



**Asia-Pacific  
Economic Cooperation**

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## **Thailand Individual Action Plan 2008 Study Report**

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**Asia-Pacific  
Economic Cooperation**

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**IAP Study Report  
Thailand 2008**

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**Acronyms and Their Meanings**

(Lao) People's Democratic Republic.....	PDR
Agreement on Trade Related Aspects of Intellectual Property Rights (WTO) .....	TRIPs
Agreement on Trade-Related Investment Measures (WTO) .....	TRIMs
Airport Authority of Thailand.....	AAT
Antidumping Practices Committee (WTO) .....	ADP
Antidumping .....	AD
APEC Business Travel Card.....	ABTC
ASEAN Free Trade Agreement .....	AFTA
Asia-Pacific Economic Cooperation.....	APEC
Association South East Asian Nations.....	ASEAN
Admission Temporaire/Temporary Admission .....	ATA
Australian Agency for International Development.....	AusAID
Bilateral Investment Treaties .....	BITs
Bureau of Investment.....	BOI
Cabinet Committee on State Enterprise Policy.....	SEPC
Centre for the Interdisciplinary Study of Property Rights .....	CISPR
Convention on International Trade in Endangered Species of Wild Fauna and Flora .....	CITES
Common Effective Preferential Tariff .....	CEPT
Communications Authority of Thailand .....	CAT
Compact Disk.....	CD
Australia-New Zealand Closer Economic Relations Trade Agreement .....	CER
Computer Reservation System.....	CRS
Countervailing Duty.....	CVD
Dispute Settlement Understanding (WTO).....	DSU
Dispute Settlement .....	(WTO) DS
Doha Development Agenda.....	DDA
Electronic Data Interchange.....	EDI

**APEC STUDY REPORT OF THAILAND'S 2008 IAP**

Electricity Generating Authority of Thailand .....	EGAT
Electricity Supply Industry .....	ESI
Foreign Direct Investment .....	FDI
Foreign Investor .....	FI
Framework Agreement .....	FA
Gas Supply Industry.....	GSI
General Agreement on Trade in Services .....	GATS
General Agreement on Tariffs and Trade (1994) .....	GATT
Genetically Modified .....	GM
Genetically Modified Organisms .....	GMOs
Gross Domestic Product .....	GDP
Harmonized System .....	HS
International Electrotechnical Commission.....	IEC
International Standards Organization .....	ISO
Individual Action Plan .....	IAP
Industrial Estate Authority of Thailand .....	IEAT
Industry (Ministry of) .....	ICT
Initial Public Offering .....	IPO
Intellectual Property .....	IP
Intellectual Property Rights .....	IPR
International Monetary Fund .....	IMF
Information Technology .....	IT
Information Technology Agreement (WTO).....	ITA
International Telecommunication Union .....	ITU
Joint Committee on the Suppression of Intellectual Property Rights Violation.....	JCIP
Most-Favoured Nation .....	MFN
Mutual Recognition Agreement.....	MRA
National Telecommunications Commission .....	NTC
New Electricity Supply Arrangement.....	NESA
Non-tariff Measure.....	NTM
Organization for Economic Cooperation and Development.....	OECD

**APEC STUDY REPORT OF THAILAND'S 2008 IAP**

Petroleum Authority of Thailand .....	PTT Plc
Port Authority of Thailand.....	PAT
Price Fixing and Anti-Monopoly Act of 1975 .....	PFA
Research and Development.....	R&D
Royal Thailand Government.....	RTG
Sub-committee on Customs Procedures Collective Action Plan .....	SCCP CAP
Securities and Exchange Commission .....	SEC
State Enterprise Capital Policy Committee.....	SECP
State Owned Enterprise.....	SOE
Sanitary and Phyto-Sanitary Agreement (WTO).....	SPS
Standards Regulating Body.....	SRB
Stock Exchange of Thailand .....	SET
Tariff Rate Quota .....	TRQ
Technical Barrier to Trade .....	TBT
Telephone Organization of Thailand .....	TOT
Thailand Maritime Navigation.....	TMN
Third Party Access.....	TPA
Trade and Investment Facilitation Agreement.....	TIFA
Trade Competition Act of 1999 .....	TCA
United Nations Commission on International Trade Law .....	UNCITRAL
United Nations .....	UN
United States Trade Representative .....	USTR
World Customs Organization .....	WCO
World Trade Organization .....	WTO

## 1. INTRODUCTION

This Study of Thailand's progress towards achieving its Bogor Objectives since the 2002 Individual Action Plan (IAP) Report and overall was prepared by the Study Review team pursuant to the directions and methodology set by the APEC Members. The Study was prepared using the Bogor objectives of "free and open trade and investment" as the comparative benchmark. The Review Team have endeavoured to examine Thailand's current trade and investment policies, together with recent changes made since Thailand's last IAP and review, and in light of the progress to date, to identify the changes needed for Thailand to successfully achieve its Bogor objectives. The Study benefited from a well organized session of meetings with GOT officials held in Bangkok, Thailand between September 8<sup>th</sup> and 11<sup>th</sup>, 2008.

The Review Team notes that comments and questions from other member economies were not as extensive as in the last IAP review. In some cases the comments were in the nature of encouragement to the Thai authorities to continue reforms and liberalization already undertaken or in progress. Some other economies sought information and advice on how to do achieve similar progress in their economies. The Review Team considered that they must conduct independent research on a range of issues to provide a broader overview. Some of these issues were raised in independent questions not attributed to any specific Member economy and many of these did not elicit a response but were addressed in the review meetings in Bangkok.

The review team has identified a number of comments raised by member economies in other fora or in their national compendia of alleged trade barriers. However as these were not raised formally in the process, precluding a proper opportunity for reply by the Thai authorities, the Review Team cannot attach any weight to these allegations. We have included them in this report so that the Thai authorities may address them to the extent they consider this necessary and appropriate.

In general, notwithstanding political uncertainties encountered during the latter part of the period since the last review, Thailand continued to make significant progress towards achieving its goals. Thailand's continuing dedication to multilateralism and its active program of bilateral and

regional FTAs, should in a more stable political environment enable Thailand to accelerate progress towards its goals.

With respect to the specific sectors of the IAP, the Review Team notes the following:

(i) Tariffs

Thailand has been making steady and measured progress toward tariff elimination. Thailand completed its tariff restructuring process in 2007. The MFN applied rates for most agricultural products are already equal to WTO bound rates. The simple average applied tariff has been reduced to 11.36%. Thailand has also unilaterally reduced tariffs for most of its industrial products including those in the textiles and clothing sector. Information on tariffs and Customs has been transparent and available from government websites. Several FTAs and EPAs, to which Thailand is a party, have entered into effect namely ASEAN-China FTA, Thailand-Australia FTA, Thailand-New Zealand CEP, Thailand-India FTA, Japan-Thailand Economic Partnership Agreement. Thailand is on negotiation for some other agreements.

(ii) Non-Tariff Measures

Thailand has largely eliminated its non-tariff measures or brought them under WTO disciplines. Import prohibitions are only used as necessary to protect public morals, national security, or human, animal, or plant life, and health, in accordance with GATT 1994 Article XX of the WTO Agreement. Since the last IAP, Thailand has abolished export licensing requirements on jute and kenaf seed, rattan, live bovine animals, tree-shrew, 277 kinds of wild animals, 291 kinds of wild animal carcass, corals, *Geomyda spinoza*, and fertilizers. No changes have been made to Thailand's Automatic Import Licensing or Voluntary Export Restraint measures. After discussing a number of TRQ administration Thailand has advised the review team that its administration of Tariff Rate Quotas (TRQ) on 23 agricultural products fully comply its with WTO obligations.



(iii) Services

**Financial Services:** Thailand has been actively participating in the WTO discussion on financial sector liberalization and has indicated that it will continue to participate in the negotiations of financial liberalizations under GATS. Thai officials also indicated that Thailand will consider undertakings to enhance the role of foreign financial business in the domestic financial system with a view to promoting overall economic efficiency and stability.

**Energy:** The framework for restructuring Thailand's Energy Industry was stipulated by the Energy Industry Act, B.E. 2550 which has been in force since 11 December 2007. This Act aims to separate the policy-making, regulation and operating functions of the energy industry from each other and to enhance efficient regulation of the electricity and natural gas industry in the long term. Under the Act, the government, via the Ministry of Energy and the National Energy Policy Council (NEPC), is responsible for the consideration and approval of policy-related matters, such as the energy procurement plans, expansion of energy transmission networks, energy diversification, including the determination of service quality standards. Measures taken thus far include: (1) promotion of independent power producers (IPP), small power producers (SPP), and very small power producers (VSPP), (2) promotion of the use of natural gas vehicle, (3) LNG procurement plan from foreign sources, (4) promotion of the use of biofuels, (5) promotion of energy efficiency, and (6) promotion of nuclear power generation. On the regulatory side, the Energy Regulatory Board (ERB) has been established to be responsible for regulation of energy industry operations through the issuance of regulations, criteria and conditions of the operation of energy business, in compliance with government policy.

**Tourism:** The Board of Investment (BOI) of Thailand has offered incentive mechanisms for tourism investment. It will give privileges in terms of tax and non-tax incentives to hotels having more than 100 rooms with conditions applied. It is also considering giving special privileges to foreign investment in some types of accommodation such as retirement homes.

**Transportation: Land.** Thailand is reviewing restrictions on market access for road transport services in compliance with GATS with a view to reducing them where appropriate. Thailand is

also undertaking progressive action to facilitate the supply of road transport services. At present, the focus is on equity ownership requirements, which restrict foreign ownership in business of road transport services. Hence, Thailand is open to considering amending its regulations on restriction of foreign equity ownership, but no specific timeline has been set for such amendment. Despite the current restrictions, an exception for establishing foreign entity in Thailand can be made with the permission of the Minister of Commerce approved by the Cabinet according to the Foreign Business Act, B.E. 2542 (1999), and the exception for foreign entity to undertake road transport services can be made with the approval of the Central Land Transport Control Board under the Ministry of Transport according to the Land Transport Act, B.E. 2522 (1979).

**Transportation: Maritime.** The 2002 IAP referred to a plan to privatize the Port Authority of Thailand (PAT). As reported in the review meeting, the plan has been halted due to labor union protests. At present PAT is preparing the Single Rail Transfer Operator (SRTO) at Laem Chabang Port that would be run as a business unit model. According to the PAT officials, the draft plan has been submitted to the Cabinet for approval.

**Transportation: Air.** Currently foreign airlines are allowed to operate computer reservation system (CRS) services for their own use. The National Telecommunications Commission has already been established to look after the telecommunication and other related services in Thailand. The draft of CRS Code of Conduct had been reviewed by various authorities as it might duplicate other relevant legislations. At present, the Council of State of Thailand has been reviewing the contents and considering whether to proceed.

**Communication: Telecommunication.** The second Telecommunication Master Plan for the year 2008-2010 was formally published in the Royal Gazette in April 2008. At the same time, a proposal to merge NTC and NBC (National Broadcasting Commission) has been submitted to the Parliament. The Review Team asked whether the approval of the NTC-NBC merger would have an impact on the Master Plan. Thailand responded that the impact would be minimal as at present there has been no master plan for broadcasting services. The 2008 IAP also states that the

NTC is well on the way to establishing criteria to promote free and fair competition in the telecommunications market. We learned however that progress to date, has been limited.

(iv) Investment

Thailand's investment promotion policy focuses on industrial competitiveness, decentralization and good governance. Industrial competitiveness improvement is closely related to development of small and medium enterprises and technological capability (R&D as well as skill, technology, and innovation – STI Policy). Decentralization objectives are in practice consistent with the zoning system of investment. As for good governance, Thailand has been improving investment approval procedures. BOI maintains a very informative, bilingual website for investment in Thailand ([www.boi.go.th](http://www.boi.go.th)). Thailand has also made progress in facilitating entry of business people. For example, Thailand has begun to work on implementing the APEC Business Travel Card (ABTC) Scheme and now in the process of revising its internal laws to complement the Scheme's operations.

