1931. Since its last Trade Policy Review in 2007, Thailand has acceded to the Paris Convention for the Protection of Industrial Property (in 2008) and the Patent Cooperation Treaty (2009).<sup>110</sup> It is not a party to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, but the authorities indicate that most of the convention's principles are already incorporated into current copyright legislation, in accordance with Article 2 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Thailand plans to accede to the Protocol relating to the Madrid Agreement Concerning the International Registration of Marks by the end of 2012; ASEAN members have agreed to do this by 2015 under the ASEAN Economic Community Blueprint.<sup>111</sup>

146. Under the WTO Doha Work Programme, Thailand has co-sponsored proposals on the relationship between the TRIPS Agreement and the UN Convention on Biological Diversity (TRIPS and CBD), where it has expressed concern about biopiracy and inappropriate patenting, and on extending beyond wines and spirits the enhanced (TRIPS Article 23) protection for geographical indications (GI extension), Thailand has identified its fragrant rice (Hom Mali or Jasmine) as one of its interests. On geographical indications, it co-sponsored an unofficial document in November 2007 proposing that Article 23 be extended to all products. On TRIPS and biodiversity, it joined a May 2008 formal proposal for the TRIPS Agreement to require patent applicants to disclose the origin of the genetic resources, associated traditional knowledge, or both, if used in their inventions (the "disclosure" proposal). In July 2008, when a group of ministers met at the WTO to try to achieve a breakthrough in the Doha Round negotiations, Thailand joined an enlarged group (the W52 Group) calling for modalities to be negotiated in parallel in three issues: the disclosure proposal, GI extension, and the multilateral register for geographical indications for wines and spirits.<sup>112</sup> In 2011 it co-sponsored proposals on "GI extension" (TN/C/W/60) and "TRIPS and CBD" (TN/C/W/59), and participated in the drafting group in the negotiations on the GI register for wines and spirits.

147. Thailand has not yet implemented the 2003 WTO General Council waiver on compulsory licensing, set up under Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health to allow compulsory licensing for exports to countries lacking their own production capacity

<sup>109</sup> Economist Intelligence Unit (2009).

<sup>110</sup> See WIPO online information. Viewed at: [www.wipo.int/treaties](http://www.wipo.int/treaties) [22 April 2011]. Thailand's Ministerial Regulation on the Application for Patent Protection to Implement the Patent Cooperation Treaty, B.E. 2552 (2009) was notified in WTO document IP/N/1/THA/2, 9 March 2010.

<sup>111</sup> Information from the Department of Intellectual Property; Nattaphol Arammuang (2008); Informed Counsel, Vol.1 No. 2, May 2010, Tilleke & Gibbins International, Bangkok; WIPO online information. Viewed at: [www.wipo.int/treaties](http://www.wipo.int/treaties) [22 April 2011]; and Economist Intelligence Unit (2010a).

<sup>112</sup> The proposals are in WTO documents: JOB(07)/190, 30 November 2007, on GI extension; TN/C/W/49, 28 May 2008, on "disclosure"; and TN/C/W/52, 19 July 2008, on the three issues. See also Thailand's statements on TRIPS and CBD in various minutes of the TRIPS Council, and Secretariat document on GI extension issues TN/C/W/25, 18 May 2005.

(the "Paragraph 6" system). Nor has it yet accepted the 2005 decision to convert the waiver into a TRIPS Agreement amendment.<sup>113</sup> However, it is preparing to amend the Patent Act and the procedure for implementing the Paragraph 6 system will be discussed and then included in the draft amendment.<sup>114</sup> The aim was to submit a draft to the Cabinet 2011, after a process that includes public consultation; however, due to the 3 July 2011 general election, during the legislative plans under the next government and Parliament were unknown at the time of writing.

148. Thailand has notified its intellectual property contact points as required by TRIPS Article 69 on international cooperation.<sup>115</sup>

(a) Legislative and institutional developments

149. As a developing country, Thailand has implemented the WTO TRIPS Agreement since 2005. Although it has been planning further legislation to strengthen the legal framework for intellectual property, no new laws have been passed since its last Review in 2007.<sup>116</sup> Legislation being prepared includes amendments to patent and optical disc laws first, followed by trademark, copyright and trade secrets legislation.<sup>117</sup> The Information Technology and Communications Ministry is also reported to be considering amending the 2007 Computer Crime Act to include provisions on intellectual property infringement.<sup>118</sup>

150. Under the Ministry of Commerce, the Department of Intellectual Property (DIP), with around 400 staff and a budget of B 316m (2011), is responsible for implementing laws and initiating reforms on intellectual property protection covering copyrights, trade marks, patents, integrated circuit topographies, geographical indications, trade secrets, optical disc production, traditional knowledge, and other subjects. This includes promoting the protection, creation, management, and commercial exploitation of intellectual property (including the protection of foreign intellectual property), registering intellectual property under international agreements, arbitrating disputes, and suppressing infringements in cooperation with other agencies.<sup>119</sup> The department is studying the options for turning itself into a self-regulatory body, looking at models in some other ASEAN countries. One of the objectives is to increase financial independence so that more examiners can be hired, and to reduce the backlog of patent and trade mark applications.<sup>120</sup>

151. The DIP is the focal point for the Government's Creative Thailand project, involving the public and private sectors. For this, it drafted a Creative Economy project, inaugurated in August 2009, whose objectives include making Thailand a hub for creative industries in the ASEAN region, and increasing creative industries' contribution to GDP from 12% to 20% by 2012. Officials say that the project highlights the need for policy to take another track, in parallel with enforcement, which

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<sup>113</sup> See WTO online information. Viewed at: [www.wto.org/tripshealth](http://www.wto.org/tripshealth), and WTO document IP/C/57, 10 December 2010 on the "Paragraph 6" review.

