THAILAND

In 1997 the U.S. trade deficit with Thailand rose to $5.2 billion, up from $4.1 billion in 1996. U.S. merchandise exports to Thailand were $7.4 billion, up $146 million from the level of exports in 1996. U.S. merchandise imports from Thailand were $12.6 billion, up $1.2 billion from 1996.

The stock of U.S. foreign direct investment, calculated on a historical-cost basis, was $5.3 billion in 1996, an increase of $939 million (21.8 percent) from the level in 1995.

IMPORT POLICIES

Tariffs

In the Thai fiscal year (TFY) 1997 (October 1996 to September 1997), the average Thai tariff was 5.5 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 Royal Thai Government's (RTG) program of investment incentives. This compares with a figure of 6.7 percent in TFY 1996. The difference between these figures reflects the continuation of Thailand's tariff reduction policies, designed to bring them into line with their ASEAN Free Trade Area (AFTA) and World Trade Organization (WTO) obligations. The average trade weighted tariff for dutiable items was 15.2 percent in 1997, down from 17.01 percent in 1996-97. Tariffs accounted for 11.9 percent of government revenues during TFY 1997, compared to 14.9 percent in 1996.

Thailand is continuing with tariff reform begun at the end of 1994; although progress was impeded during 1997 due to shortfall in government revenue. The total number of tariff rate bands has been reduced from 39 to 6, with the following rates: zero 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 instant print film and certain finished products; and 30 percent for goods "needing special protection," including items such as fabrics, clothing, refrigerators, and air conditioners. Since 1997, tariff rates on almost 4,000 items were reduced. Overall, duties that had ranged between 30 to 60 percent were cut to between 1 and 45 percent.

During 1997, Thailand increased tariffs, surcharges, and excise taxes on a number of items. Tariffs on automobiles were increased to 80 percent, and tariffs for perfume and cosmetics, some leather products, crystal, jewelry, cameras, watches and clocks, pens, lighters, and spectacles are currently applied at 30 percent. In addition, a new surcharge equivalent to 10 percent of the applicable tariff is levied on imports, except those items on which the customs duty is less than 5 percent. In addition to automobiles, auto parts, alcoholic beverages, certain agricultural products and other sensitive products are not included in the current tariff reform program.

Tariffs on petrochemical products are gradually being reduced. In January 1998, the petrochemical tariff was reviewed, and reductions were affected as follows: petrochemicals from 27 to 23.5 percent, plastic pellets from 40.5 to 30 percent, and other plastic products from 40.5 to 35.25 percent. Another review is expected during mid-1998, when further reductions to 20 percent and 30 percent for petrochemicals and plastic products, respectively, are planned.

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

Agriculture and Food Products

Import duties on high-value fresh and processed foods remain the main constraint on U.S. exports of these products. With the exceptions of wine and spirits, there are no longer specific duties for most agricultural and food products, and ad valorem rates are slated to decline between 35 and 50 percent under WTO rules. Nevertheless, import duties are currently high. In particular, duties on many high-value fresh and processed food products will remain high even after the reductions of current rates by 50 percent or more under Thailand's Uruguay Round schedule. U.S. agriculture exporters are concerned that Thai tariffs on agriculture upon full implementation of Uruguay Round commitments will still remain relatively high, with bound rates on many products, such as imported frozen processed potatoes/french fries, in the 30 to 40 percent range by the year 2004.

Thailand's tariff-rate quotas for a selected number of agricultural products were adjusted in 1996. In some cases, Thailand has lowered applied tariffs on agricultural and food products below its WTO commitments. For example, in October 1996 Thailand eliminated the quota for soybeans and reduced tariffs on soybean meal, when specific domestic purchase requirements were met. For corn, however, Thailand continues to require that imports arrive between February and June. Corn is also subject to a tariff-rate quota based on domestic wholesale corn prices. Rice is subject to a "safeguard" on importation and price levels, pursuant to WTO rules.

Phytosanitary standards continue to a source of concern for the United States. After years of effort, the United States in 1995 was able to obtain Thai approval for the importation of fresh citrus fruit from Florida and California. Since then, however, efforts to obtain approval for citrus from Texas and Arizona have been underway, but have stalled for unsubstantiated technical reasons.

