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TRADE SUMMARY

The U.S. trade deficit with Thailand was $9.3 billion, a decrease of $594 million over the last year. U.S. goods exports to Thailand rose by 20.2 percent to $5.8 billion, while U.S. imports from Thailand grew at a slower pace, 2.6 percent, to $15.2 billion.

U.S. exports of private commercial services (i.e., excluding military and government) to Thailand were $1.1 billion in 2002 (latest data available), and U.S. imports were $810 million. Sales of services in Thailand by majority U.S.-owned affiliates were $2.3 billion in 2001 (latest data available).

The stock of U.S. foreign direct investment (FDI) in Thailand in 2002 was about $20 billion, based on a recent survey by the American Chamber of Commerce, Thailand. According to the U.S. Department of Commerce, total accumulated U.S. FDI in Thailand on a historical cost basis was $6.9 billion in 2002, up from $6.4 billion in 2001. U.S. FDI in Thailand is concentrated largely in manufacturing, mining, and finance sectors.

FREE TRADE AGREEMENT NEGOTIATIONS

The U.S. government announced in February 2004 that it intended to initiate free trade agreement (FTA) negotiations with Thailand. Having concluded an FTA with Singapore in May 2003, the United States is seeking to advance President Bush's Enterprise for ASEAN Initiative, an initiative aimed at enhancing U.S. relations with ASEAN countries. The United States has numerous concerns about Thailand's trade and investment regime, which it hopes to address through these FTA negotiations. These include high tariffs and non-tariff barriers on both industrial and agricultural goods; restrictions on access to the services market; deficiencies in Thailand's intellectual property rights and customs regimes; and other issues.

IMPORT POLICIES

Thailand's high tariff structure remains a major impediment to market access in many sectors. The country's average applied MFN tariff rate is 14.5 percent. The highest tariff rates apply to imports competing with locally produced goods, including agricultural products, autos and auto parts, alcoholic beverages, fabrics, paper and paperboard products, restaurant equipment, and some electrical appliances. In some cases, tariffs on unfinished and intermediate products are higher than on related finished products. In the aftermath of the 1997-98 financial crisis, the Thai government increased duties, surcharges, and excise taxes on a range of "luxury" imports, including wine, passenger cars, and wool carpets. Some tariff increases have corresponded with implementation of trade liberalization measures; for example, tariffs on completely knocked down (CKD) auto kits increased from 20 percent to 33 percent when local content requirements were eliminated in the automotive industry in December 1999. Thailand also imposes a 60 percent duty on motorcycles. At the request of the U.S. Government, the Thai government reviewed its tariff classification for motion picture film imports, which established different tariff rates for the audio and video negatives, resulting in much higher duties for audio negatives. As a result of the review, a tariff rate of 10 baht ($0.25) per meter was implemented for 35 mm audio and video negative film imports.

The Thai government is behind its schedule in implementing its WTO and ASEAN Free Trade Area (AFTA) tariff reduction commitments and rationalizing its complicated tariff regime, which currently has 46 rates. Nonetheless, it continues to lower selected import duties in line with WTO and AFTA commitments, and, as of October 2003, had reduced tariffs on 1,108 items, mostly on raw materials and inputs not produced locally. In September 2003, the Thai government announced tariff reductions on 1,391 items, but these have yet to be implemented.

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Taxation

Thailand's tax administration generally is complicated and non-transparent. Excise taxes are high on some items, such as unleaded gasoline, beer, wine, and distilled spirits. In March 1999, as part of an economic stimulus package, the value-added tax (VAT) was temporarily reduced from 10 percent to 7 percent and the excise tax on fuel oil was reduced from 17.5 percent to 5 percent. The Thai government is scheduled to restore the VAT to 10 percent on October 1, 2005, but it has scheduled and annulled the VAT restoration three times since 2001.

Agriculture and Food Products

High duties on agriculture and food products remain the main impediments to U.S. exports of high-value fresh and processed foods. Under its WTO Uruguay Round agriculture obligations, Thailand committed to reduce its import duties, but agriculture is scheduled to be among the last sectors rationalized under the Thai government's plan.