(v) Standards and Conformance

Some member economies have questioned the rate of progress of alignment with international standards and the percentage of its standards that are aligned with international standards. In answering those questions, Thailand explained that there are 2,736 industrial standards in total of which 27% are aligned with relevant international standards. In addition, the alignment of national with international standards has been done on voluntary basis. In essence, Thailand attempts to align its standards with international standards to the maximum extent possible and appropriate and to fulfill the commitment with SCSC priorities and other bilateral agreements.

(vi) Customs Procedures

Thailand's Customs procedures appear to be compatible with the Five Guiding Principles of APEC Sub-Committee on Customs Procedures, namely facilitation, accountability, consistency, transparency, and simplification. Measures that have been adopted thus far include (1) greater availability of public information, (2) paperless trading, (3) clear appeals provision, (4) alignment with WTO valuation agreement, (5) adoption of Kyoto convention regarding necessary Customs standards, (6) Harmonized System convention, (7) advance classification ruling system, (8) implementation of the TRIPs agreement, (9) risk management and inspection, and (10) improved integrity and transparency.

(vii) Intellectual Property Rights

Thailand's Department of Intellectual Property (DIP), as the principal agency in the development of the intellectual property system in Thailand, is now able to offer a streamlined process to resolve the intellectual property issues in the economy and, more importantly, to assure a continual and sustainable development of the intellectual property system in Thailand. Improvements include (1) implementing TRIPs, (2) ensuring the expeditious granting of IP rights, (3) effective enforcement of IP Rights, (4) public education and awareness of IP, and enhanced IP user skills, (5) contributing to APEC Cooperation on IP issues, and (6) promoting transparency of IPR.

(viii) Competition Policy

The Thailand's Trade Competition Act is currently under review and will be amended where appropriate and necessary, to respond to the continually changing economic climate in Thailand. The key characteristics of the proposed changes are effective implementation of the competition policy in globalization with a view on freer movement of capital, goods, and services, people and information, and technology. Furthermore, rapid changes and complexity of the world trade rules

and regulations, economic integration for trade and investment cooperation as well as bilateral, regional, and multilateral free trade agreements are becoming more serious and need to be addressed properly.

(ix) Government Procurement

Thailand is making progress on the development and implementation of electronic procurement systems. On line procurement of computer equipment was a test case at the time of the last review. Use of these systems has resulted in real cost savings for Thailand and these savings are expected to continue in future. Thailand intends to complete the development of these e-procurement mechanisms by the end of 2009 including developing an English language version of the government procurement internet portal. Although there have been concerns raised that Thailand continues to apply a “Buy Thai” policy that gives preferences to local suppliers and local goods, Thailand is also moving forward in the development of new regulations concerning public sector procurement, including regulations for the procurement of ‘green’ goods and services. We expect continuing improvements in making procurement more open and transparent.

(x) Deregulation/Regulatory Review

In its 2008 IAP Report Thailand stated that its efforts at further deregulation and regulatory review stopped with dissolution of the House of Representatives in February, 2006 and that further work in these fields would proceed once the new government has issued policy directives. Although Thailand's efforts to further liberalization in these fields was temporarily suspended pending receipt of new policy directives, Thailand clearly made significant progress in deregulation and regulatory review during the period from 2002 to February 2006, primarily focused on reforming and developing state enterprises as drivers of economic growth through the development of new structures and the establishment of new regulators. This progress is based on a longstanding policy of deregulation and regulatory review that began with the appointment

of the Law Reform Commission in 1991. In light of the progress made to date, so long as the government of Thailand issues new directives to continue deregulation and regulatory review and reform the Review Team believes that Thailand's efforts in these fields will accelerate and contribute to achieving its Bogor objectives well before 2020.

At the time of the last review it was noted that Thailand was well on its way (over half way) to achieving its goals. It is encouraging that Thailand has not relaxed the pace nor ambition of its efforts, notwithstanding.

(xi) Implementation of WTO Obligations (including Rules of Origin)

Thailand has taken steps to implement its WTO obligations, but concerns have been raised by the United States that Thailand is administering its TRQs, import licenses and SPS measures in a non-transparent manner that restricts trade. Thailand SPS measures appear to be based in science but absolute determination is beyond the competence of the Review Team. The United States raised these during the latest WTO Trade Policy Review in 2007.

The Thai authorities advised the Review Team that it manages each TRQ product differently and allows the imports of a number of TRQ products above the WTO bound quantities. Quota allocation is based on "licensing on demand" for all qualified importers. Given the uncertainties and wide variations in TRQ regimes, the Review team does not dispute the Thai authorities' assertion of compliance.

(xii) Dispute Mediation

The Review Team considers that Thailand has made significant progress in establishing alternative dispute resolution mechanisms.

Thailand has developed extensive arbitration and mediation procedures as alternatives to the domestic courts and has opened these processes to foreign investors. Thailand has also negotiated 39 bilateral investment agreements that include arbitration clauses. Although Thailand generally prefers mediation and negotiation to litigation, it has been involved in fifteen WTO dispute settlement processes, twelve as the complaining party.

Thailand amended its anti-dumping practices after being found to be operating inconsistently in Poland's challenge in H-Beams.<sup>1</sup> Thailand achieved an important win in WTO dispute settlement in its successful challenge of U.S. practices in the Shrimps anti-dumping.<sup>2</sup>

Thailand, like other economies in the region, tends to find participation in DSU challenges much too expensive.

(xiii) Mobility of Business Persons

Thailand has made significant progress in facilitating business travel, including active participation in the APEC ABTC Travel Card System, introduction of a new three-year Non-Immigrant "B" multiple entry visa, and the five-year multiple "Special Entry Visa" and established a One-Stop Service Center to facilitate issuing visas and assisting with all related arrangements. Approximately 800,000 foreign nationals entered Thailand in 2007 on the basis of a Non-Immigrant Visa or Non-Immigrant Re-Entry Visa. In addition to Thailand's efforts to facilitate business travel by improving its visa programs, it is more important to note that business travelers from 42 countries/economies, including the United States, Canada, Australia, Japan and Indonesia, are exempt from Thailand's visa requirements. The Review Team considers that Thailand has made a considerable effort to facilitate business travel.

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<sup>1</sup> Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland (Complainant: Poland) DS122/R, April 6, 1998

<sup>2</sup> United States – Measures Relating to Shrimp from Thailand (Complainant: Thailand) DS343, April 24, 2006

(xiv) APEC Food System

Thailand has taken steps to adopt policies required to achieve the objectives of the APEC Food System. However, concerns have been raised, principally by the United States,<sup>3</sup> that question whether Thailand's administration of its regulations affecting food and agriculture has undermined its ability to achieve its APEC objectives. The Review Team considers that over the next 11 years Thailand has more than enough time to achieve its Bogor goals in this area.

(xv) Transparency

Thailand continues to make significant progress in improving to increasing transparency through the use websites to publish laws, regulations and requirements in a broad range of fields, including government procurement, Customs, visa requirements for business persons.

Since 1997, Thailand has also granted its citizens the right to obtain most official data and information on request under the Official Information Act (OIA).

In addition to subscription to the Special Data Dissemination Standards (SDDS) since 1996, Thailand already participated in the Report on the Observance of Standards and Codes (ROSC)-Data Module and was assessed against the IMF's Code of Good Practices on Transparency in Monetary Policy under the joint IMF-WB's Financial Sector Assessment Program (FSAP). Thailand is in the process of participating in the IMF's ROSC on Fiscal Transparency.

(xvi) Free Trade Agreements/Regional Trade Agreements

Thailand has adopted and implemented an ambitious program of negotiating free trade and regional trade agreements as a means of increasing the benefits of trade among the Parties to the Agreements. Although Thailand is negotiating more free trade agreements and regional trade

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<sup>3</sup> Eg., USTR National Trade Estimates 2008 Thailand



agreements, it is committed to a policy of supporting trade liberalization within the multilateral trading system. Given the stalled state of WTO liberalization, these bilateral and regional agreements are the principal positive influence for trade liberalization in Thailand.

(xvii) Trade Facilitation

Thailand has made significant progress in its efforts to facilitate trade and to reduce the overall cost of business transactions. These efforts have primarily been focused on improvements to Thailand Customs procedures, including the use of paperless transactions, a single window approach and more streamlined Customs procedures, but also include proposed changes to intellectual property requirements, amendments to ease business travel, to align standards with international norms and to improve access to government procurement.

Although the Review Team considers that Thailand has made significant progress, it notes that the United States has raised concerns<sup>4</sup> about Thailand's Customs administration including alleged lack of transparency, as well as concerns about significant discretionary authority vested in Thai officials and a failure to fully implement the WTO Customs Valuation Agreement. If the United States is correct in its assessment, Thailand's administration of its Customs measures could undermine the significant efforts made to facilitate trade. These concerns were not raised by the United States in this review.

The Review Team recognizes the significant efforts that Thailand has made it recommendations that Thailand consider the concerns raised by the United States and take such corrective action as may be necessary.

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<sup>4</sup> USTR National Trade Estimates 2008 Thailand

### *Conclusion*

The Review Team considers that Thailand has made significant progress toward achieving its Bogor goals, Thailand has continued to make progress since the last IAP Review in 2002 and notwithstanding the economic effects of the 2004 Tsunami and the political disruption and uncertainty experienced in 2006 which still overhang this economy. Had economic and political conditions been more stable the Review Team would have expected more progress, but these reviews must be conducted in light of realities and not in a vacuum. Thai officials are to be congratulated for their efforts to date, which point to achieving their goals well ahead of schedule.

The research conducted by the Review Team in connection with the review of Thailand's IAP has disclosed concerns about Thailand's administration of its Customs and trade programs. The Review Team found that the questions from other APEC economy members were limited and did not raise many issues. So the Research team conducted additional research and analysis.

While Thailand has obviously introduced measures to liberalize trade, it has been suggested that Thailand's administration of these measures may at times be non-transparent and lacking in objectivity which could have a negative impact on trade. The Review Team notes these comments and has attributed them to the specific APEC economies throughout the Report. For the most part, these are anecdotal comments based on reports from individual exporters. While the Review Team cannot comment on nor confirm the accuracy of these reports, it does agree that if non-transparent and arbitrary administration, exists, it could undermine the significant progress that Thailand has already made and could frustrate early attainment of its Bogor goals. Therefore, the Review Team recommends that Thailand authorities investigate the concerns that have been raised by other APEC economies in various fora that are identified in this report and take corrective action if any is necessary.

The Review Team considered the questions and comments from the ABAC and noted that a number of these were quite aggressive and some were found to be offensive by Thai officials. On the whole these questions were not as constructive as the questions raised by the other member

economies. As a result some of the ABAC questions did not elicit a response from the Thai authorities. The Review Team recognizes that the tone of the questions may reflect certain business frustrations with dealing with the government of another economy but this has not facilitated a constructive dialogue.

In light of the overall progress made to date, the Review Team believes that Thailand is on track to achieve its Bogor goals by 2020 and will achieve them so long as the GOT and government officials continue in their efforts at improved trade liberalization. Therefore, if Thailand continues its progress and more stable economic and political conditions permit an accelerated effort, the Review Team can confidently say that Thailand will achieve its Bogor goals by or before 2020.

## 2. GENERAL ISSUES

Any discussion of Thailand's current economic environment must take account of the impact of the current financial and economic crisis and the political uncertainty in Thailand since September 2006. The extreme "credit crunch" and accompanying slowdown in demand is having an adverse impact globally, including on Thailand, although Asian developing economies may not be as significantly affected as other economies. The Asian Development Bank notes,

"Developing Asia's economic growth in 2008 will taper off from its multiyear high in 2007. Inflation is expected to climb to its highest level in a decade. Under the weight of subsidies for food, fuel, and power, fiscal positions are at risk. But developing Asia is not exposed to the threat of massive financial deleveraging, and its credit markets should continue to function in an orderly manner."<sup>5</sup>

Thailand's economy cannot escape the more recent serious economic downturn. It is to be hoped that Thailand and other APEC economies are able to resist political pressures to slow or reverse reform and market opening.

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<sup>5</sup> Asian Development Outlook 2008, Highlights, Asian Development Bank, [www.adb.org/Documents/Books/ADO/2008](http://www.adb.org/Documents/Books/ADO/2008)

Thailand's political uncertainty and people power demonstrations which recently dominated global newscasts has had an impact on consumer, business and investor confidence and it has been suggested that it also had an impact on Thailand's economic performance. Tourism which is important to Thailand has experienced a number of negative influences.