In addition to high tariffs, Thailand maintains substantial taxes on imported wines. These include excise, value-added and municipal taxes, which are assessed through a complex equation. The excise tax for wine was doubled from 20 to 40 percent in 1996, raised to 50 percent in 1997, and increased to 55 percent in early 1998. A case of wine with a CIF invoice value of $100 invoiced now costs more than $400 prior to retail mark-up.

Quantitative Restrictions and Import Licensing

Thailand is required to conform its import license procedures to WTO obligations. However, progress to date has not been only incremental. Import licenses are still required for 42 categories of items, 23 of which are agricultural. Licenses are required for many raw materials, petroleum, industrial, textile, and agricultural items. All items of food for human consumption require licenses. U.S. companies are concerned that import licenses can be used to protect unproductive local industries and to encourage greater domestic production. Ten categories of items for which import licenses are not required must, nevertheless, comply with ministerial regulations, and are subject to administrative fees, or certificates of origin requirements.

Customs Barriers

The Thai Customs Department enjoys an unusual degree of autonomy, and some of its practices appear to be arbitrary and irregular. The current fiscal crisis has added to the influence of this revenue-generating department, making implementation of some newly promulgated reforms difficult. The Customs 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 assess import value. This practice often results in over-valuation. It also fails to take into account differences in quality and seasonal fluctuations in prices of agricultural goods. Many foreign and Thai importers have stated that Customs Department procedures are nontransparent, arbitrary and inconsistently applied. Demands for unrecorded cash “facilitation fees” throughout various steps in the clearance procedure are common.

During 1997, at the urging of the international business and diplomatic community, the Thai Government undertook to enact some customs reforms. Although arbitrary customs valuation procedures continue to be a barrier to U.S. exports, there are signs of improvement. The Thai Customs Department has agreed to use the Harmonized System, and has begun the installation of an electronic data interchange (EDI) system. A training program for personnel to administer EDI is under way. Administrative responsibility for the EDI rests with a semi-public corporation, the Trade Siam Company, which was incorporated during the closing months of 1997. Full and effective implementation of EDI could reduce the possibility of inconsistent or arbitrary customs-related abuses and opportunities for procedural irregularities.

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 requirement can restrict trade by raising costs, lengthening the process of bringing a product to market, and additional regulatory obstacles associated with occasional demands for the disclosure of proprietary ingredient information.

Food licenses cost about $300 and must be renewed every three years. Pharmaceutical import licenses are expensive and must be renewed every year. Licenses for sample food products imported in bulk, and sealed packaged foods are also costly. Pharmaceuticals must be registered, and must be inspected and analyzed, with additional fees assessed at each step. The process can take more than three months to complete.

Effective November 1997, the registration and inspection process for pharmaceuticals may be expedited upon application and payment of a fee which is determined by the type of product under consideration. A new brand-name pharmaceutical costs 40,000 baht for each application. A request to expedite a generic drug costs 2,500 baht, and a traditional medicine costs 1,500 baht. Some TFDA procedures have been streamlined, but delays of up to a year have occurred. All processed foods must be accompanied by a detailed list of ingredients and a manufacturing process description. U.S. manufacturers are reluctant to disclose trade secrets and, as a result, some U.S. products are not marketed in Thailand for this reason.

GOVERNMENT PROCUREMENT

Thailand

In 1995, Thailand approved a policy requiring countertrade on government procurement contracts valued at more than 500 million baht, on a case by case basis. This threshold was increased to a one billion baht in April 1996. A counter purchase of Thai commodities valued at 20 to 50 percent of the principal contract may be required. As part of a countertrade deal, Thailand may also specify markets into which commodities may not be sold in order to minimize adverse effects in markets where Thai commodities already enjoy significant access. The countertrade requirement is a disadvantage to U.S. suppliers, and the provision for a case-by-case approach is nontransparent and unnecessarily burdensome.