Duties on imported consumer-ready food products range between 30 percent and 50 percent, the highest in the ASEAN region. Tariffs on meats, fresh fruits (including citrus fruit and table grapes) and vegetables, fresh cheese and pulses (*e.g*., dry peas, lentils, and chickpeas) are similarly high, even for products for which there is little domestic production. Frozen french fries, for example, are not produced in Thailand, yet face an unusually high tariff of 30 percent. When import duties, excise taxes, and other surcharges are calculated, imported wines face a total tax of nearly 400 percent. The excise tax on wine (made of grapes) is 60 percent of value or 100 baht per liter of pure alcohol, whichever is higher. Fermented spirits made from fruits other than grapes, *e.g.*, mangosteen, are subject to an excise tax of 25 percent of value or 70 baht per liter of pure alcohol, whichever is higher.

With the exceptions of wine and spirits, there are no longer specific duties for most agricultural and food products, and *ad valorem* rates are declining in accordance with Thailand's WTO commitments. Nevertheless, import duties on some agricultural and processed food goods are as high as 61 percent, and the average tariff rate is 24.42 percent. Moreover, duties on many high-value fresh and processed food products will remain high at between 30 to 40 percent even after reductions under WTO commitments. As of December 2002, tariffs on apples stood at 10 percent, while pears and cherries remain as high as 60 percent U.S. fruit growers estimate lost sales of up to $25 million annually from the combined effect of Thailand's high tariffs, surcharges, and a customs reference price system that often disregards the declared transaction price of these products. (See "Customs Barriers" section below).

Thailand's overall import policy is directed at protecting domestic producers, although Thailand has been relatively open to imports of feed ingredients, including corn, soybeans, and soymeal, in recent years. Still, the Thai government has issued new and burdensome requirements associated with the issuance of import permits for feed ingredients. For example, corn imports enjoy liberalized tariff rates, but the benefit of this tariff reduction has been muted by a Thai government requirement that corn imports arrive between March and June, a seasonal provision not provided for in Thailand's WTO schedule. This limitation places U.S. suppliers at a disadvantage and gives most of the market to corn from the southern hemisphere. Corn is also subject to a tariff-rate quota (TRQ); in 2003, in-quota corn imports (54,4440 mt) will be subject to a 20 percent tariff rate, while out-of-quota corn is subject to a 73.8 percent tariff. There are unlimited import quotas for soybeans, for which the import duty is 5 percent, provided that specific domestic purchase requirements are met.

In addition, the Thai government requires import license fees for meat products of approximately $114 per ton on beef and pork, $227 per ton for poultry, $114 per ton on offal that do not appear to reflect the real costs of import administration. Sanitary and phytosanitary standards for certain agricultural products also often appear to be applied arbitrarily and without prior notification. The Thai government began inspections of meat plants in supplier countries in January 2003, but has delayed implementation in some countries, including the United States.

U.S. agricultural exports of agricultural, fish, and forestry products to Thailand, which dropped dramatically in the aftermath of the 1997 financial crisis to $440 million in 1998, have recovered and reached $742 million in 2003. However, U.S. industry estimates that its potential exports to Thailand could reach as much as $900 million annually if Thailand's tariffs and other trade-distorting measures were substantially reduced or eliminated and the economy recovered to pre-crisis levels.

Automotive Sector

Thailand’s import duties and taxes are among the highest in ASEAN. In response to the financial crisis, the Thai government in October 1997 raised tariffs on passenger cars and sport utility vehicles to 80 percent, up from 42 percent and 68 percent, respectively. Current tariff rates on parts and components range from 40 percent to 60 percent, while tariffs on raw materials for parts production are 35 percent. Thailand's excise tax structure discriminates against passenger vehicles by taxing them at a rate of 35 percent to 48 percent while pickup trucks are taxed at a rate of only 3 percent. Customs valuation issues have been particularly acute in the auto sector (See "Customs Barriers" section below).