In considering the impact of political uncertainty, the Asian Development Bank noted,

“Renewed political uncertainties and rising inflation have undercut consumption and investment in 2008. GDP growth slowed in the second quarter and will likely trend lower in the rest of the year, while inflation accelerated in July to a more than 10-year high. The authorities have undertaken several policy measures; cuts in some taxes and utility charges, extra funding for villages and small businesses, and interest rate increases. Growth is projected at about 5% this year, subject to strong downside risks. Assuming that political tensions recede, growth in 2009 is forecast at around 5% (a downward revision from April). Inflation forecasts are revised up for both years.”<sup>6</sup>

Notwithstanding the twin impact of the financial crisis and political uncertainty, Thailand's economic fundamentals appeared to remain strong. The Asian Development Bank made the following prediction,

By and large, Thailand's economic fundamentals remain good. Since its previous Trade Policy Review in 2003, despite a series of difficult circumstances, Thailand's real GDP has grown at an average annual rate of 5.7%, largely due to strong growth in exports and domestic consumption, according to a WTO Secretariat report on the trade policies and practices of Thailand. Nevertheless, a confluence of factors, including increasingly constrained production capacity, has led to a recent slowdown in real GDP growth.<sup>7</sup>

The 2007 WTO Trade Policy Review of Thailand noted,

Since its previous Trade Policy Review in 2003, despite a series of native shocks, Thailand's real GDP has grown at an average annual rate of 5.7% (within inflation averaging a modest 3.4%). This is largely the result of strong growth in exports and domestic consumption, although the latter's growth has been slowing; by contrast, growth of private investment remained relatively weak, especially in 2006.<sup>8</sup>

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<sup>6</sup> Asian Development Outlook 2008 Update, Thailand, Asian Development Bank, [www.adb.org/Documents/Books/ADO/2008](http://www.adb.org/Documents/Books/ADO/2008)

<sup>7</sup> Trade Policy Review: Thailand, WTO Press Release, 26 and 28 November 2007, Press/TPRB/291

These predictions that Thailand's economy would be affected by the global financial crisis have been reflected in Thailand's economic data. The most recent Monthly Economic Report prepared by the Thai Ministry of Finance notes that the, "Thailand economy in 3<sup>rd</sup> quarter of 2008 continued to expand, but at decelerated pace due to softening external demand from slowing export volume following a global economic slowdown while the domestic demand through private investment also showed sign of slowing down as well."<sup>9</sup>

The Thai economy has been more outward oriented with trade in goods and non-factor services rising from 124.6% of GDP in 2003 to 143.5% in 2006 while inward foreign direct investment increased by 86.4% during the period 2003 – 2006.<sup>10</sup>

Thailand's GDP grew by 4.5% in 2005, 5.1% in 2006 and 4.8% in 2007 and was projected to grow by 5% in 2008 and 5% in 2009.<sup>11</sup> GDP growth was affected by a contraction in government consumption for the first quarter of 2008 and a slight reduction in consumer spending over the same period. Thailand's GDP growth is lower than the other Southeast Asian economies considered by the Asian Development Bank and is well below the average growth rates of Asian countries, which were 8.12%, 8.9% and 9.0% in 2005, 2006 and 2007 respectively and is projected to increase by 7.5% and 7.2% in 2008 and 2009.<sup>12</sup>

"Growth in Southeast Asia inched up to 6.5%. The Philippines expanded at a 30-year high of 7.3%, and Viet Nam continued to grow quickly. Indonesia accelerated to 6.3%; Malaysia picked up gently; but Thailand – where consumer and business confidence faded in a context of heightened political uncertainty – moderated."<sup>13</sup>

Manufacturing grew by 9.0-% in the first half of 2008, driven by export-oriented industries such as electronic products, computers, televisions and air conditioners. Services grew by 3.5% for

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<sup>8</sup> Thailand, WTO Trade Policy Review 2007, Economic Development, WT/TPR/S/191, para 1

<sup>9</sup> Monthly Economic Report (3<sup>rd</sup> Quarter of 2008) Ministry of Finance, Fiscal Policy Office

<sup>10</sup> Thailand, WTO Trade Policy Review 2007, Economic Development, WT/TPR/S/191, para 3

<sup>11</sup> Asian Development Outlook 2008 Update GDP Table. Asian Development Bank,

[www.adb.org/Documents/Books/ADO/2008](http://www.adb.org/Documents/Books/ADO/2008)

<sup>12</sup> Asian Development Outlook 2008, Highlights – ADO 2008 Asian Development Bank,

[www.adb.org/Documents/Books/ADO/2008](http://www.adb.org/Documents/Books/ADO/2008)

<sup>13</sup> Asian Development Outlook 2008 Update, Thailand, Asian Development Bank,

[www.adb.org/Documents/Books/ADO/2008](http://www.adb.org/Documents/Books/ADO/2008)

the first six months of 2008 compared to the same period in 2007.<sup>14</sup> Services remained the largest contributor to the economy although their share of total GDP fell in 2005 and 2006 because of a fall in tourism.<sup>15</sup>

The slowdown in GDP growth in 2007 is in part explained because easy gains from increased utilization of excess capacity have been exhausted and new capacity is expanding slowly because of low investor confidence. The Bank of Thailand reported that between 2003 and 2006 total industrial capacity utilization increased from 64.4% to 74.2% with the paper, petrochemical and integrated circuits sectors having capacity utilization rates of over 90%.<sup>16</sup>

Thailand's export performance was robust in the first half of 2008. Merchandise exports increased by 24.7% to USD \$86.5 billion. Agricultural exports increased by 55% in value terms, primarily due to increased exports of rice (up 135%) and natural rubber (32%). High-technology exports increased by 19%. There was a significant increase in exports to non-traditional markets, particularly to the People's Republic of China, India, the Middle East, Eastern Europe and non-traditional markets in South East Asia.<sup>17</sup>

Manufactured exports accounted for more than 75% of Thailand's total exports. Agricultural exports contracted, due primarily to lower domestic supply caused by drought and the bird flu, but the impact of lower exports was mitigated by stronger prices.<sup>18</sup>

Growth in imports during the same period exceeded exports reducing the trade surplus to \$316 million from \$4.1 billion during the same period in 2007. During this period the current account surplus also fell, from \$5.9 billion to \$2.8 billion.<sup>19</sup>

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<sup>14</sup> Asian Development Outlook 2008 Update, Thailand, Asian Development Bank, [www.adb.org/Documents/Books/ADO/2008](http://www.adb.org/Documents/Books/ADO/2008)

<sup>15</sup> Thailand, WTO Trade Policy Review 2007, Economic Development, WT/TPR/S/191, para 4

<sup>16</sup> Thailand, WTO Trade Policy Review 2007, Economic Development, WT/TPR/S/191, para 4 and fnnt 12

<sup>17</sup> Asian Development Outlook 2008 Update, Thailand, Asian Development Bank, [www.adb.org/Documents/Books/ADO/2008](http://www.adb.org/Documents/Books/ADO/2008)

<sup>18</sup> Thailand, WTO Trade Policy Review 2007, Economic Development, WT/TPR/S/191, para 29

<sup>19</sup> Asian Development Outlook 2008 Update, Thailand, Asian Development Bank, [www.adb.org/Documents/Books/ADO/2008](http://www.adb.org/Documents/Books/ADO/2008)

Manufactured items represent two-thirds of total imports. Import growth was fuelled by the hike in oil prices, increased imports of iron and steel due to the temporary closure of large local steel producers, the inventory build-up, increased domestic demand due to mega projects and increased construction activity.<sup>20</sup>

Inflation increased during the first half of 2008 to an overall average of 6.3%, reaching an 11 year high of 9.2% in July before falling in August. Inflation was primarily driven by increases in energy costs (fuel and natural gas prices rose 20% during the first six months of 2008) and food and beverages (which increased by 9%). Higher production costs were passed onto consumers with the result that the core inflation rate increased to 3.7%, just above the Bank of Thailand's 0% - 3.5% target range. In response to core inflation breaching the target rate, the Bank of Thailand raised its policy interest rate by 25 basis points in July and August bringing the interest rate to 3.75%.

Government responded to inflation by releasing rice from stockpiles at low prices, by temporarily reinstated the subsidy on diesel fuel (between March and July 2008) and by requesting that oil refineries reduce the refinery margin on diesel for the period from June to November 2008.

The GOT implemented a broader inflation-relief package in August 2008 that was intended to last for six months. The package included reductions in the excise tax on gasoline-ethanol mix and diesel, free electricity and water for poor households, free rides on selected public buses in Bangkok and free third-class train travel on some trains. The total package is projected to cost approximately USD \$1.4 billion. Despite these commitments, revenue growth is expected to be slightly stronger than anticipated and the budgetary deficit for FY 2008 (ended 30 September 2008) is projected to be slightly lower than the deficit for FY 2007, which was recorded at 1.8% of GDP.<sup>21</sup>

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<sup>20</sup> Thailand, WTO Trade Policy Review 2007, Economic Development, WT/TPR/S/191, para 29

<sup>21</sup> Asian Development Outlook 2008 Update, Thailand, Asian Development Bank, [www.adb.org/Documents/Books/ADO/2008](http://www.adb.org/Documents/Books/ADO/2008)

“Several generally moderate fiscal measures have been implemented to spur the economy in the first 8 months of 2008. A package announced in March and costing the equivalent of [USD] \$1.2 billion contained tax breaks for individuals and for small and medium firms. A second package includes a 3 year debt moratorium for about 300,000 farmers, low interest rate loans from the Government Savings Bank for small businesses, and additional funding for the Government Housing Bank. As expected, the new Government injected more funds into programs started several years ago to assist development and generate employment in villages. It distributed about [USD] \$41 million to 5,800 villages in April for community development projects and \$26.6 million to 900 villages in August for lending to villagers.”<sup>22</sup>

The Asian Development Bank projects that these measures, and the reduction in inflation from mid-year, should have a positive impact in the second half of 2008. However, economic growth is projected to slow to 4.0% due to worsening political tensions. “Antigovernment demonstrates disrupted transportation and sparked clashes that led the Government to declare a state of emergency in Bangkok that was in force for 12 days in early September. ... The rising political tensions further dented investor sentiment – the index of stock prices fell by 27% between late May and mid-September.” Export growth is also expected to slow in the second half of 2008 because of the weaker global economy.<sup>23</sup>

More recent experience suggests a more serious impact. As an export-driven economy, Thailand has been affected by the global crisis shrinking world consumption. It is estimated that the economic crisis will cost Thailand 1.5 million jobs<sup>24</sup>

FDI in Thailand increased from \$4.614 Billion in 2003 to \$5.786 Billion in 2004 and \$7.545 Billion in 2005.<sup>25</sup> FDI inflows increased by 86% between 2003 and 2006, an increase from US \$11.5 billion to US \$21.4 billion. Most investment was in manufacturing followed by the trade sector, non-bank investment and real estate. In 2006 increases in FDI were due mainly to recapitalization in the telecommunications and iron and steel industries.<sup>26</sup> Singapore is the

<sup>22</sup> Asian Development Outlook 2008, Update, Thailand, Asian Development Bank, [www.adb.org/Documents/Books/ADO/2008](http://www.adb.org/Documents/Books/ADO/2008)

<sup>23</sup> Asian Development Outlook 2008 Update, Thailand, Asian Development Bank, [www.adb.org/Documents/Books/ADO/2008](http://www.adb.org/Documents/Books/ADO/2008)

<sup>24</sup> “Growth to slow to 3-4% next year as exports, oil prices slip” Bangkok Post, December 13, 2008

<sup>25</sup> Asian Development Outlook 2008, Statistical Table A16, [www.adb.org/Documents/Books/ADO/2008](http://www.adb.org/Documents/Books/ADO/2008)

<sup>26</sup> Thailand, WTO Trade Policy Review 2007, Economic Development, WT/TPR/S/191, para 33



largest overseas investor, followed by Japan, the EC-25 and the United States.<sup>27</sup> Thailand's investment climate remained generally favourable and ranked ahead of other competitors in 2006.

