

# THAILAND

In 1996, the U.S. trade deficit with Thailand was \$4.1 billion, a decrease of \$824 million from the U.S. trade deficit of \$4.9 billion in 1995. U.S. merchandise exports to Thailand were \$7.2 billion, an increase of \$809 million (12.6 percent) from the level of U.S. exports to Thailand in 1995. Thailand was the United States' twentieth largest export market in 1996. U.S. imports from Thailand were \$11.3 billion in 1996, a decrease of \$15 million (0.1 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Thailand in 1995 was \$4.6 billion, an increase of 22.9 percent from the level of U.S. FDI in 1994. U.S. FDI in Thailand is concentrated largely in the manufacturing and petroleum sectors.

## IMPORT POLICIES

### Tariffs

In the 1996 Thai fiscal year (TFY) from October 1995 to September 1996, the average Thai tariff was 6.7 percent, calculated as a ratio of import duties collected to total imports arriving in Thailand (including imports of goods on which tariffs were waived as part of the Thai Government's program of investment incentives). This compares with a figure of 7.8 percent in TFY 1995. The difference between those figures reflects the continuation of Thailand's tariff reduction policies, designed to bring the country into line with its Association of Southeast Asian Nations (ASEAN) Free Trade Area (AFTA) and World Trade Organization (WTO) obligations. The average trade weighted tariff for dutiable items was 17.01 percent in 1996, down from 21.26 percent in 1995-96. Tariffs accounted for 14.9 percent of government revenue in TFY 1996, a decrease of 2.9 percent from 1995. This continues a downward trend that began in 1990 as a result of high growth rates and increased revenues from other sources. Thailand's obligations as a member of international trading organizations are expected to accelerate the trend.

The Thai Government is currently completing a reform of tariff schedules begun at the end of 1994. The total number of tariff rate categories has been reduced from 39 to 6 categories, with the following rates: 0 percent for certain goods such as medical equipment and fertilizer; 1 percent for raw materials, electronic components, and vehicles for international transport; 5 percent for primary and capital goods, such as machinery, tools, and computers; 10 percent for intermediate goods; 20 percent for finished products; and 30 percent for goods "needing special protection," to include such items as fabrics, clothing, refrigerators, and air conditioners. Altogether, as of the first of 1997, tariff rates on almost 4,000 items are being reduced. Overall, duties that have ranged between 30 to 60 percent are being cut to between 1 and 45 percent. The exceptions are some petrochemical products, for which the Industry Ministry has obtained a grace period of six months from the outgoing government. Therefore, petrochemicals will not conform to the assigned AFTA-agreed lower tariff rates until July 1997.

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There are other anomalies in the Thai tariff schedules. In some cases, import duties on unfinished materials have been higher than on finished products. Most of these problems are to be resolved through the adoption of the World Customs Organization's harmonized commodity description and coding system, a move now under consideration by the Thai Government. Certain items, notably some agricultural products, autos and auto parts, alcoholic beverages, and other sensitive products are not included in the roster of tariff reform. The current duty on wine is 58.2 percent ad valorem, or 19.4 Baht per liter, whichever is higher. Thereafter an excise tax formula is applied and both value-added and municipal taxes added, which translates into a 208 percent duty by the time the bottle of wine reaches the consumer. Duties on other alcoholic beverages range between 58.2 and 67 percent, with similar add-ons. The automobile tariff stands at 42 or 60 percent, depending upon horsepower, and the rate for auto parts remains at 42 percent. The excise tax has been raised on certain luxury items, such as yachts and wool carpets, to 50 percent.

### **Agriculture and Food Products**

Thailand's tariff rate quota for a selected number of agricultural products was adjusted in 1996. Despite the importance of farm products in a still heavily agricultural economy, the Thai Government is lowering tariffs beyond its WTO commitments for certain agricultural product and food products. As of October 1996 the quota for soybeans was eliminated and that for soybean meal was reduced, provided specific domestic purchase requirements are met. These steps are not required by Thailand's WTO commitments. Likewise, the quota and import duty for corn were eliminated. However, the Thai Government continues to require that imports arrive between February and June, and to subject the liberalized tariff-rate quota to domestic wholesale corn prices, which limits the effect of this measure. Rice will be subject to "safeguards" on importation and price levels, but these will be set to meet WTO standards.