Textiles

Thailand's tariff rates for U.S. textile exports are high, ranging from 20 percent to 30 percent for most fabrics and 30 percent for most clothing and other made-up textile products. In addition, Thailand applies specific unit duties on more than one-third of all textile tariff lines, which make effective rates even higher. Thailand's current applied tariffs on some clothing products, as published on the APEC Website, are listed as 60 percent or more depending on whether a specific unit duty is applied.

Quantitative Restrictions and Import Licensing

Thailand is still in the process of changing its import licensing procedures to comply with its WTO obligations. Import licenses are required for at least 26 categories of items, including many raw materials, petroleum, industrial materials, textiles, pharmaceuticals, and agricultural items.

Imports of used motorcycles and parts and gaming machines are prohibited. Imports of other products must meet burdensome regulatory requirements, including extra fees and certificate-of-origin requirements. Thailand does not have specific measures of general application relating to non-preferential rules of origin. Imports of food, pharmaceuticals, certain minerals, arms and ammunition, and art objects require special permits from relevant ministries. Thailand requires detailed and often proprietary business information about the manufacturing process and composition of the food be provided in applications for food product registration.

Customs Barriers

Thailand took significant steps to improve its customs practices in 2003, based on discussions held under the U.S. Thai Trade and Investment Framework Agreement (TIFA). While the international business community maintains that some positive customs policy changes are slow in filtering down through the bureaucracy, most acknowledge the progress to date and recognize that the Thai government is committed to improving its customs procedures and facilitating trade.

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Thai Customs is taking steps to fully implement the transaction value methodology required by the WTO Customs Valuation Agreement through compliance with related WTO requirements, proposed legislation and improved procedures and training. As part of its effort to improve the transparency and efficiency of customs procedures, Thailand has implemented a *de minimis* threshold, exempting goods valued 1,000 baht or less from formal entry procedures and has increased the low-value informal clearance threshold to 40,000 baht (USD 1000) from 20,000 baht (USD 500). Thailand also has taken action to expand customs clearance working hours, to increase the use of electronic and paperless customs procedures, and to create an English-language version of the Customs Department website.

Despite this progress, the Thai government needs to make further progress to enhance the transparency and efficiency of its customs regime. In July 2003, Thailand formally notified the WTO of legislation passed in 2000 implementing the WTO Customs Valuation Agreement. Meanwhile, Thailand has drafted, but not yet submitted to Parliament, legislation limiting the discretion of the Customs Director General to arbitrarily increase the value of imports. Such legislation is required for Thailand to be in full compliance with WTO rules. Some industry representatives report inconsistent application of the WTO transaction valuation methodology or consistent use of arbitrary values. In addition, while Thailand has taken steps to streamline its customs appeals procedures, some businesses complain that the process still is too lengthy and not yet fully transparent.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Thailand's Food and Drug Administration (TFDA) requires standards, testing, labeling, and certification permits for the importation of all food and pharmaceutical products, as well as certain medical devices. Many U.S. companies consider the cost, duration, and complexity of the permitting processes to be overly burdensome and are concerned about the periodic demands for disclosure of proprietary information. TFDA has streamlined its procedures somewhat, but U.S. companies still report delays of up to a year. All processed foods must be accompanied by a detailed list of ingredients and a manufacturing process description, disclosure of which could potentially jeopardize an applicant's trade secrets. A labeling regime for genetically modified foods, modeled on the Japanese system, was put into effect in May 2003.

The Thailand Industrial Standards Institute (TISI) is the national standards organization under the Ministry of Industry. TISI is empowered to give product certifications according to established Thai standards and is an accredited body for ISO and HACCP certifications in Thailand. The Thai government requires a compulsory certification of 60 products in ten sectors, including: agriculture, construction materials, consumer goods, electrical appliances and accessories, PVC pipe, medical equipment, LPG gas containers, surface coatings, and vehicles.