Although Thailand continued to attract foreign investment concerns have been raised that investor confidence has been affected by the political uncertainty. The Thailand Board of Investment noted that foreign investment approvals fell by 18% in 2006, which meant less foreign investment in 2007.<sup>28</sup> However, the Board of Investment considers that Thailand remains an attractive investment destination for European investor "despite political hard times". The Bureau noted Dutch interest in investing in shipbuilding in Thailand and increases in the total value of French and British investment in Thailand.<sup>29</sup>

As a further means of attracting further investment, the Board of Investment has introduced incentives, in the form of an eight year exemption from corporate income tax, a 50% reduction in corporate income tax for five years, permitting double deduction of transportation, electricity and water supply costs and a 25% deduction from net profits for facility installation and construction costs in addition to normal depreciation capital, for investment in six target sectors,

- (i) energy saving and alternative energy related businesses (eg., alcohol manufacturing and fuel produced from agricultural products)
- (ii) high technology businesses (eg., functional fibre, medical equipment and vehicle parts)
- (iii) environmentally-friendly materials and products manufacturing
- (iv) mega project-related businesses
- (v) tourism and real estate-related businesses
- (vi) high-tech agricultural material-based businesses (eg. sweeteners, dextrin and modified starch manufacturing).<sup>30</sup>

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<sup>27</sup> Thailand, WTO Trade Policy Review 2007, Economic Development, WT/TPR/S/191, para 3

<sup>28</sup> Thailand, WTO Trade Policy Review 2007, Economic Development, WT/TPR/S/191, para 34

<sup>29</sup> Confidence in Thailand Remains Strong among European Investors despite the Current Political Problems, Board of Investment, Ministry of Industry, Press Release No. 138/2008 (O.72) November 4, 2008

<sup>30</sup> BOI Offers Maximum Incentives to Six Priority Industries during Thailand Investment Year 2008 – 2009, Bureau of Investment, Ministry of Industry, Press Release No 145/1/2008 (O.76/1) November 5, 2008

Thailand's Ministry of Finance made the following comment concerning more recent private investment trends,

“Private investment in 3<sup>rd</sup> quarter 2008 showed sign of slowing down from the previous quarter. Indicator for equipment and machinery investment measured from import volume of equipment and machinery in 3<sup>rd</sup> quarter decelerated to 22.2 percent (y-o-y) from a growth of 29.3 percent (y-o-y) in the previous quarter. Consistently, investment indicator from domestic cement sales in the first 2 months of 3<sup>rd</sup> quarter contracted sharply from the previous quarter to -6.1 percent (y-o-y). For investment in capital good, import volume of capital goods increased by 13.1 percent in 3<sup>rd</sup> quarter, slightly higher than previous quarter due to extraordinary import growth from oil drillers import in July 2008, but in past 2 month (August – September 2008) import volume of capital good declined significantly with 2 months-average of 6.0 percent. As for investment indicator from commercial car sales in 3<sup>rd</sup> quarter, it contracted sharply. For investment in capital growth, import volume of capital goods increased by 13.1 percent (y-o-y) in the 3<sup>rd</sup> quarter, slightly higher than previous quarter at -25.8 percent (y-o-y due mainly from slow down in pick-ups and trucks sales.”<sup>31</sup>

The Board of Investment considered before the closure of the airport due to civil unrest) that Thailand's “current political situation has had no direct impact on investments” and that investment growth in Thailand was on-track. This assessment may have been a bit optimistic.

Since the closure of the economy's principal airport by anti-government protestors, Thai authorities have recognized the need for improved certainty and predictability to encourage foreign investment and BOI is one of agencies preparing a plan to deal with future national emergencies such as the airport closure. The BOI is also preparing to add tax incentives for the tourism sector, which has been one of the hardest-hit industries from the airport closures<sup>32</sup>. The Board of Investment (BOI) has also set up a working committee to estimate damages experienced by investors after the recent temporary closure of Thailand's 's two major airports in order to help affected businesses recover quickly. New incentives are under consideration to encourage manufacturers to make investment related to enhanced production efficiency.

<sup>31</sup> Monthly Economic Report (3<sup>rd</sup> Quarter of 2008), Ministry of Finance, Fiscal Policy Office

<sup>32</sup> “BOI to draft new plan for emergencies Business continuity will be main goal” Bangkok Post, December 13, 2008

To encourage continuing investment, the BOI has opened seven overseas offices (New York, Los Angeles, Tokyo, Osaka, Paris, Frankfurt and Shanghai). In addition, missions have been organized from the BOI to some target countries in September and October 2008 to attract foreigners to invest in Thailand.<sup>33</sup> Thailand's efforts to attract foreign investment have met with success – total foreign investment increased to 635 projects during the first nine months of 2008 from 604 in the same period in 2007 – and these efforts will continue, possibly with the addition of improved investment incentives.<sup>34</sup> It has also been suggested that Thailand's investment climate could be improved by reducing the regulatory burden on investors, addressing the skills shortage and improving Thailand's infrastructure.

During the period reviewed by the WTO for the 2007 TPRM exercise, investment outflows increased by 73.4%, primarily to manufacturing, mining and non-bank investment. Singapore was the largest destination for Thailand investment followed by the EC-25, Japan and the United States.<sup>35</sup>

Thailand introduced a series of tax reforms to reinforce its fiscal stability framework, incorporate environmental and social objectives, enhance competitiveness and stabilize economic development. The tax reform measures were set out in the 2005 Roadmap for Tax Reform, which aimed at broadening the tax base, increasing competitiveness, promoting social development and increasing private sector participation. Through the program the government intended to review the structures of the corporate income tax, personal income tax, value-added tax, excise tax and Customs duties.<sup>36</sup>

During the period reviewed by the WTO team, Thailand reduced certain tax rates and maintained numerous tax incentives in line with specific policy objectives while trying to increase tax revenues through greater compliance and better administration and collection. Initiatives to modernize the tax administration, such as e-revenue, e-excise and e-customs were facilitating

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<sup>33</sup> BOI Confirms Investment Growth on Track, Bureau of Investment, Ministry of Finance, Press Release No. 110/2008 (O.58) September 1, 2008

<sup>34</sup> BOI Unveils Proactive Marketing Strategy to Drive the Country's Economy Amidst the Current Situation, Bureau of Investment, Ministry of Finance, Press Release No. 139/2008 (O.73) November 4, 2008)

<sup>35</sup> Thailand, WTO Trade Policy Review 2007, Economic Development, WT/TPR/S/191, para 35

<sup>36</sup> Thailand, WTO Trade Policy Review 2007, Economic Development, WT/TPR/S/191, para 17

taxpayer dealings with the tax collecting agencies and also helped reduce tax evasion and corruption by minimizing face-to-face contacts.<sup>37</sup>

The Thai Government continues to intervene in certain economic activities. The privatization process, has been slow and at times contentious. While there has been some government divestiture of state-owned enterprises, in April, 2004 the GOT announced it would maintain a 50% stake in all state-owned enterprises and a 75% stake in power and water utilities. Planned privatization of the Electricity Generating Authority of Thailand was suspended by the Supreme Administrative Court in 2006. The Government intends to privatize ten state-owned enterprises as the political situation permits.<sup>38</sup>

Thailand faces economic challenges going forward. The Asian Development Bank reports that foreign investor sentiment was “dented” by some policies and proposals by the interim government and that the government now faces the task of rebuilding investor confidence. Government has begun to take these steps by ending capital controls and by considering shelving a proposed amendment to the Foreign Business Act that would tighten controls on foreign ownership in Thailand businesses.<sup>39</sup> However, looking forward the expected uptick in consumer and business confidence may be delayed by the global economic slowdown. Investment is expected to increase supported by the infrastructure projects, such as two new mass transit rail lines for Bangkok that have been delayed since 2006. Inflation is projected to ease to 5.5% as global prices for oil and other raw materials decline. Export growth is expected to be reduced due to global economic conditions.

In a regional context Thailand is expected to perform better than other Southeast Asian economies.

“Southeast Asia will slow to 5.7%, its export prospects damped by the slowdown in the global economy. In addition, efforts to prevent inflation from getting out of hand will

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<sup>37</sup> Thailand, WTO Trade Policy Review 2007, Economic Development, WT/TPR/S/191, para 18

<sup>38</sup> Thailand, WTO Trade Policy Review 2007, Economic Development, WT/TPR/S/191, para 3

<sup>39</sup> Asian Development Outlook 2008, Economic and Trade Prospects in Developing Asia, Southeast Asia, Thailand, Asian Development Bank, [www.adb.org/Documents/Books/ADO/2008](http://www.adb.org/Documents/Books/ADO/2008)

moderate growth in Viet Nam from the fast pace of recent years. Only Thailand is expected to record higher growth after a return to normalcy in politics”<sup>40</sup>

However, in its assessment of Thailand's economy, the ADB points to the risks of political uncertainty and its economic impact.

“The main risks to this outlook are in the political arena. If wrangling that started in 2006 drags into a fourth year, the impact on the economy would most likely intensify, substantially eroding already weak business and consumer sentiment and resulting in lower than forecast economic growth. Extended disruptions to the economy and to policy making could have implications for the country risk premium (including bond spreads and credit ratings). The Government faces several legal challenges that could lead to an early national election in the forecast period. That would likely create an economic policy vacuum for some months that could further delay the large public infrastructure projects and undermine investment. In that event, weaker than expected domestic demand could be expected to damp import growth, and the current account outcome would be better than the baseline forecast. The inflation outlook is condition on volatile international factors, as well as the implementation of domestic inflation-relief measures and the value of the baht.”<sup>41</sup>

The net result is that even with the current global financial crisis, Thailand's economy should perform relatively well so long as the political climate contributes to improved consumer, business and investor confidence.

### **3. EVALUATION METHODOLOGY**

This Study Report has been prepared pursuant to the guidelines established by the APEC Member Economies. The Experts based this Report on a review of Thailand's IAP, their meetings with Thai officials in Bangkok, Thailand between September 8 and September 11, 2008, and their prior and subsequent research and review of Thailand's legislation, regulations, administrative policies, practices and measures undertaken by the GOT to achieve its Bogor goals.

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<sup>40</sup> Asian Development Outlook 2008, Highlights – ADO 2008, Asian Development Bank, [www.adb.org/Documents/Books/ADO/2008](http://www.adb.org/Documents/Books/ADO/2008)

In accordance with the requirements established by the Member Economies, the Review Team adopted a non-controversial and balanced approach in its assessment of Thailand's progress. The Review Team was assisted in this regard by the productive meetings held with numerous officials of the GOT in Bangkok, Thailand. The GOT officials who participated in these meetings were uniformly open and forthcoming and greatly assisted the Review Team in understanding Thailand's current regulatory system, the efforts that Thailand has made to date and since 2002 to achieve further liberalization and most importantly Thailand's plans for further liberalization as it moves forward. The information provided by GOT officials was supplemented with information from other sources including AD B Reports, WTO documents and USTR's National Trade Estimate Report on Foreign Trade Barriers.

#### **4. ANALYSIS AND COMMENTS ON THAILAND'S INDIVIDUAL ACTION PLAN**

##### **I. Tariffs**

###### *APEC objectives*

*To achieve free and open trade in the APEC Region by progressively reducing tariff measures and ensuring their transparency.*

Since the last IAP review, Thailand has been making steady and measured progress toward tariff elimination. In 2007, Thailand completed its tariff restructuring process. Currently, Thailand uses the HS 2007 tariff nomenclature, fully implemented since 1 January 2007. In general, MFN applied rates for most agricultural products are already equal to WTO bound rates and selected agricultural goods considered to be inputs may have lower than bound rates. As for industrial goods, the tariff is varied based on the degree of processing; i.e., 1% for raw materials and inputs that are not locally produced, 5% for intermediate products, 10% for finished products other than those used by consumers and 20% and above for finished consumer products. Thailand's simple average applied tariff has been reduced to 11.36%. As Thailand moves towards Bogor

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<sup>41</sup> Asian Development Outlook 2008, Update, Thailand, Asian Development Bank, [www.adb.org/Documents/Books/ADO/2008](http://www.adb.org/Documents/Books/ADO/2008)

conformity it will need to address tariff escalation and the significant effective protection it affords.