Import duties on most high-value fresh and processed foods remain the main constraint to U.S. exports of these products. With the exceptions of wine and spirits, there will no longer be specific duties for most agricultural and food products and ad valorem rates are slated to decline between 35 and 50 percent under WTO rules. Nevertheless, import duties are currently high and will continue to be so following the implementation period. A notable exception was made in 1996 for raw shelled or unshelled tree nuts, when the import duty was reduced to 10 percent. Duties on many high-value fresh and processed food products will remain high even after the reductions of between 33 and 50 percent from current rates under the WTO rules. Since most pre-WTO rates are approximately 60 percent, many items will remain in the 30 to 40 percent range by the year 2004, which is rather high in comparison with Malaysia, Singapore, and Indonesia.

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

Thailand is beginning to bring its import license procedures into accord with WTO obligations. Progress has not been as fast as hoped and import licenses are still required for 42 categories of items, 23 of which are agricultural. Only new motorcycles were removed from the list during 1995-1996. Licenses are required for many raw materials, petroleum, industrial, textile, and agricultural items. All items of food for human consumption require licenses. Import licenses can sometimes be used to protect unproductive local industries and to encourage greater domestic production. Ten categories of items which do not require

licenses must nevertheless comply with the regulations of concerned agencies, which require extra fees or certificates of origin.

### **Customs Barriers**

Thailand's customs valuation procedures continue to be a barrier to U.S. exports. The Thai Customs Department enjoys an unusual degree of autonomy, and some of its practices appear to be arbitrary and irregular. The Department may use the highest previously invoiced price of any product imported from any given country as a check price, disregarding actual invoiced values in favor of this check price to arrive at an assessment of value. This practice fails to take into account differences in quality as well as seasonal fluctuations in prices of agricultural goods, and often results in over-valuation.

Many importers, both Thai and foreign, charge that Customs Department procedures are a barrier to trade because of demands for unrecorded cash at each of the many steps in the clearance procedure. Failure to produce this money can result in damaging delays. The regulations are not made clear to Thai or foreign importers, and are reported to be unevenly applied.

Foreign air couriers in Thailand must conform to restrictive regulations that require an on-board courier for express cargo clearance, but prohibit the use of on-board couriers on all-cargo aircraft. This significantly raises the cost of delivering any single shipment and has precluded certain air carriers from transporting express cargo shipments on their own aircraft. In November 1996, the Thai Customs Department undertook to examine this situation, but has not yet taken steps to correct it.

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

The Thai Food and Drug Administration (TFDA) requires standards, testing, labeling, and certification permits for the importation of all food and pharmaceutical products. This process can be a barrier due to the cost, the length of the process, and occasional demands for proprietary information.

Food licenses cost about \$600 and must be renewed every three years. Food licenses for sample food products imported in bulk usually cost between \$40 to \$120 per item, while sealed, packaged foods can cost about \$200 per item. Pharmaceutical import licenses cost about \$480 and must be renewed every year. In addition, pharmaceuticals must be registered for a fee of about \$80, and must be inspected and analyzed for another fee of about \$40 per item. The process can take more than three months to complete.

Some TFDA procedures have been streamlined, but individual cases can still take up to a year to process. This can be a meaningful delay, but more serious are the occasional demands for proprietary information. All processed foods must be accompanied by a detailed list of ingredients and a manufacturing process description. American manufacturers are reluctant to disclose trade secrets, and some American products have not reached the Thai market for this reason.

Phytosanitary standards that prohibited entry of U.S. citrus were recently removed for the products of Florida and California. Efforts are currently underway to remove the standards barring entry for Texas and Arizona citrus as well.

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### **GOVERNMENT PROCUREMENT**

In 1995, the Thai Government approved a policy requiring countertrade on government procurement contracts valued at up to 500 million Baht (\$20 million), with exceptions evaluated on a case-by-case basis. This threshold was increased to a one billion Baht (about \$40 million) in April 1996. As part of a countertrade arrangement, the Thai Government can specify markets into which commodities may not be sold (generally markets in which Thai commodities already enjoy significant access). The countertrade requirement is a disadvantage to U.S. suppliers, and the provision for a case by case approach creates a lack of transparency. Additionally, a government-promulgated software license agreement is under consideration that would severely disadvantage U.S. software companies in the Thai marketplace.