<sup>114</sup> Information from the Department of Intellectual Property.

<sup>115</sup> WTO online information, "Members' Transparency Toolkit, TRIPS". Viewed at: [www.wto.org/trips](http://www.wto.org/trips) [22 April 2010].

<sup>116</sup> English translations of Thailand's intellectual property laws and related legislation, regulations, and treaties are available in the World Intellectual Property Organization's database, WIPO Lex. Viewed at: <http://www.wipo.int/wipolex/en/profile.jsp?code=TH>. Explanations of the laws can be found in Department of Intellectual Property (2010).

<sup>117</sup> Information from the Department of Intellectual Property; and Vachanavuttivong (2010). Some drafts are available in Thai from the Department of Intellectual Property online information. Viewed at: [www.ipthailand.go.th](http://www.ipthailand.go.th) [23 April 2011].

<sup>118</sup> Mokkhavesa (2010).

<sup>119</sup> Department of Intellectual Property (2010) and (2011).

<sup>120</sup> Information from the Thai authorities; and Economist Intelligence Unit (2010).

was originally the sole focus. Separately, the DIP has also set up an online Intellectual Property Central Market, for rights holders to trade their intellectual property. The department highlights 4 out of 925 works that were traded by January 2010: design patents for a nano noise filter and an air purifier, and distribution rights for a petty-patented wheel lock, and for trademarked "Kesorn Mai Hom".<sup>121</sup> Since late 2007, the department has been setting up technology licensing offices at various universities to encourage the private sector to license the results of academic research. It has agreements on technology licensing with six universities.<sup>122</sup>

152. The Ministry of Science and Technology also has an Intellectual Property Management unit ("We file. We sell. We value. We do anything about IP") in its National Innovation Agency. Its role is described as a broker to promote partnerships between private companies and local researchers, and a consultant on registration and a provider of various services.

#### *Copyright and related rights*

153. There has been no change in Thailand's copyright legislation in the period under review. The law applied is the Copyright Act B.E. 2537 (1994), which gives protection for the life of the creator, plus 50 years<sup>123</sup>, except for works of applied art, which are protected for 25 years from the date of creation.<sup>124</sup> Copyright applies from the time a work is created. Registration is not required, but the Department of Intellectual Property issues certificates for notified copyrighted works. Protected works are literary (including computer programs), dramatic, artistic, musical, audio-visual, photographic, cinematographic, sound recorded, broadcast, and all other literary, scientific, and artistic materials. Authors' moral rights and performers' rights are also protected. Computer software is exempt if the copying or modification is for research, study or other personal use, and if it is not for profit.

154. If copyrights are infringed, rights holders may seek injunctions, compensation for damages, and recover investigation costs and legal expenses. Competent authorities under the Copyright Act have the right to seize pirated goods upon the request of the copyright holder and to enter any premises where they suspect these goods are being held. Penalties for direct infringement for commercial purposes range from B 100,000 to B 800,000, with prison terms of six months to four years.

155. Annual copyright notifications peaked in 2006, at 39,511 and fell by almost half in 2009 before increasing slightly in 2010 (Table III.12). The largest numbers were in musical, artistic, and literary notifications, with the fall of almost 19,000 from the peak in musical notifications accounting for almost the entire decline in the total. Sound recording notifications also fell dramatically after 2006.<sup>125</sup> This coincides with a period when the music industry was said to be struggling to compete with pirates. According to one report, EMI Thailand (one of the big four multinationals in Thailand,

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<sup>121</sup> Economist Intelligence (2010). The web address given for IP Central Market is [www.thaiipmart.com](http://www.thaiipmart.com).

<sup>122</sup> Information from the authorities; and Economist Intelligence Unit (2010a). The six are Khon Kaen, Naresuan, Prince of Songkla, Chiang Mai, Suan Dusit Rajabhat, and Thai Chamber of Commerce universities. In July 2011, Prince of Songkla University's website advertised itself as the first university in Thailand to apply for a patent through WIPO's Patent Cooperation Treaty.

<sup>123</sup> For joint authorship, copyright lasts for the life of the authors plus 50 years after the death of the last surviving author. If the author is a legal person, copyright lasts for 50 years from the date the work was created; if the work is published during the period, copyright lasts for 50 years from its first publication.

<sup>124</sup> If the work of applied art is published within 25 years of its creation, copyright lasts for 50 years from its first publication.

<sup>125</sup> Department of Intellectual Property (2010). Viewed at: [www.ipthailand.go.th](http://www.ipthailand.go.th).

with Sony-BMG, Warner, and Universal) closed its CD and DVD manufacturing in Thailand in January 2008, citing pirated discs as the cause; in addition, 20 independent Thai labels went out of business in 2006<sup>126</sup>, although other factors such a market structure in the Thai industry and the increase in legal and illegal downloading and file sharing may also have played a part.