Since joining the AFTA, the first FTA for Thailand, several other FTAs or EPAs (Economic Partnership Agreement) have been completed with different schemes and have taken effect at present. Those are the Thailand-Australia FTA (TAFTA), the Thailand-New Zealand CEP, the Thailand-India FTA (Early Harvest Program), the Japan-Thailand Economic Partnership Agreement (JTEPA). Currently, Thailand is also in the process of free-trade negotiations with EFTA, India, and BIMST-EC, as well as ASEAN-India and ASEAN-EU Thailand's negotiations with Peru (Early Harvest Scheme), ASEAN-Japan (Trade in goods), ASEAN-Korea and ASEAN-Australia and New Zealand have been concluded but the agreement has not yet been implemented. These agreements are awaiting the completion of internal legal procedures necessary for the entry into force concluded but the agreements have not yet been implemented. These agreements are awaiting the completion of legal procedures necessary for their entry into force.

Under AFTA, tariffs on all products, except for the sensitive products of 10 tariff lines, are currently in the 0 to 5% range. Thailand plans to reduce all tariff lines to Free in 2010 except for these sensitive products. Thailand has also made significant progress in its efforts to reduce tariffs under the ASEAN-China FTA (Early Harvest Program) by eliminating tariff rates on products in Chapters 01-08 beginning on January 1<sup>st</sup>, 2006. Tariff rates on products in the Normal Track under the ASEAN-China FTA have been reduced since 1 July 2005, and will be eliminated by 2010. Under the TAFTA, Thailand eliminated tariff rates on 2,724 items on 1 January 2005. Tariff rates on products under this agreement continue to be reduced and will be Free in 2010.

The Thailand-New Zealand CEP entered into force on 1 July 2005. Upon implementation, approximately 50% of Thailand's imports from New Zealand are duty free. Similar to TAFTA, most of the tariff lines will have their tariff rates reduced to Free by 2010.

Under the Early Harvest Scheme of the FTA between Thailand and India, both parties have agreed on tariff elimination of 82 products by 1 September 2006. The remaining products are currently under negotiation.

JTEPA entered into force on 1 November 2007. Upon implementation, approximately 45% of Thailand's imports from Japan are duty free. Tariff rates on most products will be reduced to Free by 2012.

There were questions from some member economies regarding the existence of relatively high applied tariff on imports of textiles and clothing products. Thai officials explained that Thailand supports trade liberalization policy and, as a result, Thailand has been unilaterally reducing tariffs for most industrial products including those in the textiles and clothing sector. In the future, more tariff reduction can also be expected in textiles and clothing product because of the expansion of Thailand's FTAs with more trading partners.

### **Tariff Transparency is Improving**

Thailand's Tariff and Customs procedures online information on its website has been improved. To ensure broader access, Royal Thai Customs has been translating its website into English since the last IAP review. As a result, more detailed information on Customs procedures; tariff nomenclatures and other information on import/export procedures are now available in English ([www.customs.go.th/Customs-Eng/indexEng.jsp](http://www.customs.go.th/Customs-Eng/indexEng.jsp)). Thailand's Customs Administration is also working towards frequent updates to enhance the reliability of the information.

Thai Customs also provides Appeals Provisions through the Customs Appeals Committee which is responsible for making decisions concerning any valuation discrepancies between Customs officers and concerned parties. Importers and exporters may submit an appeal to the Customs Appeals Committee within 30 days after receiving a notice of assessment. According to Thai officials, there are approximately 78 appeals per month filed with the Customs Tariff Appeal and Rules of Origin division by exporters and importers. Most involve Customs tariffs and duty rates appeals. In total 623 appeals were submitted from January to August 2008.



In addition, Thailand's Import Policy Administration Board aims to maintain a stable economy while balancing export promotion and import administration as a general policy. The Board seeks to improve the competitive position of Thai products in the market via better distribution of import sources and to achieve efficiency through the use of capital goods, raw materials and others. The Board's primary function does not exclusively focus on tariff measures, it also strives to improve efficiency and productivity. The Review Team understands that Administration of tariff measures by IPAB is fully consistent with the provisions of the WTO.

## II. Non-Tariff Measures

### *APEC objectives*

*To achieve free and open trade in the APEC region by progressively reducing non-tariff measures and ensuring their transparency.*

In general, there are no restrictions or prohibitions on imports of most products into Thailand. Non-tariff measures have largely been eliminated or brought under WTO disciplines. However, on some products, import prohibitions are used, but as necessary to protect public morals, national security, or human, animal or plant life, and health, in accordance with Article XX on General Exceptions of the GATT (1994) to the WTO Agreement.

Currently Thailand maintains Tariff Rate Quotas (TRQ) on 23 agricultural products. The application of TRQ complies fully with the WTO arrangement. However, some member economies have questioned the practice of TRQ on agriculture products that seems to be unevenly applied. Thai officials explained that each TRQ was managed differently. For example, soybeans, soybean meal, skimmed milk powder, and fresh potatoes are allowed to be imported in more than the WTO bound quantities.

In 2003, Thailand expanded its tariff quota and lowered its applied in-quota tariff rates below its WTO commitments for several items. For instance, imports of soybean and seed potato, under

tariff quota imports are subject to a Free tariff rate and, thus, are not limited. All Soybean cake imports are subject to a 4% tariff rate, which is more liberal than the bound quantity and in-quota tariff rates, which are 229,339 tons and 20% respectively. Furthermore, for onion seed, the quantity allocation in the tariff quota is 3.15 tons with Free tariff rate while the WTO Agreement on Agriculture quantity and in-quota tariff rate commitments are 3.15 tons and 30% respectively.

Used engines, certain parts and accessories of motorcycles, selected type of wheels, are subject to import restriction for public health reasons. In addition, potassium permanganate, caffeine and rough diamonds are subject to import registration with the Department of Foreign Trade (DFT) for control of narcotics and the UN resolution respectively.

The Department of Foreign Trade (DFT) has prohibited the import of any electrical and mechanical operating devices for gambling to protect public morals. Importation of parts and accessories of such devices are also prohibited.

The DFT also prohibits imports of logs and sawn wood which are made of teak trees, rubber trees or forbidden trees from the border of Targ and Kanchanaburi provinces to prevent illegal logging. The prohibition on import of devices for gambling and import of logs and sawn wood are new restrictions introduced since the last IAP.

Even though there are some restrictions or prohibitions on Thai exports, there are no improvements in *quantitative export restrictions/prohibitions* implemented or planned since the last IAP. On the other hand, neither *import nor export levies* are imposed in Thailand thus far.

As for *discretionary import licensing*, DFT has abolished the import control on new six-wheeled buses with over 30 seats. Also, the DFT has improved the import regulation on machinery and parts thereof that potentially violate copyrights of cassette tape, video tape, and compact disc.

Since the last IAP, Thailand has abolished export licensing requirement on jute and kenaf seed, rattan, live bovine animals, tree-shrews, 277 kinds of wild animals, 291 kinds of wild animal carcasses, corals, Geomyda Spinoza and fertilizer. Thailand has also revised export licensing

laws and regulations on rubber wood, wood charcoal, elephant, rice, wood and sawn wood, 12 kinds of fruit and vegetable and 400 kinds of ornamental fish.

No changes have been made to Automatic Import Licensing or Voluntary Export Restraint. Thailand does not use *export subsidies*, nor set *minimum import prices*. As to *other non-tariff measures maintained*, no changes have been made since the last IAP.

### **III. Services**

#### *APEC objectives*

*To achieve free and open trade and investment in the APEC region by progressively reducing market access restrictions and providing for, inter alia, most-favoured-nation (MFN) treatment and National Treatment.*

### **FINANCIAL SERVICES**

Thailand has been actively participating in the WTO discussions on the financial sector and will continue to participate in the negotiations on financial service liberalization under the GATS. Thai officials indicated that Thailand will consider appropriate undertakings to enhance the role of foreign financial businesses in the domestic financial system with a view to promoting overall economic efficiency and stability.

#### **Easier Licensing and Qualification Requirements of Service Providers**

The Security and Exchange Commission (SEC) officially announced a *new licensing scheme with a roadmap* for liberalization of the securities business within five years. According to the Ministerial Regulation that came into effect on February 12, 2008, the new scheme introduced “single license” allowing the license holder to engage in a full range of securities businesses and “boutique services” license for those who seek to engage in a specific category of securities business. While current license holders can upgrade into this new package regime, the SEC will

accept applications for new securities licenses under the new regime on January 1, 2012 and there will be no limit on the number of licenses, providing that the applicants meet the “fit and proper” requirements.

In essence, the SEC will replace the multiple licensing scheme currently in use with the single licensing scheme that will allow the undertaking of packaged services covering a range of securities businesses as follows:

- 1 Full Services:** Operation of all types of securities businesses, i.e., securities broker/dealer/underwriter, derivatives broker/dealer, mutual fund management, private fund management, derivatives fund management, venture capital fund management, investment advisor and derivatives advisor, and securities borrowing and lending.
  
- 2 Boutique Services:** Operation of specific securities businesses under the following categories: (1) **Boutique debt services:** Operation of debt securities businesses, i.e., debt broker/dealer/underwriter, investment advisor, and securities borrowing and lending; (2) **Boutique derivatives services:** Operation of derivatives businesses, i.e., derivatives broker/dealer, derivatives fund management, and derivatives advisor; and (3) **Boutique asset management services:** Operation of asset management businesses, i.e., mutual fund management, private fund management, derivatives fund management, venture capital fund management, investment advisor and derivatives advisor, and LBDU.

In its IAP, Thailand reports that, according to current regulation, foreign shareholder participations in asset management business are allowed under the following conditions:

- In case of the CIS operators which have been operating for less than 5 years: foreign shareholder participations are allowed up to 49.99%. The rule also requires that the rest must be owned by Thai financial institutions.
- In other cases, foreign shareholder participations can be up to 100% with prior permission from the Director-General of Business Development Department, Ministry of Commerce (MOC).

Thailand has allowed existing finance companies and credit foncier companies to upgrade to become retail banks, or to merge with another financial institution to become a commercial bank, under the Financial Sector Master Plan I (FSMP I). As a result of the rationalization program, the number of financial institutions under the supervision of the Bank of Thailand fell almost by half from 83 in December 31, 2003 (before the FSMP I) to 42 at the end of 2007.

### **Limited Brokerage, Dealing and Underwriting Business**

The ministerial regulation concerning approval of the undertaking of securities business in the category of limited brokerage, dealing or underwriting of investment units (“LBDU”) was repealed by the Ministerial Regulation Concerning Granting of Approval for Undertaking Securities Business B.E. 2551 dated January 25, 2008. In addition to the current eligible persons, the new ministerial regulation allows newly established companies to apply for LBDU license.

### **Foreign Entry**

In principle, Thailand allows foreign investors to hold up to 25% equity participation in commercial banks, finance companies or credit foncier companies. Where it is deemed necessary to improve the condition or business of these companies, the Bank of Thailand (BOT) may allow foreign interests to hold up to 49% of the shares of these institutions to rectify the condition or operation of a commercial bank or to ensure the integrity and stability of a financial institution or financial institution system. The Finance Minister, with the advice of the BOT, has the authority to permit foreign investors to hold more than 49% of the shares for up to ten years. After the specified period has elapsed, foreign investors will not be forced to sell their shares but can not purchase any additional shares, unless the amount of shareholding is less than 49% of total shares outstanding. Additional shares may then be acquired to bring foreign shareholdings to the 49% maximum.

Improvements implemented since the last IAP on foreign entry the Financial Sector Master Plan permits existing branches of foreign banks to apply to upgrade to become a subsidiary. As a result of implementation, of the Financial Sector Master Plan I some existing foreign participants had been upgraded to branches or subsidiaries..

Thailand's answers to questions from member economies on this issue indicate that a number of potential liberalizing measures or actions are expected to be taken over the next 3 years in the insurance sector, namely:

- (1) The ability to increase in number of foreign shareholders and directors. According to Life Insurance Act (No.2) B.E.2551 (2008): section 10 and Non-Life Insurance Act (No.2) B.E. 2551 (2008): section 9, not less than three fourths (3/4) of the total number of directors have to be Thai nationals and to have Thai nationals to hold shares more than 75% of voting and paid shares; and
- (2) If the Commission deems appropriate, it may permit persons of non-Thai nationality to hold shares, in a proportion of up to 49% of the total number of voting shares that have been sold, and permit persons of non-Thai nationality to serve as directors, in an amount exceeding one fourth (1/4), but less than one-half (1/2), of the total number of directors.