EXPORT SUBSIDIES

Thailand maintains several programs that benefit manufactured products or processed agricultural products and may constitute export subsidies. These include subsidized credit on some government-to-government sales of Thai rice (agreed on a case-by-case basis), preferential financing for exporters in the form of packing credits, tax certificates for rebates of packing credits, and rebates of taxes and import duties for products intended for re-export. In September 1993 Thailand established an Export-Import Bank which administers some of these programs, particularly that of packing credits (usually charging interest at LIBOR plus 3.0 to 3.5 percent). In reaction to the current economic climate in Thailand, the packing credit program is being expanded for the period between October 22, 1997 through September 18, 1998. The Thai Government has approved additional packing credit loans through commercial banks totaling $500 million (at LIBOR plus 3.0 to 3.5 percent). The Thai Ex-Im bank offers a 9.0 to 9.5 percent interest rate (LIBOR plus one percent), quoted and repaid in U.S. dollars, but paid out in baht.

LACK OF INTELLECTUAL PROPERTY RIGHTS PROTECTION

Despite the passage of significant legislation protecting the rights of copyright, patent, and trademark holders in Thailand, enforcement of intellectual property rights continues to be one of the leading trade issues between the United States and Thailand. Problems remain with substantive aspects of the Thai copyright law and the enforcement of existing legislation, and large quantities of infringing goods continue to be sold at the retail level. Since November 1994, Thailand has been on the Special 301 "watch list." In September 1996, the Thai parliament passed a long-awaited law establishing an intellectual property and international trade court, which began operations in December 1997. The IPR court is intended to provide a “one-stop shop” which should make it possible to obtain a warrant, conduct a raid, and arrest and sentence an infringer in one day. Appeals procedures at the trademark and patent offices have also been streamlined. Although allegations of irregularities continue to undermine confidence in local police authorities, cooperation and coordination among enforcement officials has improved as a result of the creation of an interagency committee on the suppression of IPR piracy. Seizures of infringing materials in 1997 more than tripled over the previous year (from 168,000 to 568,000), while arrests grew by 48 percent, according to Thai Ministry of Commerce statistics.

Patents

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

Although the Thai Government recognizes importation as "working the patent," this policy position is not uniformly understood by Thai officials. The Thai Government has long promised to amend its patent law to comply with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), including the abolition of the Pharmaceutical Review Board. Due to domestic opposition and frequent changes of government, it has failed to do so. The Thai Government also refuses to exercise discretionary power to amend pending patent applications under the 1979 law. Such action would provide enhanced protection under the 1992 patent law and would permit coverage of the pharmaceutical product, as well as the production process.

Copyright

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 Bern 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 scores of raids on pirates in recent years. The incidence of pirated materials in the marketplace has fallen, and sales of legitimate audio cassettes, video cassettes, and software are growing.

Nonetheless, the vagueness of certain provisions of the law, particularly regarding decompilation and government use of software, continue to be areas of concern. The law does not clearly define what acts constitute infringement of software. Moreover, judicial proceedings are slow and the fines actually imposed are too light to deter offenders. Piracy in certain areas, such as CDs and CD-ROMs (containing application software), has increased since 1996. U.S. software producers estimate that piracy cost its members $86.5 million in lost sales of entertainment software and $75.5 million in business applications in 1997. U.S. motion picture exporters estimate damages to U.S. film makers at $19 million in 1997, and the recording industry estimates that piracy resulted in trade losses of $15 million in 1997. Book piracy remains to be a substantial target of pirates which is estimated to have cost U.S. publishers $32 million in 1997.

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 have led to some improvements 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. There are also concerns with respect to the trademark appeals board, whose actions, often lack transparency and consistency. Trademark infringers are also using Thailand as a platform to export counterfeit goods, such as apparel and watches.

SERVICES BARRIERS

Thailand

Telecommunications Services

Telecommunications services in Thailand are state-controlled, although the government has allowed increased private sector participation since 1989. Currently, at least two U.S. companies operate through minority-owned affiliates in Thailand.

The communications authority of Thailand imposes equity and revenue sharing requirements on international value added network service (IVANS) providers. The privatization of the two existing state-owned telephone companies was part of a telecommunications master plan, which was approved in late 1997. In addition, the Thai Government's agreement with the IMF contains a commitment to accelerate the privatization of state holdings in the telecommunications sector. As a first step, the two state telecommunication operators are expected to form strategic alliances with foreign operators, in preparation for liberalization of the sector in line with the country's WTO commitments.