**Table III.13**  
Copyright notifications, 2005-10

	2005	2006	2007	2008	2009	2010
Literary	1,892	1,892	1,617	2,114	3,621	4,283
Dance	4	4	18	43	26	23
Artistic	3,899	3,899	4,823	5,430	4,966	6,776
Musical	15,325	28,347	15,511	13,471	10,653	9,427
Audiovisual	575	1,709	1,172	600	790	639
Cinematography	50	16	76	24	31	61
Sound recording	1,757	2,329	282	296	290	216
Broadcasting	2	0	0	0	2	0
Others	102	1,315	853	743	607	411
<b>Total</b>	<b>22,019</b>	<b>39,511</b>	<b>24,357</b>	<b>22,721</b>	<b>20,988</b>	<b>21,836</b>

Source: Department of Intellectual Property, *Annual Reports 2009 and 2010*. Viewed at: <http://www.ipthailand.go.th>.

156. In 2010, the Cabinet instructed the Intellectual Property Department to undertake further study into making it a criminal offence to buy copyright-infringing material. Among the amendments to the Copyright Act under consideration are to make it an offence to buy pirated computer programs, sound recordings, audiovisual materials, and movies, and for property owners to knowingly allow others to use the property for piracy. Also proposed are exemptions from protection for non-commercial use by the handicapped.<sup>127</sup> The United States has cited Thailand's failure to progress on copyright law amendments as a reason for keeping it on the Priority Watch List in 2011. Among the concerns are lack of progress on landlord liability, unauthorized camcording of movies in cinemas, and failure to implement the WIPO Internet Treaties.<sup>128</sup> The Thai authorities say the Government considers WIPO's Internet Treaties to be beneficial and is planning to amend copyright law to include some of the core content of the treaties and to keep up-to-date with rapidly changing technologies.

#### Trade marks

157. The Trademarks Act B.E. 2534 (1991) remains unchanged since its amendment in 2000, which included national treatment and extended coverage to coloured and three-dimensional marks. Owners of registered trade marks are granted protection for ten years; registration may be renewed every ten years. Trade marks that are identical or similar to well-known marks may not be registered and those already registered may be revoked. Thai and foreign owners may apply to have their marks officially recorded as well-known.<sup>129</sup> Also protected are service marks, certification marks, and collective marks.

158. Applications for trade mark registration must be filed with the Department of Intellectual Property. To qualify, a trade mark must be distinctive, different from other registered trade marks, and not violate public order or morality. Goods and services are classified according to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks. The number of trade mark applications in Thailand fluctuated between 33,000 and 37,000 during 2005-10, while registrations fell from over 27,000 to about 22,000. (Table III.14). Thai applications and registrations continue to exceed those of foreign applicants.

<sup>126</sup> Natera (2008).

<sup>127</sup> Drafts are available (in Thai) from the Department of Intellectual Property online information. Viewed at: [www.ipthailand.go.th](http://www.ipthailand.go.th) [23 April 2010].

<sup>128</sup> Office of the US Trade Representative (2011).

<sup>129</sup> Vachanavuttivong (2008).

159. A draft amendment of the Trademark Act was completed in 2006. It is being revised by the Council of State (the Government's legal advisory body) under instruction from the Cabinet, before consideration by the Cabinet and ultimately Parliament. Proposed amendments include provisions for registering unconventional trade marks such as sound and scent marks.<sup>130</sup>

#### Patents

160. Thailand's patent law, the Patent Act B.E. 2522 (1979), amended in 1992 and 1999, grants national treatment to nationals of other countries that are party to any international convention that Thailand has signed. If a patent owner imports the patented products, this is considered as working the patent. The Patent Act covers inventions and designs, and products and processes. It includes full patents for inventions that are new, industrially applicable, and represent an inventive step; and petty patents, which do not require an inventive step. Terms of protection, applied from the date of filing, are 20 years for inventions, 10 years for designs, and 6 years for petty patents.<sup>131</sup> Under the Patent Act, an invention is defined as any innovation or invention that creates a new product or process, or any improvement on a known product or process. A product design is defined as any form or composition of lines or colours that gives a special appearance to a product and can serve as a pattern for an industrial or a handicraft product.

161. Under the Act (Section 9), the following unpatentable are: naturally occurring microorganisms and their components, animals, plants or extracts from animals or plants; scientific or mathematical rules or theories; computer programs; methods of diagnosis, treatment or cure of human and animal diseases; and inventions contrary to public order, morality, health or welfare.