Thailand bans large-displacement motorcycle traffic from its tollways, including large motorcycles that are engineered to be ridden safely at highway speeds. In 2000, Thailand adopted motorcycle emissions regulations that are an amalgamation of standards and tests used elsewhere in the world, resulting in standards among the most severe in the world. Enforcement of these standards has been non-transparent and even the advanced low-emission technology used by U.S. industry has difficulty meeting Thailand's standards.

GOVERNMENT PROCUREMENT

Thailand is not a signatory to the WTO Agreement on Government Procurement, although in the past Thai officials have evinced support for a WTO Agreement on Transparency in Government Procurement. A specific set of rules, commonly referred to as the Prime Minister's Procurement Regulations, governs public-sector procurement for ministries and state-owned enterprises. While these regulations require that nondiscriminatory treatment and open competition be accorded to all potential bidders, different state enterprises typically have their own individual procurement policies and practices. Preferential treatment is provided to domestic suppliers (including subsidiaries of U.S. firms registered as Thai companies), which receive an automatic 15-percent price advantage over foreign bidders in initial bid round evaluations.

A "Buy Thai" directive from the Prime Minister's office enacted in 2001 has raised additional concerns about the Thai government procurement policies. Reversing a long-standing non-discriminatory government procurement policy, "Buy Thai" has impeded market access of foreign suppliers in selected sectors, notably personal computers. While Thailand officially denies that the "Buy Thai" policy discriminates against foreign producers, specific language used in government instructions on some procurement tenders explicitly excludes foreign-made, non-Thai products from competition for bids.

A procuring government agency or state enterprise reserves the right to accept or reject any or all bids at any time and may also modify the technical requirements during the bidding process. The latter provision allows considerable leeway to government agencies and state-owned enterprises in managing tenders, while denying bidders any recourse to challenge procedures. Allegations that changes are made for special considerations are frequently made, including charges of bias on major procurements. Despite the official commitment to transparency in government procurement, U.S. companies and Thai media regularly report allegations of irregularities.

Regulations promulgated in May 2000 formalized a Thai government practice requiring a counter trade transaction on government procurement contracts valued at more than 300 million baht, on a case-by-case basis. A counter-purchase of Thai commodities valued at not less than 50 percent of the principal contract may be required. As part of a counter-trade deal, the Thai government also may specify markets into which commodities may not be sold; these are usually markets where Thai commodities already enjoy significant access. From 1994 through May 2003, 196 counter trade agreements were signed, resulting in exports valued at 33 billion baht.

EXPORT SUBSIDIES

Thailand maintains programs to support trade in certain manufactured products and processed agricultural products, which may constitute export subsidies. These include various tax benefits, import duty reductions, credit at below-market rates on some government-to-government sales of Thai rice (established on a case-by-case basis), and preferential financing for exporters. The Thai government terminated its packing credit program in compliance with WTO commitments but received an extension of its WTO exemption period for the Industrial Estate Authority of Thailand and the Board of Investment until December 2005. Low interest loans provided under the Export Market Diversification Promotion Program for exporters targeting new markets ended in December 2003.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Widespread commercial IPR counterfeiting and piracy continues at high levels, despite the passage of significant IPR legislation and a good working relationship between foreign business entities and Thai enforcement authorities. U.S. copyright industries reported an estimated annual trade loss of more than $188 million in 2002 from IPR infringement in Thailand. An increasing volume of pirated and counterfeited products manufactured in Thailand are exported. Thailand has been on the U.S. Special 301 Watch List since November 1994.

The United States and Thailand have held extensive consultations on IPR issues under the TIFA. In June 2003, the United States provided Thailand with a proposed IPR Action Plan. This plan includes detailed proposals for action to be taken on enforcement, legislative/regulatory, and judicial issues. Key among these are: (1) revisions to the optical disk legislation currently pending before Parliament and expeditious passage of this legislation; (2) a clear improvement in Thailand's IPR enforcement record through sustained, aggressive, and coordinated enforcement efforts; and (3) improvements in the draft Copyright Act amendments currently under consideration and passage of these amendments.