As for securities companies, a securities brokerage businesses may have up to 100 % foreign shareholding. However, other securities businesses, including securities underwriting, securities dealing, investment advisory, mutual fund management, and private fund management businesses fall under Annex 3 (21) attached to the Foreign Business Act B.E. 2542 (1999) which prohibits securities companies having foreigners holding 50% or more of outstanding shares without obtaining prior permission from the Director-General of Business Development Department, Ministry of Commerce (MOC).

## **ENERGY**

The framework for restructuring of Thailand's Energy Industry was stipulated by the Energy Industry Act, B.E. 2550 which has been in force since 11 December 2007. This Act aims to separate the policy-making, regulation and operating functions of the energy industry from each

other and to enhance the efficiency of regulation of the electricity and natural gas industry in the long term. Under the Act, the government, via the Ministry of Energy and the National Energy Policy Council (NEPC), is responsible for consideration and approval of policy-related matters, such as energy procurement plans, expansion of energy transmission networks, energy diversification, including the determination of service quality standards.

On the regulatory side, the Energy Regulatory Board (ERB) has been established to regulate energy business operation, pursuant to the policy approved by the government. The ERB has, *inter alia*, the following authority and duties: (1) issuing licenses for energy industry operation; (2) establishing measures to ensure security and reliability of the power system; (3) providing recommendations to the Minister of Energy on the power development plan, the investment plans of the electricity industry, the natural gas procurement plan and the energy network system expansion plans; (4) inspecting the operations of energy industry licensees to ensure efficiency and transparency; (5) issuing regulations on Customer service standards and quality, including measures to protect energy consumers against adverse impacts resulting from the energy industry operation; (6) providing comments or recommendations related to the energy industry operation to the Minister of Energy and the Cabinet; and (7) promoting efficient use of energy and the use of renewable energy and energy that has a less adverse impact on the environment.

In addition, the Energy Regulatory Commission (ERC) has been appointed under the Act, effective 1 February 2008, to oversee and regulate the electricity and natural gas industry. The establishment of the Office of the Energy Regulatory Commission (OERC) and the selection of the OERC Secretary General is currently underway. Now that the ERC is operational it has been entrusted with regulation of the energy industry. The National Energy Policy Council (NEPC), formerly responsible for both energy policy making and regulation, will be responsible only for determination of Thailand's energy policy. The ERC will regulate, through the issuance of regulations, criteria and conditions of the operation of energy business, in compliance with the national policy.

The new Energy Industry Act is expected to have an impact on energy sector development by: (1) creating more transparency and fairness in the energy industry management, which will contribute to a better environment for more investment by investors in the energy industry in Thailand; (2)

enhancing efficiency of energy industry regulation through the terms and conditions of license issuance; (3) ensuring fair and transparent energy pricing for all stakeholders, particularly the electricity tariffs, which will reflect actual costs of fuel used, and consumers will have access to information about energy situations, changes in various aspects, including fuel costs, share of energy mix and electricity tariffs, via the ERC website, which will foster better understanding for the general public as to why tariffs are reduced or increased; (4) ensuring fairness for the communities surrounding a power plant and better environmental protection, through the requirement of Power Development Fund establishment; and (5) helping address problems arising from the energy business operation in a shorter time by the ERC and/or the Regional Energy Consumer Committees.

According to the Act, an energy industry operator must obtain a license from the ERB. Thus existing energy industry operators, will have to apply for a license under this Act prior to its entry into force within the specified time frame.

The Power Development Fund initiative is also required by the Act to be set up for providing capital funds that would be established under the OERC. The fund aims to (1) support extensive extension of electricity service provision to various localities; (2) develop local communities affected by the operation of a power plant; (3) promote the use of renewable energy and technologies in the electricity industry operation that have less impact on the environment; (4) compensate/subsidize electricity industry licensees who provide services for underprivileged power consumers or to enhance extensive electrification; (5) increase knowledge, awareness and participation of society and people in power-related issues; and (6) pay for the costs of Fund management.

Therefore, power generation plants owned by both Thai utilities and private power producers, must contribute to the Fund in accordance with the regulations prescribed by the ERB under the policy framework approved by the NEPC. The OERC shall receive, disburse, keep, manage and administer the money of the Fund separately from its operating budget, in line with the regulations made by the ERC.



### **Electricity Supply Industry (ESI)**

The GOT has been and will continue to encourage private investor participation in the electricity generation sector, in the form of Independent Power Producers (IPPs), Small Power Producers (SPPs) and Very Small Power Producers (VSPPs).

To ensure both energy security and sustainable development, Thailand, through the Ministry of Energy, is promoting alternative and new and renewable energy development with a view to reducing dependency on imported oil. Greater use of domestic energy resources, particularly natural gas and potential renewable energy sources is being explored, and energy efficiency measures are being intensified.

A major supportive approach under the government policy to encourage development of cogeneration and renewable energy power generation projects is the provision of an additional tariff, or “*Adder*” on top of the base power purchase tariff from Small Power Producers (SPPs) and Very Small Power Producers (VSPPs). Adders will be provided for a period of 7 years as from the Commercial Operation Date. The amounts of adders vary, depending on the technology used, eg., 30 satangs (0.86 US cent) per unit of purchased electricity generated from biomass or biogas energy; 2.50 Baht (7 cents) per unit from wind or municipal wastes; and 8 Baht (23 cents) per unit from solar energy. (Rate used: 35 Baht/1 USD)

### **Natural Gas Vehicles**

Thailand has promoted the use of natural gas vehicles, Natural Gas Vehicles (NGV), in place of gasoline vehicles, the largest oil consumption sector. Thailand supports NGVs by providing incentives such as: financial package for NGV conversion, zero tax policy for NGV related equipment for filling station and vehicle, import tax exemption for trucks and buses (both CBU and CKD), excise tax reduction for NGV OEM vehicle from 30% to 20%, and license plate tax reduction.

### **Plan for LNG Procurement**

A plan for LNG procurement from foreign sources has been developed to ensure adequate long term gas supply. The LNG Receiving Terminal will be located on the eastern coast at Map Ta

Phut Industrial Estate in Rayong province. Construction is expected to be completed in mid-2011. Total investment is estimated at one billion U.S. dollars. LNG imports are expected from 2011 onwards.

### **Promotion on the Use of Biofuels**

To cope with the unstable supply of world crude oil and oil price hikes, renewable energy and alternative fuel development has been intensified with a view to reducing dependency on petroleum fuels. The Ministry of Energy has set a target of increasing the share of renewable energy in Thailand's energy mix to 12.2% of total demand by 2011. The use of biomass and biogas, including wastewater from factories such as those producing tapioca starch and palm oil, to produce energy will be promoted to optimize domestic energy resources, to generate more income for farmers and, at the same time, to alleviate environmental problems.

Thailand has devised energy development plans and strategies based on the concept of sustainable development, aimed at strengthening energy security while reducing environmental impact and balancing supply and demand for sustained economic growth.

Considering that Thailand has abundant sources of oil plants for use as feedstock for the production of biofuel, the government has considered developing clean energy to reduce adverse environmental impacts, especially in the transportation sector. The feedstock for biofuel production is surplus supply of oil plant products; therefore, there is no competition between food and fuels. The crop land for oil plants and that for other food plants (eg., oil palms vs rice), are in different areas.

Accordingly, to alleviate the potential constraint on cropland expansion for raw materials for biofuel production and to reduce concerns about food and energy supply conflicts, Thailand, at the 26<sup>th</sup> ASEAN Energy Ministers' Meeting (26<sup>th</sup> AMEM) as well as at the ASEAN+3 and the EAS Energy Ministers' Meetings held in early August 2008 in Bangkok, strongly encouraged regional cooperation in the production and trading of biofuel, especially ethanol, at the regional level. This would be beneficial not only in reduced energy costs in the transportation sector but also to the global environment.

### **Promotion of Energy Efficiency**

To encourage economical and efficient use of energy, especially in the industrial and household/commercial sectors, various measures have been implemented, for example: (1) Energy-saving Labeling No. 5 (highest) for seven electric appliances, i.e., refrigerators, air-conditioners, ballasts, electric fans, rice cookers, compact fluorescent lamps and electric lamps, which is expected to be completed by December 2008 with a target saving of 1,000 million Baht/year; (2) Campaigns urging discontinuation of production and use of incandescent lamps in favour of increased use of compact fluorescent lamps; (3) Provision of the Revolving Fund for Energy Conservation Projects, Phase 2 (a low-interest loan scheme to promote energy conservation in buildings and factories); and (4) Income Tax Exemption – a claim for tax exemption can be made for devices that contribute to energy saving;

### **Development of Nuclear Power Generation**

To prepare for increasing energy demand, Thailand is contemplating development of nuclear power generation. Nuclear power plants with a total generating capacity of 4,000 MW (2,000 MW in 2020 and another 2,000 MW in 2021).are envisaged in Thailand's Power Development Plan 2007-2021 (PDP2007 -Revision 1),

In April 2007, The Nuclear Power Infrastructure Preparation Committee (NPIPC) was appointed to develop and recommend plans, measures and guidelines for implementation of preparatory work for the establishment of a nuclear power plant.

According to May 2007, survey by the National Statistical Office under the Ministry of Information and Communication Technology 41.3% of people supported nuclear plant construction, while 22.7% were opposed and 36.0% were uncertain or did not know about the plan. The survey covered 5,800 people nationwide, aged 18 and over.

## TOURISM

According to the Travel Business and Guide Act 2008, the provision of tourist guide services is reserved for Thai nationals. The Ministry of Tourism and Sports may consider allowing other foreign language speaking tour leaders to work as interpreters in Thai territory in the company of local guides. This policy reduces impediments to tourism businesses as contained in the Seoul Declaration through facilitating the mobility of skills and labour.

Foreigners who establish a hotel business in Thailand must follow “the Foreign Business Act, B.E. 2542 (1999)” under the responsibility of Department of Business Development, Ministry of Commerce. While the establishment of travel agency and tour operator services must follow “the Tour Operator and Guide Act, B.E. 2551 (2008)” under the Bureau of Tourism Business and Guide Registration, Office of Tourism Development, Ministry of Tourism and Sports. Foreigners who are permitted to set up travel agency and tour operator services in Thailand according to the Act must apply for a license from the Tourism Business and Guide register and qualify under the requirements set out in Article 16 of the Act.

There is no discrimination between domestic and foreign service suppliers as long as foreigners who want to set up tourism business obtain a license from Tourism Business and Guide Register. By applying the MFN Principle, Thailand has a relatively open trading environment in tourism, and encourages liberalization of services trade related to tourism under GATS. There is no discrimination in the approach to provision of visitor facilities and services in Thailand.

The Hotel Act of 1935 has been amended as the Hotel Act 2004 (B.E. 2547) which provides that the operation of a hotel business requires a license and business registration issued by the district office controlling the area where the hotel is located.

For foreign business, incentive mechanisms for tourism investment are offered by the Board of Investment (BOI) of Thailand in terms of tax and non-tax incentives to hotels with more than 100 rooms, subject to certain conditions. The BOI is also considering extending special privileges to foreign investment in some types of accommodation such as retirement homes.

## **TRANSPORTATION: LAND**

Road transport services in Thailand are subject to the Land Transport Act BE 2522 (1979) and the Foreign Business Act BE 2542 (1999). Thailand also participates in bilateral agreements such as those with Malaysia, Cambodia, Vietnam and Laos, as well as multilateral agreements eg., ASEAN Agreement on the Recognition of Commercial Vehicle Inspection Certificates for Goods Vehicles and Public Service Vehicles (1998) and the ASEAN Framework Agreement on the Facilitation of Goods in Transit (1999).

Currently Thailand is reviewing restrictions on market access for road transport services in compliance with GATS with a view to reducing or removing them where appropriate. At present, the focus is on equity ownership. However, no specific timeline has been set. Thailand also plans further consideration of undertaking progressive actions to facilitate the supply of road transport services.