**Table III.14**  
**Trade marks and patents, 2005-10**

	2005	2006	2007	2008	2009	2010
<b>Trade marks</b>						
Total applications	36,423	33,572	33,555	35,422	36,087	37,656
Thai	24,275	21,171	20,140	21,950	24,733	24,781
Foreign	12,148	12,401	13,415	13,472	11,354	12,875
Total registrations	27,445	24,115	24,640	21,941	22,483	21,830
Thai	18,497	15,595	14,769	12,574	11,981	13,268
Foreign	8,948	8,520	9,871	9,871	10,502	85,625
<b>Patents (inventions)</b>						
Total applications	6,340	6,261	6,818	6,741	5,867	1,925
Thai	891	1,040	945	902	1,025	891
Foreign	5,449	5,221	5,873	5,839	4,832	1,034
Total patents granted	553	1,121	948	966	846	772
Thai	62	118	118	62	59	48
Foreign	491	830	1,003	904	787	724
<b>Patents (designs)</b>						
Total applications	4,545	3,580	3,521	3,820	3,873	6,614
Thai	3,367	2,524	2,533	2,736	3,171	2,648
Foreign	1,178	1,036	988	1,085	702	966
Total patents granted	769	757	876	1,219	1,164	1,332
Thai	443	450	544	719	709	841
Foreign	326	307	332	500	455	491

Source: Information provided by the Department of Intellectual Property, directly, and *Annual Reports 2009 and 2010*. Viewed at: <http://www.ipthailand.go.th>.

162. Applications for patents must be submitted to the Department of Intellectual Property. Patent applications for inventions plummeted from over 6,000 per year at the start of the review period to about 2,000 in 2009, while for designs they were more or less steady at around 4,000, before surging

<sup>130</sup> Information from the Thai authorities; and Vachanavuttivong (2010). Draft amendments (in Thai) viewed at: [www.ipthailand.go.th](http://www.ipthailand.go.th) [23 April 2010].

<sup>131</sup> These terms of protection can be extended twice for periods of two years.

to well over 6,000 in 2010. Approvals fluctuated at around 1,000. Lack of resources in the department means that patent examinations may take over five years, and despite attempts to speed up approvals, the department was quoted as having a backlog of over 18,000 applications in late 2010.<sup>132</sup> There were more foreign applications and approvals than Thai for inventions, but the reverse for designs. Officials say this is because Thailand has a lower capacity for innovation, requiring it to be a technology importer, but greater capability in artistic creativity and design.

163. The Intellectual Property Department recently set up a sub-committee to draft an amendment to the Patent Act; it is chaired by the department's deputy director-general and included various stakeholders both inside and outside government. The draft could include provisions to implement the 2003 WTO General Council compulsory-licensing-for-export waiver under the Paragraph 6 system on TRIPS and public health. It could also set up a separate industrial design act and streamline patent examination. Officials say they expect it to be completed and submitted to the Cabinet for approval in principle by the end of 2011.<sup>133</sup>

#### *Layout designs of integrated circuits*

164. The Protection of Layout Designs of Integrated Circuits Act B.E. 2543 (2000) says a layout design must be the designer's own work and must not be commonplace. The layout design must be registered with the Department of Intellectual Property. Protection enters into force when the design is registered and a certificate is issued. The certificate is valid for ten years from the date of filing or the date of the first commercial exploitation, in or outside Thailand, whichever occurs first, but no longer than 15 years from when the layout design was completed.

#### *Trade secrets*

165. Under the Trade Secrets Act B.E. 2545 (2002), undisclosed information is only protected if it is not generally known or readily accessible within the business, if its secrecy makes it valuable, and if it is in the control of the information owners who have taken steps to keep it secret. Generally, the Government has to keep secret any confidential information it receives subject to limited exceptions. The protection lasts as long as the information remains confidential. Test data for pharmaceutical and agricultural chemicals products qualify, but Thai law does not give data "exclusivity"; the law does not prevent the data from being used for the approval of generic versions.

166. The number of industrial and commercial trade secrets notified to the Department of Intellectual Property tumbled from 1,801 in 2005 to 254 in 2010.<sup>134</sup> The reasons for the low uptake are unclear, although officials say it could be because of different perceptions about notification and its value in protecting secrets. Various sources (including the previous Review of Thailand) suggest the private sector might fear notified secrets are insecure, or they might view it as weak because of the low number of injunctions or cases brought to the Intellectual Property and International Trade Court in Bangkok as criminal charges, and 35 as civil charges. Officials point out that the notifications do not need to contain the actual secrets, only the type of secret. They add that the purpose of notifying is to create preliminary evidence that the secret exists and who the owner is, which can help with

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<sup>132</sup> Economist Intelligence Unit (2010a).

<sup>133</sup> Information from the Thai authorities; draft amendments in Thai are viewed at: [www.ipthailand.go.th](http://www.ipthailand.go.th) [23 April 2010]. Some of the proposed changes are discussed in Vachanavuttivong (2010).

<sup>134</sup> Department of Intellectual Property (2010) and (2011).

protecting the secret or "commercializing" it. The Intellectual Property Department is trying to encourage the private sector to use the notification system.<sup>135</sup>

### *Geographical indications*

167. Thailand's Geographical Indications Act B.E. 2546 (2003) protects domestic and foreign geographical indications in Thailand and includes terms associated with places as well as the place names themselves<sup>136</sup>, allowing protection, for example, for fragrant rice such as Hom Mali (Jasmine).

168. Once a term is registered, similar or identical terms must not be used if that could cause confusion or be misleading about the product's geographical origin, quality, reputation or characteristics. Thailand applies "GI extension" to a limited number of products under Chapter V of the Act: Ministerial Regulation of Geographical Indications B.E. 2547 (2003) identifies rice and silk as well as wines and spirits as products benefiting from a higher level of protection, which protects their names against goods from other geographical areas using the same or similar terms even when their true origin and qualities are clearly identified so there is no risk that anyone will be misled or confused. Protection is exempt if a term is generic or to protect public order, morals or policy. The law allows for fines of up to B 200,000 for violations.