### **EXPORT SUBSIDIES**

Thailand maintains several programs that benefit manufactured products or processed agricultural products and may constitute export subsidies. These include subsidized credit on some government-to-government sales of Thai rice (on a case-by-case basis), preferential financing for exporters in the form of packing credits, tax certificates for rebates of packing credits, and rebates of taxes and import duties for products intended for re-export. In September 1993, Thailand established an export-import bank which has taken over administration of some of these programs, particularly that of packing credits. The export-import bank offers a rate of 10 percent, about three points below that of other banks.

### **LACK OF INTELLECTUAL PROPERTY PROTECTION**

Despite the passage of significant legislation protecting the rights of copyright, patent, and trademark holders in Thailand, enforcement of intellectual property rights (IPR) continues to be one of the leading trade issues between the United States and Thailand. After the Thai government enhanced protection of pharmaceutical products and passed a revised copyright law in 1994, Thailand was moved from the U.S. Special 301 "priority watch list" to the "watch list" in November 1994. After the new copyright law became effective in March 1995, the United States in July 1995 restored benefits to Thailand for 11 of the 16 GSP items previously suspended.

Since then, the Thai Government has cooperated with private industry in staging raids against IPR pirates. In September 1996, the Thai legislature passed a long-awaited law establishing an intellectual property and international trade court that legal experts and private industry believe will facilitate and expedite the prosecution of pirates. The new court should begin operations in 1997.

Problems remain, however, with aspects of the copyright law and the enforcement of existing legislation on copyrights, trademarks, and patents. The police seldom initiate action against pirates, and alleged irregularities have undermined private industry's confidence in the reliability of local police forces. To date, no one has ever served time in prison for copyright piracy or trademark counterfeiting, and fines are too low to deter offenders. Vast quantities of illicit goods continue to be sold at the retail level. Although the government sponsored major campaigns to sweep pirates from Bangkok's streets in 1993-1994, the number of arrests and seizures of illicit materials plummeted in 1995 and 1996. Seizures in 1996, for example, ran at just 12 percent of 1994 levels, according to Ministry of Commerce statistics.

### Patents

In September 1992, Thai legislation extended protection to pharmaceuticals and agricultural chemicals and increased patent protection to 20 years. In 1993, following complaints from private industry about inadequacies in the law, the Thai Government established administrative measures to provide a degree of market exclusivity for pharmaceutical products not eligible for protection under the 1992 law ("pipeline protection"), narrowed the scope of compulsory licensing provisions, and restricted the authority of the Patent Review Board. These measures, however, are not fully consistent with the growing international consensus on protecting pharmaceutical products.

Thailand is still in the process of amending its patent law to comply with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). The Thai legislature is expected in 1997 to consider a bill abolishing the Pharmaceutical Review Board. This measure would advance objectives of American manufacturers. Industry representatives report that in 1994, approximately \$70 million in sales was lost due to deficiencies in patent protection in Thailand. Estimates of losses during 1995 and 1996 due to inadequate patent protection in Thailand are not available.

### Copyrights

Thailand's new copyright law, which became effective in March 1995, brought Thailand into closer conformity with international standards under the TRIPs Agreement and the Berne Convention (Paris Act). The legislation also increased fines and lengths of sentences for offenders. With active support from U.S. industry associations, the Thai police have conducted raids on pirates in recent years. As a result, the incidence of pirated materials in the marketplace has fallen and sales of legitimate audiocassettes, videocassettes, and software have grown. Nonetheless, the vagueness of certain provisions, particularly regarding decompilation and government use of software, remain of concern. The law does not clearly define activities which constitute software infringement. Moreover, judicial proceedings are slow and actual fines imposed have not served to deter offenders. The sharp decline in police arrests and seizures in recent years has resulted in a resurgence of piracy in certain areas, such as CD-ROMs containing application software. Industry representatives report that software piracy in Thailand cost U.S. companies about \$290 million in lost sales in 1996.