Thailand is not currently planning to amend its regulations with respect to limitations on domestic transportation businesses. That is, domestic transport operators must be a natural person of Thai nationality or a Thai juristic person registered under Thai law, with its head office based in Thailand. Furthermore, not less than half of the Board of Directors of the companies should be Thai nationals and not less than 51% and 50% of the capital must belong to nationals of Thailand in the cases of limited company and public company, respectively. However, despite these restrictions, GOT may grant permission for specific foreign investment in road transportation given approvals from Ministry of Commerce and the Cabinet.

## **TRANSPORTATION: MARITIME**

International shipping in Thailand is subject to Thailand's Vessel Act BE 2481 (amended by the Act BE 2540), the Navigation in Thai Waters Act BE 2456 (amended BE 2540), and the Mercantile Marine Promotion Act BE 2521. Vessel operators must be Thai juristic persons

whose business comprise of at least 51% of Thai equity. The Marine Department is responsible for these laws.

Port operations are subject to the Port Authority of Thailand Act BE 2494 (1951) and the Foreign Business Act BE 2542 (1999). The Port Authority of Thailand (PAT) is a state-owned enterprise under the Ministry of Transport. In the 2002 IAP Thailand noted a the plan to privatize the PAT however Thai officials reported in the review meeting that this plan has been halted due to labour union protests.

PAT is currently responsible for Bangkok Port, Laem Chabang Port, Chiang Saen Port, Chiang Kong Port, and Ranong Port. At present PAT is preparing the Single Rail Transfer Operator (SRTO) at Laem Chabang Port; that would be run as a business unit model. This system would involve container transport using railway between Laem Chabang Port and Lad Krabang. According to the PAT officials, the draft plan has been submitted to the Cabinet for approval.

## **TRANSPORTATION: AIR**

Air transport services in Thailand are subject to the Foreign Business Act BE 2542 (1999), the Air Navigation Act BE 2497, the Telecommunication Business Act BE 2544, and the Announcement of Thailand's National Executive Council No. 58 BE 2515. The IAP for this section mainly addresses restrictions regarding air transport services with respect to the above laws.

Currently foreign airlines are allowed to operate computer reservation system (CRS) services for their own use. The draft of CRS Code of Conduct had been reviewed by various authorities as it might duplicate other relevant legislations. At present, the Council of State of Thailand has been reviewing the contents and considering whether to proceed. The Code's main characteristics are similar to EU Code of Conduct and ICAO Code of Conduct for CRS which contain principles concerning operation of vendors, rights, obligations and responsibilities of concerned parties with the objectives to have fair, transparent competition on non-discriminatory basis as well as to protect consumer's right, eg., private information. In the meantime, the National

Telecommunications Commission has already been established to look after the telecommunication and other related services in Thailand.

## **COMMUNICATION: TELECOMMUNICATION**

It is reported in the IAP that the second Telecommunication Master Plan for the year 2008-2010 was formally published in the Royal Gazette in April 2008. The Master Plan focuses on the following areas: (1) promotion of competition, (2) telecommunication resources management, (3) consumer protection in telecommunication services, (4) universal service obligation (USO) and corporate social responsibility (CSR), (5) telecommunication industry research and development and telecommunication personnel development, (6) telecommunication for specific services, (7) telecommunication infrastructure and technology management, and (8) modernization of organization.

At the same time, the proposal to merge NTC and NBC (National Broadcasting Commission) has been submitted to the Parliament. The Review Team asked whether the approval of NTC-NBC merger would have an impact on the said Master Plan. Thailand responded that the impact would be minimal as at present there has been no master plan for broadcasting services.

The 2008 IAP also states that the NTC is well on the way to setting up criteria to promote free and fair competition in the telecommunication market. However the Review Team was told that progress to date has been limited.

Other planned improvements include (1) conformity assessment of telecommunication products; (2) assessment and licensing criteria for domestic bodies performing testing/certification, including demonstration of competence; and (3) recognition of Conformity Assessment Bodies under APEC Mutual Recognition Arrangement scheme to which Thailand is a party.

The IAP report also mentions the plan to grant licences for the 3G mobile phone system.. In the Review Meeting, Thai officials explained that the NTC is now developing licensing criteria to determine assignment method, number of operators and its relevant conditions to be applied. It is

expected that licensing criteria will be introduced by early 2009, and the process of licence granting will begin in 2009.

#### **IV. Investment**

##### *APEC objectives*

*To achieve free and open investment in the APEC region by (a) liberalizing their respective investment regimes and the overall APEC investment environment by progressively providing for MFN, National Treatment and ensuring transparency (b) facilitating investment activities through technical assistance and cooperation.*

Investment in Thailand is primarily subject to the Foreign Business Act BE 2542 (1999). Under this Act, foreigners are prohibited to engage in businesses that might affect Thailand's national security and safety, art and culture, tradition, folk handicrafts, as well as Thailand's natural resources and environment. In response to members' questions, Thailand does not currently have a policy to amend the Foreign Business Act. However, the Department of Business Development reviews the lists of activities(List 1, List 2, and List 3) every year and makes recommendations to the government for adjustments, if needed. Under this Act, foreigners are prohibited to engage in certain business unless permitted with conditions specified in the three Lists (Foot Note List 1: Foreigners shall be prohibited from operating the business not permitted to them with special reasons as described in List One. List 2: Foreigners shall be prohibited from operating any business concerning national safety and security, business affecting art and culture, tradition and folk handicraft or the business affecting natural resources or environment as prescribed in List Two unless permitted by the Minister with the approval of the Cabinet. List 3: Foreigners shall be prohibited from operating the business prescribed in List Three in which Thai national are not ready to compete unless permitted by the Director-General with the approval of the Committee.) In response to members' questions, Thailand made it clear that the Foreign Business Act will not be amended. However a review of business categories under the Lists shall be made at least once every year by the Foreign Business Committee. Information are posted on government official



websites. In case foreigners are not permitted to operate the business under the Lists, they may submit letter of appeals within 30 days of the notification of a decision.

Thailand's investment promotion policy focuses on industrial competitiveness, decentralization and good governance. Industrial competitiveness improvement is closely related to development of small and medium enterprises and technological capability (R&D as well as skill, technology, and innovation – STI Policy). Decentralization objectives are, in practice, consistent with the zoning system of investment. As for good governance, Thailand has been improving the procedures for approval of investments.

The agency in charge of investment promotion in Thailand is the Office of Board of Investment (BOI). On August 1, 2000 the BOI launched a new investment promotion policy that focuses on industrial competitiveness, decentralization, good governance. The GOT has a liberal policy designed to encourage and support foreign investment. There are no restrictions on foreign currency remittances, no export requirements, no foreign equity restrictions in manufacturing sectors, and no local content requirement.

Thailand also offers investors a package of fiscal and non-fiscal incentives. The former includes corporate income tax holidays of up to eight years and import duty reduction or exemption on machinery and raw materials. The latter covers for example permission to own land and permission to bring in foreign experts and technicians to work on projects in Thailand.

In an attempt to encourage investment in the relatively more remote and disadvantaged areas (and to be consistent with decentralization objectives), the Thailand zoning system was modified under the 2000 policy. That is, two provinces (Phuket and Rayong) which were formally under Zone 3, are now included under Zone 2, due to their economic development. Furthermore, 58 provinces in Zone 3 are now divided into two groups: 36 provinces with relatively higher per capita income, and 18 provinces which constitute the least developed areas. Investors based in the 36 provinces receive slightly less incentives than those in the other 18 provinces.

Thailand also continues to improve and streamline procedures for obtaining business licenses as well as investment approval. For example, the approval timeframe for projects with investment less than 40 million baht (excluding the cost of land and working capital) has recently been reduced from 60 working days to just 15 working days.

BOI maintains a very informative, bilingual website for investment in Thailand ([www.boi.go.th](http://www.boi.go.th)). Relevant information and news for investors include, for example, Thailand in brief, company establishment, setting up business in Thailand, industrial estates in Thailand, business statistics, business focus (including speeches, policies, analysis, sectors, press releases, and bulletins), Thailand information databases, online services, publications (including guide to BOI), and links to important websites when doing business in Thailand. The website gets about 6 million hits every month. Furthermore, nearly 10% of the regular business applications are received via online applications in the website. In addition to these, BOI also regularly updates the APEC Investment Guidebook.

To facilitate easier entry of business people, Thailand has made various changes. For example, Thailand has joined the APEC Business Travel Card (ABTC) Scheme since 1999 and is an active participant in the Scheme and other APEC BMG projects. It has also conducted periodic reviews of cross-border measures with a view to making further improvements and to better respond to developments in the global business environment.

## **V. Standards and Conformance**

### *APEC objectives*

*In accordance with the Declaration on APEC Standards and Conformance Framework and with the WTO Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures to (a) ensure the transparency of standards and conformity assessment of APEC economies (b) align their mandatory and voluntary standards with international standards (c) achieve recognition of conformity assessment in regulated and voluntary sectors (d) promote cooperation to develop*

*technical infrastructure to facilitate broad participation in recognition of conformity assessment.*

The GOT recognizes the importance of standards and conformance and participates actively in international and regional standardizing bodies as well as in the WTO Agreements on Technical Barriers to Trade (TBT) and the Application of Sanitary and Phyto-sanitary Measures (SPS). In Thailand, a unified system of standards and conformance has been organized to be in line with internationally acceptable systems. Parallel to Thailand's the strengthening of the conformity of standards is the acceptance of others' standards and conformance systems, which are considered to be at the same level through an accreditation system and the provision of assistance to other neighboring countries in terms of training in standards and conformance.

Thailand aims to align its national standards to international standards on as wide a basis as possible. Since the last IAP, 50 national standards have been aligned with relevant international standards. The IAP also reports that 618 of Thailand's industrial standards are already aligned with the relevant international standards. In fact, the number is 738 and Thailand will continue to review its standards with a view to increased international alignment.

Some member economies raised questions about the process of the alignment to international standards and the percentage of Thailand's standards that are so aligned. In answering those questions, Thailand explained that it has 2,736 industrial standards in total, of which 27% are aligned with relevant international standards. In addition, the alignment of national with international standards has been done on voluntary basis. Thailand's procedures for establishing standards comply with the ISO/IEC Guide 59 Code of Good Practice for Standardization. Thailand also confirmed that the degree of alignment in SCSC priority (IECEE/CB Scheme) is 57%. The remainder are under review for alignment during 2008-2012. In essence, Thailand attempts to align its standards with international standards to the maximum extent possible and appropriate in order to fulfill the commitment with the SCSC priorities and other bilateral agreements.

, Since the last IAP is 13 national standards in the agreed priority areas have been aligned with agreed IEC standards under the IECEE CB Scheme. Since 2005, Thailand completed its

alignment of the first priority areas, i.e., Electrical and Electronic, Food labeling, IEC 60335s, CISPR, Standards and Guides, and Safety of IT equipment as agreed by APEC-Subcommittee on Standards and Conformance (SCSC) in 2006.

Thailand is a member of ISO, IEC and ITU. Currently, Thailand holds 72 'P' membership, 166 'O' membership of ISO/ TCs/SCs and 31 'P' membership, 52 'O' membership of IEC/TCs/SCs. For ITU, Thailand participates in a number of ITU-R and ITU-T Study Groups. In addition, Thailand is also a member of The Asia Pacific Metrology Program, The Asia Pacific Laboratory Accreditation Cooperation, The Asia Pacific Legal Metrology Forum, The Pacific Accreditation Cooperation, and The Pacific Area Standards Congress.

In 2006- 2007, Thailand was an Evaluator of two Accreditation Bodies Peer Evaluation of the Asia Pacific Laboratory Accreditation Cooperation (APLAC). Thailand currently participates in the APEC Electrical MRA (Mutual Recognition Arrangements) part I and is considering taking part in the APEC electrical MRA part II and III. Thailand also participates in the APEC Food MRA and in the APEC Arrangement for the Exchange of Information on Toy Safety.