**Table III.15**  
**Geographical indications, 2005-10**

	2005	2006	2007	2008	2009	2010
<b>Total applications</b>	<b>15</b>	<b>12</b>	<b>14</b>	<b>13</b>	<b>7</b>	<b>10</b>
Thai	14	9	12	10	5	10
Foreign	1	3	2	3	2	0
<b>Total registrations</b>	<b>3</b>	<b>8</b>	<b>8</b>	<b>1</b>	<b>9</b>	<b>0</b>
Thai	2	7	6	1	7	0
Foreign	1	1	2	–	2	0

Source: Department of Intellectual Property, *Annual Report 2009 and 2010*.

169. The Department of Intellectual Property registers Thai and foreign terms and issues permits for individuals or companies to use Thai-owned terms.<sup>137</sup> Registration is valid until it is cancelled. Among foreign terms registered are Champagne (France), the first European geographical indication to obtain registration; Cognac (France); Brunello di Montalcino and Prosciutto di Parma (Italy); Scotch Whisky (UK); and Pisco (Peru). Registered Thai geographical indications include fruits, coffee, wine, seafood, roast pork, and fragrant rice. According to the authorities, the low number of registrations compared with applications reflects the time needed to handle registration and the department's staffing constraints.<sup>138</sup>

### *Protection of plant varieties*

170. Protection under the *sui generis* Plant Varieties Protection Act B.E. 2542 (1999), which entered into force in December 1999, is for up to 27 years. It defines plant varieties eligible for protection and says that genetically modified varieties may only be registered after they are officially appraised as safe for the environment, health, and public welfare. Farmers may replant the protected varieties they have grown for their own use, if the government has announced it is promoting the

<sup>135</sup> Information from the Thai authorities; and Chokwaranun (2010). This article, which is advice for companies preparing litigation, recommends six actions to demonstrate to the court that the company has made an effort to keep the information confidential; but it does not consider notification to the department to be significant enough to include in the list.

<sup>136</sup> Tanasanti (2007).

<sup>137</sup> Department of Intellectual Property online information (in Thai). Viewed at: [www.ipthailand.go.th](http://www.ipthailand.go.th) [24 April 2010]

<sup>138</sup> Information from the Thai authorities; Tanasanti (2011); and Economist Intelligence Unit (2010a).

variety, and up to a limit of three times the original quantity that the farmer obtained. The Act is administered by the Agriculture Ministry. Thailand is not a member of International Union for the Protection of New Varieties of Plants (UPOV), and has not signed its Convention.

#### *Traditional knowledge*

171. The first form of traditional knowledge protected by law was traditional medicine, under the Protection and Promotion of Traditional Thai Medicinal Intelligence Act, B.E. 2542 (1999), administered by the Public Health Ministry. In 2002, the Department of Intellectual Property started registering traditional knowledge more broadly through an announcement citing a general administrative law.<sup>139</sup> The department recently studied the protection of traditional knowledge and artistic expressions, including a possible new law. A summary of the study, which included consultations with focus groups was published in 2008 and includes a range of views on whether ownership should be national or by local communities.<sup>140</sup> In June 2007, Thailand was one of 50 signatories of the Bandung Declaration on the Protection of Traditional Cultural Expressions, Traditional Knowledge and Genetic Resources, an outcome of the Asian-African Forum on Intellectual Property and Traditional Cultural Expressions, Traditional Knowledge and Genetic Resources.<sup>141</sup>

**Table III.16**  
Traditional knowledge notifications, 2006–10

	2006	2007	2008	2009	2010
<b>Local knowledge</b>					
Bangkok	13	13	5	91	0
Provincial	186	105	112	701	70
<b>Total local knowledge</b>	<b>199</b>	<b>118</b>	<b>117</b>	<b>792</b>	<b>70</b>
<b>Folklore</b>					
Bangkok	0	0	0	3	0
Provincial	1	16	1	13	0
<b>Total folklore</b>	<b>1</b>	<b>16</b>	<b>1</b>	<b>16</b>	<b>0</b>
<b>Total</b>	<b>200</b>	<b>134</b>	<b>118</b>	<b>808</b>	<b>70</b>

Source: Department of Intellectual Property, *Annual Report 2010*. Viewed at: <http://www.ipthailand.go.th>.

#### (b) Parallel imports

172. Parallel imports are allowed for copyrighted or trade marked goods. By contrast, a patent right holder has exclusive control over imports of the patented product or a product produced by the patented process. However, that right expires (is exhausted) if the patent owner has allowed a third party to produce or sell the product, including the right to prevent parallel imports. Right holders of integrated circuit designs also have an exclusive right to import the protected design.

<sup>139</sup> Department of Intellectual Property online information (in Thai). Viewed at: [http://www.ipthailand.go.th/ipthailand/index.php?option=com\\_docman&task=doc\\_download&gid=57&Itemid=377](http://www.ipthailand.go.th/ipthailand/index.php?option=com_docman&task=doc_download&gid=57&Itemid=377) [24 April 2010].