On the legislative front, the Thai Parliament passed a Trade Secrets Act in March 2002. The latest available draft of the Trade Secrets Act allows a government agency to disclose trade secrets to protect any "public interest" not having a commercial interest, provided the agency takes "regular measures to protect such trade secrets from unfair commercial use." The U.S. Government has raised concerns that this language would provide authorities with overly broad authority that could deny the protection of approval-related data against unfair commercial use. The Thai Food and Drug Administration and Department of Agriculture are drafting regulations to implement the Act, and public hearings on the draft are expected in May 2004. Thailand's remaining piece of legislation related to the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), a Geographic Indications Act, was passed by the Parliament in September 2003 and is scheduled to take effect in April 2004.

Thailand's IPR enforcement efforts have been inconsistent. Although conviction rates are very high, corruption and a cultural climate of leniency can complicate prosecution of cases. The frequency of raids compromised by leaks from police sources remains a concern. Pirates, including those associated with transnational crime syndicates, have responded to stepped-up levels of enforcement with intimidation against rights holders' representatives and enforcement authorities. In 2003, the Ministry of Commerce took the lead in promoting interagency cooperation on IPR enforcement issues, forging two Memorandums of Understanding between enforcement agencies (Thai police and the Thai Customs Department) and rights holders to better coordinate operations. While these agreements prompted improved retail enforcement leading up to and during the October 2003 APEC Leaders Meeting in Bangkok, retail piracy returned soon thereafter. Despite several attempts throughout 2003, the Thai government has yet to successfully sustain enforcement actions against pirate retailing and counterfeiting operations.

The Thai Parliament passed legislation in the fall of 2003 to fully authorize the establishment of the Special Investigation Department (SID). In its work on IPR enforcement, SID is expected to focus on major infringing production, warehousing and trafficking operations, as well as those activities associated with organized crime. In December 2003, the Thai Cabinet approved in principle draft amendments to the Anti-Money Laundering Act, one of which makes IPR crimes a predicate offense. This amendment would allow police and other law enforcement officials to seize and investigate funds and suspected bank accounts. These amendments are to be introduced in Parliament in 2004.

The Thai government established a specialized intellectual property court in1997, which has improved judicial procedures and imposed tougher penalties. Criminal cases generally are disposed of within 6 to 12 months from the time of a raid to the rendering of a conviction. However, authorities generally lack sufficient resources to undertake enforcement actions apart from those initiated by rights holders. Effective prosecutions can be labor-intensive for rights holders, who often investigate, participate in raids, and assist in the preparation of documentation for prosecution.

Patents

Amendments to Thailand's patent regime designed to meet TRIPS obligations entered into effect in September 1999. However, Thailand's patent office lacks sufficient resources to keep up with the volume of applications and patent examinations can take more than five years. The Department of Intellectual Property is seeking to contract out some parts of patent search for novelty and preparation of application to academic institutions in order to speed up the registration process. The increased availability of counterfeit pharmaceutical products in Thailand also is a growing concern.

Copyrights

Thailand's copyright law, intended to bring Thailand into conformity with international standards under TRIPS and the Berne Convention, became effective in March 1995. Despite efforts by Thai police at the retail, storage, production levels and by corporate end users, piracy remains a serious concern. The copyright law is ambiguous regarding decompilation, and regulations for enforcement procedures leave loopholes that frustrate effective enforcement.

The Thai government is in the process of amending the Copyright Law in order to bring it in line with the WIPO treaties. The amended draft has been approved by the Cabinet and is expected to be introduced in Parliament in 2004. Although Thai authorities undertook some action against pirate cable operators in 2003, cable piracy has continued to spread rapidly throughout the country.

In December 2003, the Thai government initiated a new policy offering amnesty to operators who agree to cease infringing actions under threat of legal action. This policy is intended as a temporary measure pending the establishment of the National Broadcasting Commission and new regulations for cable operators.