Thailand's WTO basic telecommunications commitments cover only facilities-based services. Market access provisions become effective in 2006, predicated on passage of legislation to permit broader competition. Regulatory commitments are subject to the same conditions. Thailand committed in the WTO to permit foreign equity participation in this sector only up to 20 percent.

Accounting Services

Foreign accountants are not allowed to obtain licenses in Thailand. Consequently, the rendering of accounting services is essentially reserved to Thai nationals with foreign accountants serving only as "business consultants." Also, foreign firms may not hold more than 49 percent equity in a Thai accounting firm.

Legal Services

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

Construction, Architectural and Engineering Services

Foreign construction firms must be registered and establish a commercial presence in Thailand. The Thai Government regulates the billing rates of foreign architectural, engineering and construction firms (*e.g.*, a ceiling applies to billing rates of foreign firms). There is a nationality requirement to be licensed as an architect or engineer in Thailand; however, U.S. firms receive certain preferences under the U.S.-Thai Treaty of Amity.

Financial Services

Under a 1979 Thai law, aliens are forbidden to engage in the brokerage business. 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 formed before.

Thai law and regulations also limit foreign equity in new local insurance firms to 25 percent or less. Although the Thai government has pledged to eventually raise the limit to 49 percent, Thailand did not commit to do so in the WTO financial services negotiations.

The Thai government did make significant commitments to liberalize the banking industry in the WTO Financial Services negotiations, however. Foreigners are permitted to own up to 100 percent of Thai banks and finance companies for 10 years, and then will only have to reduce toward a floor of 49 percent as they add new capital. Partly because of the regional financial crisis, the Thai government is encouraging foreign banks to assist in the recapitalization of Thai financial institutions by taking large equity positions in them. Already, one U.S. insurance firm has taken a controlling interest in a Thai finance company, and U.S. banks have shown interest in substantial equity participation in Thai banks.

Foreign banks are still disadvantaged in a number of ways, notably limits on branching. Although foreign banks may operate an on-site ATM and take part in a local ATM network, they may not participate in the nationwide 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 (BIBFs).

INVESTMENT BARRIERS

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

The Thai cabinet has indicated it may revise the current (1972) alien business law, and to replace it with a new law during 1998. The old law restricts aliens from holding a range of occupations in Thailand. The new law 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 category, which is more likely to constitute a barrier to U.S. business and investment, includes jobs in which the Thai are not competitive with foreigners but which they wish to protect, including farming, handicrafts, transportation, and construction. Foreigners are expected to be permitted to file for exceptions to these rules.

The new law would also create a range of businesses in which foreigners would be permitted up to 49 percent ownership, to include many kinds of service-sector operations. A provision will be tabled for allowing specific businesses to be added or deleted from this list every four years, by a committee designated by the Ministry of Commerce.

Trade-Related Investment Measures

Thailand

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

OTHER BARRIERS

Several government-controlled firms are protected from foreign competition in Thailand through equity ownership limits, operating approval and other regulatory measures. However, the Thai Government's 1997 stabilization agreement with the IMF contains a commitment to accelerate the privatization of state holdings in the areas of energy, telecommunications, and transportation.

The current economic crisis has led to a “Buy Thai” campaign, which is intended to promote domestic production or locally owned and operated businesses. For example, recent procurement guidelines issued by the Ministry of Public Health include instructions for government-controlled hospitals and clinics to remove foreign-made pharmaceuticals from their formularies, or lists of drugs approved for purchase. This effectively denies foreign firms a large proportion of the Thai market for medicines. This program is expected to gather momentum throughout 1998, as the devalued baht makes imports prohibitively expensive. The preference for "Thai-owned" businesses is of great concern to foreign investors.

Allegations of impropriety in government procurement and in the Customs Department, two areas affecting U.S. business, are common. The new constitution, passed in October 1997, contains a chapter on corruption in government. The status and powers of the Office of the Counter Corruption Commission (OCCC) have been enhanced, giving it independence from all branches of government. The members of the new Commission serve for a term of nine years with no renewal, and report to their own chairman. Persons holding high political offices, and members of their immediate families, are now required to list their assets and liabilities before taking office and upon leaving office.