<sup>140</sup> Department of Intellectual Property online information (in Thai). Viewed at: [http://www.ipthailand.go.th/ipthailand/index.php?option=com\\_docman&task=doc\\_download&gid=57&Itemid=377](http://www.ipthailand.go.th/ipthailand/index.php?option=com_docman&task=doc_download&gid=57&Itemid=377) [24 April 2011].

<sup>141</sup> WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore document WIPO/GRTKF/IC/11/12; and Economist Intelligence Unit online information. Viewed at: <http://country.eiu.com/Thailand> [26 April 2011].

(c) Government use and compulsory licensing

173. Thailand's use of compulsory licensing for HIV/AIDS, heart disease, and cancer drugs<sup>142</sup>, has attracted considerable attention on all sides of the debate, both inside and outside Thailand.<sup>143</sup> Seven compulsory licences for medicines were issued during 2006-08, under Section 51 of the Patent Act and Article 31 of the TRIPS Agreement, for non-commercial use under the Government's policy of providing affordable universal healthcare. One was for heart disease, two for HIV/AIDS, and four for cancer.<sup>144</sup> The medicines were imported from India because the Government Pharmaceutical Organization, the supplier specified in the compulsory licences, could not manufacture them. In August 2010, the Government announced that it would extend the compulsory licences for the two HIV/AIDS medications until their patents expire in 2012 and 2016.<sup>145</sup> In return for the compulsory licences, the Government Pharmaceutical Organization offered to pay royalties of 0.5–5.0% of total sales value to the right holders; the lower offers were for three medicines (Efavirenz, Kaletra, and Clopidrogel) and were initial figures that could be negotiated. The Government said the compulsory licences would not affect the market for patented medicines since the generic versions would go to patients who could not afford the patented versions. It has offered to buy the patented versions if the price is no more than 5% above the generic price, an offer that has not been taken up. The cheaper drugs would also not be exported.<sup>146</sup> Since the measure took effect, the prices of Efavirenz and the Lopinavir-Ritonavir combination have fallen 3.4 and 6.4-fold respectively, and the number of people receiving Efavirenz has increased from 4,539 to 29,360 and for Lopinavir/Ritonavir from 39 to 6,246.<sup>147</sup>

174. The compulsory licences were issued by the Public Health Ministry in 2006-08. During that period some trading partners expressed concerns about compulsory licensing. The United States, was concerned about the way it was implemented, referring to a lack of transparency and due process, and the potential for increased use.<sup>148</sup> The European Commission was also concerned about the way compulsory licensing was used.<sup>149</sup> In 2007 and 2008, the Public Health Ministry released two white papers defending the use of compulsory licences for two anti-retroviral and four cancer treatment drugs.<sup>150</sup> The governments that took office after the 2007 election did not issue any new licences, the two extensions were under existing licences. According to the authorities, they tried in vain to negotiate with the patent holders, even though they did not have to do so, and that in general

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<sup>142</sup> Compulsory licensing allows someone to produce (or supply) a patented product or use a patented process without the consent of the patent owner. In Thailand, the licences were issued to the government itself, i.e. the Government Pharmaceutical Organization, which has used the licence to import all generic versions from India, but was reported to be preparing to manufacture anti-retroviral medicines Efavirenz and Lopinavir/Ritonavir in 2011 (*Bangkok Post*, 27 September 2010).

<sup>143</sup> See, for example, Rungpry and Kelly (2008); and *Bangkok Post*, 7 February, 5 March, 2 and 5 May, 21 August 2009, 15–17 June, 3 August, 27 September, 27 December 2010, and 18 January 2011.

<sup>144</sup> For cardiovascular disease: Clopidogrel (trade name Plavix). For HIV/AIDS: Efavirenz (trade name Stocrin) and Lopinavir/Ritonavir (trade name Kaletra). For cancer: Docetaxel (trade name Taxotere), Letrozole (trade name Femara), Erlotinib (trade name Tarceva), and Imatinib (trade name Glivec). See Ministry of Public Health and National Health Security Office (2007) and (2008).

<sup>145</sup> The *Bangkok Post*, 15 June 2010, reported the extension, and said that patents on Efavirenz will expire on 31 January 2012 and on Lopinavir/Ritonavir on 4 December 2016.

<sup>146</sup> Ministry of Public Health and National Health Security Office (2007) and (2008).

<sup>147</sup> *Bangkok Post*, 15 June 2010; and Economist Intelligence Unit (2010a).

<sup>148</sup> See, for example, USTR (2007); and Economist Intelligence Unit (2010a).

<sup>149</sup> European Commission (2009); and Economist Intelligence Unit (2010a);

<sup>150</sup> Ministry of Public Health and National Health Security Office (2007) and (2008).

compulsory licensing remains an option to be used as a last resort.<sup>151</sup> The latest U.S. Section 301 reports continue to cite compulsory licensing as a cause for concern, and urge Thailand to negotiate with all sides meaningfully and transparently, including with rights holders, in order to deal with health issues while encouraging innovation.<sup>152</sup>

175. The legal basis for the Thai compulsory licensing is under legislation applying separately to copyrights as well as patents. The Thai Patent Act allows it on a variety of grounds, for use by the private sector or the Government, and for all types of inventions, not only pharmaceuticals. Any person may apply for a compulsory licence three years after a patent has been granted or four years from when the patent application was submitted, whichever is later.<sup>153</sup> In addition, Section 51 of the Patent Act allows licences to be granted for government use, for example to carry out any service for public consumption or to prevent or relieve a severe shortage of food, drugs or other consumption items, or for public non-commercial use. For copyrights, any interested person may apply for compulsory licensing to translate a work into Thai or to reproduce a translation published in Thai, under special circumstances, for example for non-profit research, study or teaching.