A new draft Optical Disk Control bill, in the drafting stages since 1999, passed a first reading in the House in the fall of 2003 and will be taken up by the Senate for passage in 2004. This legislation is designed to enhance the authority and capabilities of the Thai government to act against operators of illicit optical disk factories and to control the production materials and machines of legal producers. U.S. copyright industries continue to express serious concerns over the rapid and unchecked growth of optical media piracy in Thailand.

Trademarks

The Thai government amended the trademark law in 1992, increasing penalties for infringement and extending protection to service, certification, and collective marks. The Thai government also streamlined trademark application procedures, addressing issues raised by the U.S. Government in the 1998 IPR action plan. Additional amendments designed to bring Thailand's trademark law into compliance with the TRIPS Agreement were enacted in June 2000, broadening the legal definition of a mark. While these developments have created a viable legal framework and have led to some improvements in enforcement, especially for clothing, accessories, and plush toys, 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 costly. Penalties for proven trademark violations are insufficiently high to have a deterrent effect.

SERVICES BARRIERS

Telecommunications Services

Slow moving bureaucratic reform of the Thai telecommunications legal regime is a significant obstacle to investment in the Thai telecommunications sector. Most significantly, the National Telecommunications Commission (NTC), the independent industry regulator mandated by the 1997 constitution responsible for licensing, spectrum management, and supervision of telecommunications operators, has yet to be formed because of political disagreements over the composition of the commission. Significant progress has been made in recent months, as 14 finalists have been selected for the commission; the Senate is expected to choose the seven commissioners by mid-year. Until the NTC is formed, however, controversial issues such as licensing, interconnection, competition, tariff rebalancing, and standards making will remain unresolved, and licenses for new Independent Service Providers (ISP) and many value-added services cannot be issued.

The Thai government has allowed foreign participation in the telecommunications sector since 1989, but state-owned enterprises continue to control the market. While Thailand committed under the WTO to fully liberalize its telecommunications sector by January 2006, regulatory delays will make this deadline difficult to meet.

In November 2001 Thailand enacted a Telecommunications Business Law that lowered the permitted percentage of foreign ownership in telecommunication companies from 49 percent to 25 percent. However, the Thaksin Administration publicly stated its intention in 2002 to amend the Telecommunications Business Law to return the foreign ownership limit to 49 percent. Legislation has been introduced to achieve this goal, but it is not expected to be passed until mid-2004.

In 2002, the Thai government established the Information and Communication Technology (ICT) Ministry to oversee the telecommunications sector. Under the Ministry's purview, among other issues, are corporatization and privatization of the Telephone Organization of Thailand (TOT) and Communications Authority of Thailand (CAT), devising a new framework for concession conversion, and implementing an interconnection regime. Although the formation of the ministry should serve to advance telecommunication industries in the future, the failure to form a independent regulatory body prevents much progress in the sector.

In July 2002, TOT, a former state-owned telecommunications monopoly, was finally corporatized (shares still owned by the state were issued) as a precursor to privatization as part of the Telecommunication Development Master Plan and the Corporatization Act 1999. The Cabinet approved the corporatization of the CAT on July 8, 2003 in accordance with the same plan. The CAT was separated and corporatized into two distinct business entities, the CAT Telecom Public Company Limited and the Thailand Post Company Limited. The planned privatization of TOT has been repeatedly delayed due to poor market conditions for the sale of TOT shares and the privatization of CAT is not expected until after the completion of TOT privatization. Meanwhile, Prime Minister Thaksin has stated a desire for TOT and CAT to merge before privatization. Moreover, further challenges to privatization remain. Concession contracts granted to private telecommunications operators by the former state-owned monopolies for terms of 20 to 30 years will have to be addressed. Resolution of this issue has proved to be very difficult; at least two previous plans were withdrawn following public opposition.