### Trademarks

Amendments to the Trademark Law, enacted in 1992, provide higher penalties for infringement and extend protection to services, certification, and collective marks. While these amendments seem to have created a viable legal framework and led to some improvement in enforcement, trademark infringement remains a serious problem. U.S. companies with an established presence in Thailand and a record of sustained cooperation with Thai law enforcement officials have had some success in defending trademarks, but the process remains time-consuming and expensive. Problems are particularly acute with respect to the Trademark Appeals Board whose actions often lack transparency and consistency.

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### **SERVICES BARRIERS**

#### **Basic Telecommunications**

In the recently concluded WTO negotiations on basic telecommunications services, Thailand made commitments on all basic telecom services, and will provide market access and national treatment as of 2006. Thailand agreed to adopt pro-competitive regulatory principles in the future, and retained a 20 percent foreign investment limit on telecom services.

Currently, telecommunications services in Thailand are state-controlled, although the Thai Government has allowed increased private sector participation since 1989. Liberalization of the telecommunications market is part of the government's telecommunications master plan, which is slated to allow private sector participation in telecommunications services in all sections of the country within three to five years.

#### **Professional Services**

Under a 1979 Thai law, aliens are prohibited from providing brokerage services. Foreign ownership of Thai finance and credit firms is limited to 25 percent for companies formed after the law was passed, and 40 percent for those established previous to its enactment.

#### **Banking**

In order to conform with its WTO obligations, Thailand is undertaking a liberalization of banking regulations. In November 1996, thirty seven foreign banks were granted permission to establish Provincial International Banking Facilities (PIFB), which allows them to conduct Baht transactions. The total of foreign banking assets in Thailand recently exceeded 7.5 percent of the national total. Foreign banks are still disadvantaged in a number of ways, however, especially in the prohibition of branching. While foreign banks may operate an on-site ATM and take part in a local ATM network, they may not participate in the nation-wide ATM network without the approval of domestic Thai banks.

Foreign banks must maintain minimum capital funds of \$5 million invested in low yield government securities, or directly deposited in the Bank of Thailand. The number of expatriate management personnel is limited to six in branches and two in Bangkok International Banking Facilities (BIBF). Foreigners are limited to an aggregate maximum of 25 percent share holding in any Thai bank, but there are indications that this level may be raised, perhaps to as high as 40 percent. In December 1996, the Thai Government issued seven new BIBF licenses to replace the seven banks that were graduated in October 1996 from BIBF status to that of full service banks. However, the newly graduated banks are restricted in that they may not open additional branches and must raise their registered capital to two billion Baht, about twice the amount required of a BIBF. The Thai Government announced in January 1997 that it may raise the ceiling for foreign ownership of Thai finance companies and commercial banks from 25 percent to about 40 percent.

### Insurance

Thailand has attempted to clarify ambiguities in its law by enacting legislation which would explicitly permit the continued operation of existing foreign insurance providers in the domestic services sector. Thai law and regulations currently limit foreign equity in new local insurance firms to 25 percent or less. In June 1996, the cabinet approved a plan to raise the limit to 49 percent. This has yet to be written into law, but the new government is expected to implement the reform plan. The United States continues to work with the Thai Government on this issue.

### INVESTMENT BARRIERS

A new tax treaty between the United States and Thailand was signed in November 1996. The treaty will enter into force in 1997, after approval by the U.S. Senate and exchange of instruments of ratification. Smaller American firms, in particular, were disadvantaged by the lack of a reciprocal tax agreement between the two countries. The new treaty will provide for the elimination of double taxation and give American firms tax treatment equivalent to that enjoyed by Thailand's other tax treaty partners.

In 1997, the Thai Cabinet plans to consider the draft of a new Alien Business Law which, if enacted, would replace the current which has been in effect since 1972. The current law restricts aliens from holding a range of occupations in Thailand. The proposed legislation is expected to reduce these restrictions and to create two categories of restricted occupations. The first includes those occupations which exploit Thai natural resources or are concerned with national security. The second, which is more likely to constitute a barrier to business and investment, includes occupations in which the Thai feel that they cannot compete with foreigners and which they wish to protect, including farming, handicrafts, transportation, and construction. Foreigners are expected to be permitted to file for exceptions to these rules.

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