(d) Enforcement

176. Thailand's efforts to tackle piracy and counterfeiting continue, but its major trading partners are still concerned about judicial weaknesses leading to a lack of successful prosecutions, and high levels of piracy. Piracy in Thailand includes illegal downloading from the Internet, and cable and satellite signal piracy, in addition to more traditional complaints about CDs, DVDs, camcorder recording of cinema screenings, disc-based software, and fake designer goods. According to the USTR, this is an important reason for keeping Thailand on its Section 301 Priority Watch List since 2007. The EU has also listed Thailand as one of four Category 2 priority countries (ranked according to perceived harm to the EU's competitiveness) because "enforcement remains weak in general and some areas seem to have deteriorated" such as civil, criminal, and customs procedures.<sup>154</sup> In response, the Government cites removal from the US Priority Watch list as one of its motives for clamping down on piracy. It was hoping to be moved back to the non-priority list in April 2011<sup>155</sup>, but that did not happen. The Government also considers its enforcement efforts to be consistent with its Creative Thailand and Creative Economy projects. In its Priority Watch List citation, the United States praises the Government for a continued commitment to improve protection and enforcement, the various "Creative" and public awareness projects, and partnership activities with the United States.<sup>156</sup>

177. In 2009 the Government set up the National Committee on Intellectual Property Policy, chaired by the Prime Minister, with various sub-committees and working groups dealing with investigation and suppression, and public relations, awareness, and education (including in the school curriculum). Represented on the committee are the Intellectual Property, Police, Special Investigations and Customs departments, and the Public Attorney and Intellectual Property court. An action plan aimed specifically at removing Thailand from the US Priority Watch List covers: law

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<sup>151</sup> *Bangkok Post*, 2 May 2009 and 15 June 2010. These reports also say that in 2009 the Government decided that it would not issue new licences, but there has been no official announcement and the authorities deny that this is official policy.

<sup>152</sup> Office of the US Trade Representative (2011).

<sup>153</sup> The relevant provisions are in Sections 45, 46, 47 and 47 bis of the Patent Act B.E. 2522 (1979) as amended in 1992 and 1999.

<sup>154</sup> Office of the US Trade Representative (2011); Department of Intellectual Property (2010), which is also the source for much of the information on government actions in this section; and European Commission (2009). The 2009 report added the United States and Canada among the EU's Category 3 priority countries.

<sup>155</sup> Economist Intelligence Unit (2010a).

<sup>156</sup> Office of the US Trade Representative (2011).

enforcement; revising legal procedures taken against intellectual property infringement; patent protection; eradication of intellectual property infringement on the Internet; legal measures; and cooperation with the private sector.

178. Raids involving intellectual property officials and the police continue against manufacturers and sellers of pirated products (Table III.7) in 2009, two CD manufacturing factories were raided in two provinces on the outskirts of Bangkok, and a CD and DVD copying operation was raided at a housing estate called Sue Trong (meaning "Honest"). In 2010, the enforcement agencies focused on ring-leaders and major counterfeiters nationwide, with actions taken against manufacturers and well-known outlets. They have held well-publicized ceremonies destroying the counterfeit products, including in Phuket. The Department of Intellectual Property has introduced numerous campaigns and events under names such as "Stop Piracy", "Love Thailand, Use Genuine Products" and "IP Spy". It also helps small and medium-sized companies to obtain discounted software packages to promote the use of licensed software. The words of a highly-revered monk, Luang Pho Khoon, have been adopted as a slogan for a 2011 campaign, "intellectual property infringement is a sin", through mass media advertising and merchandising.<sup>157</sup>

**Table III.17**  
**Suppression of intellectual property rights violations, 2006-10**

Legislation	2006	2007	2008	2009	2010
<b>Copyright Act</b>					
Arrests	6,459	4,614	3,215	3,781	2,487
Materials seized (items)	1,704,970	2,228,348	2,485,679	3,099,592	2,241,202
<b>Trademark Act</b>					
Arrests	3,100	2,495	2,697	3,826	2,347
Materials seized (items)	1,105,629	1,472,813	946,262	2,168,887	1,970,547
<b>Patent Act</b>					
Arrests	4	4	1	5	2
Materials seized (items)	5,208	10,045	1	46,461	513
<b>Cassette Business and Television Devices Act</b>					
Arrests	12	35	10	1	15
Materials seized (items)	7,781	34,830	4,374	3,595	35,446
<b>Customs Act</b>					
Arrests	222	628	540	667	588
Materials seized (items)	862,607	1,332,319	1,328,975	473,858	295,761
<b>Total</b>					
<b>Arrests</b>	<b>9,797</b>	<b>7,776</b>	<b>6,463</b>	<b>8,280</b>	<b>5,439</b>
<b>Materials seized (items)</b>	<b>3,686,195</b>	<b>5,078,355</b>	<b>4,765,291</b>	<b>5,792,393</b>	<b>4,543,469</b>

Source: Department of Intellectual Property, *Annual Report 2010*. Viewed at: <http://www.ipthailand.go.th>.