The 1997 Thai Constitution and the Frequency Management Act of 2000 also required the establishment of an independent regulatory body for the broadcast sector, known as the National Broadcasting Commission (NBC). The NBC will be responsible for regulating radio and television broadcast businesses. Like the NTC, the NBC has not been formed yet due to political disagreements over the composition of the commission.

The Thailand Post Company, Ltd. is a state enterprise that has been corporatized. The Postal Committee, which is under the Ministry of Information and Communication Technology, is the regulator of postal services in Thailand. The provisions of the Postal Act B.E. 2477 (1934) cover basic postal (letters and postcards) and personal information. Any enterprises providing express delivery services not related to personal information as provided by the Act (such as parcel post) fall outside the purview of the Postal Committee.

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Legal Services

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

Financial Services

After the 1997-98 financial crisis, the Thai government liberalized foreign firms' access to the financial sector. Significant restrictions remain on foreign participation in the sector, however. While aliens have been allowed to engage in brokerage services since 1997, for example, foreign firms are allowed to own shares greater than 49 percent of Thai securities firms only on a case-by-case basis.

In the aftermath of the financial crisis and in response to commitments made during 1997 WTO financial services negotiations, Thailand took major steps to liberalize its banking industry. Foreigners are permitted to own up to 100 percent of Thai banks and finance companies for ten years from the date of acquisition. However, new capital invested in these ventures after the ten-year period must be provided by domestic investors until foreign-held equity shares fall to 49 percent. In the late 1990s, the Thai government encouraged foreign investors to help re-capitalize Thai financial institutions by taking large equity positions in domestic firms, and a total of four out of thirteen Thai commercial banks are now majority-owned by foreign banks.

Foreign banks operating in Thailand are still disadvantaged, however. Most notably, foreign banks are limited to three branches, only one of which may be in Bangkok. Foreign banks must maintain minimum capital funds of 125 million baht ($3.1 million) invested in government or state-enterprise securities or deposited directly with the Bank of Thailand. Expatriate management personnel are limited to six professionals in full branches and to two professionals in Bangkok International Banking Facility operations, although exceptions are often granted.

Charged with helping to restructure the financial sectors' non-performing loans, the government-owned Thai Asset Management Corporation (TAMC) gives priority to Thai nationals when contracting for management, technical, and advisory services. Foreigners may be hired, however, in the absence of qualified Thai nationals.

Construction, Architecture, and Engineering

Foreigners are prohibited from participating in construction and civil engineering. Construction firms must also be registered in Thailand (*i.e.*, establish a commercial presence). The Thai government regulates the billing rates of foreign architectural, engineering, and construction firms. Current practice places a ceiling on billing for these services by foreign firms. Thailand also imposes a nationality requirement for licensing as an architect or engineer.

Accounting Services

Foreigners cannot be licensed as Certified Public Accountants and therefore cannot practice accounting in Thailand. Foreign accountants may only serve as business consultants.

Express Delivery Services

The 49-percent limit on foreign ownership in land transport (trucking) hampers investment in and growth of express delivery services. Express delivery firms prefer to have the option of control of items throughout the supply of the service, including both air and ground-based operations in order to speed the movement of goods.

Healthcare Services

Thai government policy is highly restrictive in the healthcare services sector (*e.g*., hospital, dental, physician services), particularly the lack of transparency relating to hospitals and possibility of foreign ownership, administration, and equity shares in treatment facilities. Thailand has offered no medical services commitment in the current General Agreement on Trade in Services negotiations.

Retail Services

Thailand does not have specific legislation that deals directly with retail services. However, other laws, such as the 1975 Town Planning Act and the Trade Competition Act of 1999, include provisions relating to retail services. The Town Planning Department has implemented a regulation on zoning to curb the expansion of large stores in congested areas. The Trade Competition Act established a Trade Competition Commission with the authority to place limitations on market share and revenues of firms with substantial control of individual market sectors, to block mergers, and other forms of business combinations, and to levy fines for price fixing and other proscribed activities.