179. Part of the responsibility for enforcement lies with the Customs Department, whose officials may seize imported or exported goods that infringe copyrights or trade marks at the border, when asked by the rights holders or if they suspect piracy. Customs jurisdiction is not confined to border points. If they suspect that pirated or counterfeit goods are being smuggled, customs officials may invite rights owners to inspect the goods, and joint inspections take place regularly at Klong Toey Port. In order to strengthen border enforcement, the Customs Department has proposed amending the Customs Act B.E. 2469 (1926), last emended in 2005, to empower customs officers to inspect goods in transit, and transshipments, and to broaden the scope of border enforcement to cover all intellectual property rights.

180. Coordination has been improved since a December 2002 Memorandum of Understanding was signed on the Cooperation of the Relevant Government Agencies on the Enforcement of Intellectual Property Rights. The Ministry of Commerce also signed a memorandum of understanding with a number of private-sector representatives and law-enforcement groups in August 2006, to coordinate

<sup>157</sup> Information from the Thai authorities; and Economist Intelligence Unit (2010a).

efforts and cooperation.<sup>158</sup> In August 2010, inter-agency cooperation was strengthened with a new regulation from the Prime Minister's Office. This set up a new committee of senior officials from 20 agencies tasked with using every means available to handle enforcement.

181. The Intellectual Property and International Trade (IPIT) Court was set up in 1997 as a separate specialized court of original jurisdiction covering other trade issues, such as anti-dumping measures and countervailing duty, as well as intellectual property. Its purpose is to foster a fair, speedy, friendly, and equitable atmosphere for settling trade disputes and to enforce intellectual property rights effectively. It employs specially trained career and associate judges. It has its own rules and procedures to speed-up court cases, such as continuous hearings without adjournments. It introduced procedures that were new to the Thai legal system to prevent the defendant frustrating the process of justice by destroying the subject-matter of an action or documents or other relevant evidence. It offers equitable remedies and preliminary injunctions.<sup>159</sup> The court completed hearing 6,612 intellectual property cases in 2009 (6,874 in 2008). Most involved trade mark violations (2,166) and copyright infringements (2,145). Only ten involved patents. Court procedures have been shortened to 6-12 months.<sup>160</sup> Generally a fine is imposed and the goods are destroyed. But some trading partners are dissatisfied with the results. An EU report in 2009 maintains that a number of weaknesses remain, including inadequate and over-lengthy civil and criminal procedures, rare use of injunctions, a shortage of experienced judges, burdensome evidence required by Customs and, ultimately, a lack of political will and cases of corruption in enforcement in general.<sup>161</sup>

182. Private sector business lobbies continue to express concern about the extent of piracy in Thailand although they also recognize some significant reductions such as in illicit computer software and the production of pirated optical discs. The International Intellectual Property Alliance (IIPA) claimed that piracy cost businesses US\$382.9 million in 2009; in 2011, it reversed its earlier recommendation to move Thailand down from the Priority Watch List to the non-priority list. It complained that optical disc piracy remained widespread, but said that production by larger Thai factories has declined, the supply replaced by imports from other countries and production by small, home-based operators.<sup>162</sup> According to the Business Software Alliance, the percentage of software that is pirated remains high, but declined from 80% in 2005 and 2006 to 73% in 2010, compared with a 60% average for the Asia Pacific region in 2010. To put this in some perspective, the estimated US\$777 million commercial value of the pirated software put Thailand about 15th in the world in 2010, after the three major North American countries, five large EU countries, China, Russia, Brazil, India, Japan, and Indonesia, although the developed countries' piracy rates are estimated at around 20-30% of installed software.<sup>163</sup> Thai officials say that Thailand has also been praised for the four-year decline in software piracy, which is attributed to greater levels of intellectual property rights awareness and protection.

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<sup>158</sup> An important aspect of the memorandum is the obligation it imposes on department stores and landlords. When the Department of Intellectual Property advises them that a tenant has been prosecuted for intellectual property infringement, they must immediately terminate the tenant's lease. Failure to do so could lead to civil liability for landlords and tenants alike. Similar measures have been partly successful in China and Malaysia but in Thailand pirated software, music, and films remain easily available (Economist Intelligence Unit, 2010a). The proposed amendment to the Copyright Act would make it an offence for landlords to knowingly allow tenants to use the property for piracy.

<sup>159</sup> Ariyanuntaka (2010); see also WTO (2008).

<sup>160</sup> Economist Intelligence Unit (2010a).

<sup>161</sup> European Commission (2009).

<sup>162</sup> International Intellectual Property Alliance (2011); and Economist Intelligence Unit online information. Viewed at: <http://country.eiu.com/Thailand> [26 April 2011].

<sup>163</sup> Global Software Alliance (2010) and (2011).

183. According to the International Intellectual Property Alliance, the main problem with the courts is lenient criminal sentences that are not severe enough to be a deterrent, for example minimal fines, no custodial sentences, suspended imprisonment, or custodial work orders, even for repeat offenders, and a reluctance to prosecute managers or landlords instead of small distributors.<sup>164</sup>

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<sup>164</sup> International Intellectual Property Alliance (2011).