INVESTMENT BARRIERS

The rights of U.S. investors in Thailand are secured by the U.S.-Thailand Treaty of Amity and Economic Relations (AER) and the U.S.-Thailand Tax Treaty of 1996. The Alien Business Act lays out the overall framework governing foreign investment and employment in Thailand. The Act generally does not affect projects established with Board of Investment promotion privileges or export businesses authorized under the Industrial Estate Authority of Thailand Law, and will not supersede provisions of bilateral treaties, such as the AER.

The U.S. Government sought Thai government confirmation that AER investors are exempt from an October 2002 ministerial regulation that stipulates minimum capital requirements for foreign companies beginning operations in Thailand. The Thai government is not imposing the requirement on AER investors, and a ministerial regulation confirming the exemption is pending final government approval.

Trade-Related Investment Measures

In 1995, pursuant to the WTO Agreement on Trade-Related Investment Measures (TRIMS), Thailand notified the WTO that it would maintain local-content requirements to promote investment in a variety of sectors, including milk and dairy processing, and the motor vehicle assembly and parts industries. It eliminated these measures in the auto sector by the January 1, 2000 deadline established by the TRIMS Agreement, and the milk and dairy processing measures by the December 2003 deadline.

ELECTRONIC COMMERCE

The Thai government has placed a high priority on the development of electronic commerce and approved an electronic commerce framework in October 2000. However, an undeveloped legal infrastructure and limited Internet penetration constrain development of electronic commerce. A new Electronic Transactions Act entered into force in April 2002, but is awaiting the Thai Cabinet's issuance and approval of a royal decree required to implement this law. The Thai government plans to pass four additional, related bills. A computer crimes bill was approved by the Cabinet in September 2003 and an electronic funds transfer bill, a data protection bill, and the national information infrastructure bill currently are being drafted.

The large role played by the Communication Authority of Thailand (CAT) is an obstacle to the development of the Internet and electronic commerce. Its mandatory share ownership (CAT, 32 percent; CAT employees, 3 percent) of all licensed Internet Service Providers (ISP) and its monopoly on international telecommunications services impose high costs on online business. Required divestment of its ISP interests has not been implemented. When constituted, the National Telecommunications Commission, which currently is being formed, (see telecommunications services section above) is expected to develop new market rules.

OTHER BARRIERS

Several government firms are protected from foreign competition in Thailand. In the pharmaceutical sector, the Government Pharmaceutical Organization is not subject to requirements faced by the private sector on registration and permitting; in addition, it can produce and market generic formulations of drugs marketed in foreign countries irrespective of safety monitoring program protection. Thai government requirements limiting government hospitals procurement and dispensing of drugs not on the national list of essential drugs (NLED) significantly constrain the availability of many imported products.

The Thai government retains authority to set price ceilings for 20 goods and services, including medicines, sound recordings, milk, sugar, fuel oil, and chemical fertilizer. Price control review mechanisms are non-transparent. Price control determinations are sometimes based on outdated assumptions, including exchange rates, and go for long periods without review, even upon repeated petition for review by affected parties. Only sugar currently is subject to a retail price ceiling. In practice, the Thai government also uses its control of major suppliers of products and services under state monopoly, such as the petroleum, aviation, and telecom sectors, to influence prices in the local market. In 2003, the Thai government considered imposing price controls on optical disks, but opted not to in response to strong concerns expressed by rights holders and the U.S. Government.

The Thai government has made considerable efforts to counter official corruption. The Thai Constitution of 1997 contains provisions to combat corruption, including enhancement of the status and powers of the Office of the Counter Corruption Commission (OCCC), which is independent from other branches of government. Persons holding high political office and members of their immediate families now are required to disclose their assets and liabilities before assuming and upon leaving office. Moreover, a new law regulating the bidding process for government contracts both clarifies actionable anti-corruption offenses and increases penalties for violations. Nonetheless, counter-corruption mechanisms continue to be employed unevenly. The lack of transparency in administrative procedures also contributes to perceptions of corruption in Thailand.