Thailand provides assistance to other economies in the region in terms of capacity building training. Since the last IAP, National Institute of Metrology (Thailand) hosted training programs for other economies in the region, namely (1) "Joint Training on Measurement Standards in Thailand" in the fields of force, pressure and volume and flow standards (with participants from 15 countries) and (2) "ASEAN Seminar and Workshop on Measurement Standards in Bangkok" in the fields of pressure and roughness standards (with participants from 8 countries)

The transparency of Thailand's standards and conformance requirements was improved through: (1) complying with the Code of Good Practice, which implemented both WTO TBT obligations and APEC Transparency Standards; and (2) Establishing a website [www.tisi.go.th](http://www.tisi.go.th) to disseminate information about Thailand's standards and conformance.

In the telecommunication sector, Thailand has conducted public consultation on developing telecommunication standards and technical regulations. Thailand also established a Telecommunication Standards Committee and its working sub-committees to ensure openness and transparency.

## **VI. Customs Procedures**

### *APEC objectives*

*To facilitate trade in the APEC region by simplifying and harmonizing Customs procedures.*

Thailand's Customs procedures appear to be compatible with the five Guiding Principles: facilitation, accountability, consistency, transparency and simplification, laid down by the APEC Sub-Committee on Customs Procedures (SCCP).

Over the 2003-2008 period, Thailand has made a number of improvements in the sub-areas of Customs Procedures: (1) Thailand Customs has significantly and systematically expanded and upgraded its systems to enter full operation of e-Customs paperless service nationwide since July 2008, including import and export services; (2) The introduction of high technology such as x-ray machines, risk profiles, etc. in Thailand's Customs procedures to reduce and expedite time for cargo examination and, hence, facilitate the honest traders. In terms of procedure of inspection, high risk cargo will be selected for examination based on risk management and risk profile; (3) For the Customs House where the x-ray machine is available, the examination by machine is generally prioritized, subject to further human examination; and (4) For the development of a compendium of harmonized trade data elements, Customs has disseminated data harmonization and standard data on the private domain of the National Single Window website, which will be expected to fully operate in the third quarter of 2009. Presently, most of these documents are shared and disseminated via e-mail among relevant agencies. The existing version of those documents is in the process of receiving for further improvement in 2009.

### **Greater Public Availability of Information**

Several efforts have been made to increase public availability of information, such as: (1) Website development for easy access by the public to various Customs related information available both in Thai and English with regular updating of information on Customs matters such as Customs laws, regulations, procedures and administrative rulings; (2) Provision of Customs information on import/export statistics, import/export Customs clearance, regulations on duty drawback, Customs tariff database and current exchange at the Thailand Customs Department web-site (<http://www.customs.go.th>); (3) Provision of a web-based form, on <http://customs.go.th/Contact/ContactUs.jsp>, for individual Customs inquiries, complaints or any comments to improve Customs service; (4) Implementation of an on-line system between Customs and banks, and Customs and Customs to reduce burden in placing guarantees and expediting the refund process to complete a setting up of a working group to develop and speed up the refund process; (5) Broad dissemination of Customs information through: Publications (newsletter, public notification, booklet, etc.), public relations, helpdesk, other media (TV, radio), and a 24 hour automatic Customs calls system; (6) Various public seminars and training for providing Customs information to trade communities; (7) Establishment of close consultation between Customs and related business communities; and (8) Maintenance of several contact points for queries concerning Customs matters and making inquiry procedures available on the Internet.

### **Paperless Trading**

The Legal Affairs Bureau has amended the Customs Act B.E. 2469 by adding provisions regarding the use of electronic transactions in Customs procedures, as well as other Customs standards compliant to the Revised Kyoto Convention, of which Thailand will be a signatory in a near future.

The first generation of electronic services are e-import and e-export under internet-based and ebXML. Paperless trading permits traders to submit electronically trade-related data to Customs' computer system (generally, declaration and invoice is no longer in use for submission). Additionally, e-payment of duty and tax whereby the duty and taxes will be electronically collected from the traders account in certain commercial banks. Thus the process

of data verification, duty collection, the selection of cargo for examination can be done by computer.

The second generation of electronic service is e-Customs paperless service. The Department redesigned and reprocessed all the processes and procedures concerning import and export and adoption of web-based technology, ebXML, PKI and digital signature technologies. The Department introduced e-Customs paperless service in the third quarter of 2006 and has been fully operational nationwide since July 2008. Customs declaration and supporting documents need not be submitted to Customs for cargo release and clearance, except for less than 3% of goods deemed to be high risk.

The national single window program was started with the aim of rapidly making Customs clearance more efficient and effective in the future. To implement this policy, Thai Customs has received a budget from the government to implement a fully operational single window in a paperless environment in 2010.

Since the methods for applying electronic transactions and related matters under the ASEAN Single Window Agreement have not been finalized among member economies, the provisions in the amended Customs Law have been drafted broadly. For example, methods of using the electronic transaction or a proper way to settle a dispute occurring from a use of electronic transaction are left to the discretion of the Director General (DG) to decide. Once the DG makes his decisions regarding these matters, Notification of the Customs Department or other kinds of Departmental orders can be issued rapidly instead of relying on the time consuming process of amending the Customs Act.

### **Clear Appeals Provisions**

Royal Thai Customs has established an appeals subcommittee for tariff classification. Importers and exporters who want to appeal value added tax and excise tax decisions concerning import and export procedures can do so through the Customs Department in accordance with rules prescribed by the Director-General.

In principle, if there are any discrepancies concerning valuation, tariff classification, amount of duty payable, origin of goods and quantity of imported goods when the declaration and related documents are verified by Customs officers, the concerned importers, exporters or their agents can appeal Customs' decision at that time. Appeals can be made within specified time limits. For example, under section 112 bis of the Customs Act (2000), importers and exporters may submit appeals to the Customs Department within 30 days after the date of receiving the notice of assessment. Further avenues to seek review by the Tax Court also exist and become available after the initial appeals process at the Customs Department is concluded.

### **Alignment with WTO Valuation Agreement**

Thai Customs considers that availability on knowledge management related to WTO Valuation is accessible on the Customs Website.

### **Adoption of Kyoto Convention**

The Cabinet, on 8 November B.E. 2548, approved Thailand's eligibility to become a signatory of the Revised Kyoto Convention in near future. Customs Act B.E. 2469 has been amended by adding provisions regarding necessary Customs standards compliant with this international agreement. The Royal Tariff Decree B.E. 2530 has also been amended to support Thailand's obligations under the Revised Kyoto Convention. Both drafts of are now awaiting approval by the Ministry of Finance prior to other internal legislative processes..

### **Harmonized System Convention**

Thailand used UNTDED and WCO data set/model as reference sources for data harmonization and standardization for electronic data exchange between the Customs and relevant stakeholders. The Customs office also used modeling tools to facilitate the development and implementation processes. Data harmonization as well as standard data sets will be disseminated on the private domain of the National Single Window website, which will be fully operational in the third quarter of 2009. Presently, most of these documents are shared and disseminated via e-mail among relevant agencies. These documents are being revised and improved for 2009. In addition, Thai Customs is now considering translation of HS 2007 into a Thai language version to be used as a guideline for Customs officers in charge.



### **Advance Classification Ruling System**

Royal Thai Customs is in the process of amending the Customs Law Thailand implemented the ASEAN Harmonized Tariff Nomenclature (AHTN 2007/1) in accordance with HS 2007 in January 2007. Thai Customs has a Pre-classification Ruling System but it is not binding. The revision of the binding Pre-classification Ruling System is in process.

### **Implementation of the TRIPs Agreement**

Thai Customs is proposing to replace the current Customs Act with a new one that will give Customs officers the authority to inspect and confiscate goods which infringe on Intellectual Property Rights (IPR) that enter Thailand as transit and/or trans-shipment goods. In this connection, the Customs Department is establishing a division directly responsible for enforcing IPR. Thai Customs organizes IPR Training Course in cooperation with both government and the private sector to improve enforcement of IPR..

Following the signing of an MOU on joint IPR Enforcement, Thai Customs coordinates with other relevant government agencies to hold meetings and map out plans including joint measures for IPR suppression

### **Risk Management and Inspections**

The Regulation and Notification of the Customs Department on Risk Management Techniques is in accordance with the Revised Kyoto Convention. It includes risk profiling with a selection system that is a ready-made program implemented by automatic processing. The operational ability of the systems is handled by computerized system and involving post review process in a weekly or monthly basis. The Notification of Customs Department providing the maximum cap of 10% of random inspection.

The implementation of the profiling system for risk management will facilitate trade flows but may or may not reduce the physical inspection rate. The inspection rate will depend on the compliance level and the risk level of each product. However, in principle, it is planned that physical inspections will be reduced on imported and exported goods provided that risk management is fully utilized and x-ray container machines are in operation.

### **Improved Integrity and Transparency**

A Code of Conduct for Customs officials, based on the Arusha Declaration is being revised and several Customs training courses have been conducted to instill morality, organizational loyalty, to strengthen mental development and evaluation of its results

There are several policies and programs that have been introduced by the Customs office to improve integrity, for example: disciplinary action for Customs officials (recently the Customs transferred 28 officials as part of this policy), training on how to maintain mindfulness, leadership training and development, and ethics and code of conduct training. In addition, ethical matters will be part of the written examinations for civil service recruitment, promotion, and change responsibility.

## **VII. Intellectual Property Rights**

### *APEC objectives*

*To ensure adequate and effective protection, including legislation, administration and enforcement, of intellectual property rights in the APEC region based on the principles of MFN, National Treatment and transparency.*

The GOT has developed a comprehensive policy to promote effective protection of intellectual property rights. This intention can be inferred from the new Constitution of Kingdom of Thailand B.E. 2550, which places special emphasis on providing protection to intellectual property in line with internationally accepted standards, as well as from the National Policy of the current Royal Thai Government that places high priority on the development of the intellectual property system.

The 2008 IAP states that the Department of Intellectual Property (DIP), as the principal agency in the development of intellectual property system in Thailand, is now able to offer streamlined

efforts to resolve domestic intellectual property issues and, more importantly, to assure a continual and sustainable development of the intellectual property system in Thailand.

As part of a strategy emphasizing a coordinated approach to intellectual property policy, The Department of Intellectual Property has coordinated with universities, National Innovation Agencies and National Science and Technology Development Agency to promote the creation of innovations and intellectual property subject matters, and has also cooperated with the Office of Small and Medium Enterprises Promotion and the universities to provide knowledge on commercialization of intellectual property rights for innovators and entities in business circles in order to assist them to make full use of their rights.

DIP Thailand and other bodies concerned with intellectual property are very active in disseminating information about intellectual property rights, by establishing an effective information database system to a reliable intellectual property examination process and the promotion of the utilization of intellectual property for commercial purposes.

At the same time, due to the present rapid technological advancement, the Royal Thai Government has placed special effort on enhancing the existing legal framework for the protection of intellectual property. Moreover, there have been significant advances in the amendments of various laws and regulations, both under the responsibility of the Department of Intellectual Property and related agencies, such as the Copyright Act, the Trademark Act, the Patent Act, the Customs Act, and the Broadcasting Bill.

With respect to the infringement of intellectual property rights, the DIP has coordinated closely with related agencies to suppress intellectual property violations in an integrated manner with clear target and expected results. Especially for the optical disc piracy, the DIP, the Royal Thai Police and the Department of Special Investigation have jointly conducted numerous raids that focus on the suppression of large scale violations. The counterfeiting and pirated goods seized in the intellectual property infringement cases are destroyed to prevent them from re-entering the market.

Thailand stated that the amendment of the Copyright Act B.E. 2537 is to provide more appropriate punishment provisions by categorizing the act of infringement into 3 levels, namely general infringement, commercial infringement, and large-scale commercial infringement. For the third type of infringement, a settlement of the dispute is not allowed. Although in the proposed amendments the minimum fine is given up, the maximum fine will be increased. Therefore, the judges will be able to impose appropriate fines in proportion with the seriousness of the infringing activities.

### **TRIPS Implementation**

The Copyright Act B.E. 2537 is being amended to provide more appropriate punishment provisions and to add provisions on collecting management organizations and on exceptions for the disabled. Currently, Thailand's laws and regulations are in full compliance to TRIPS requirement as per TPRB reviewed in November 2003

To provide an electronic search system on worldwide patent information, DIP has created a new search program that links all major database gateways together, namely USPTO, EPO, JPO, KIPO, WIPO, and DIP. Applicants can therefore conduct a single search at the DIP's website without having to conduct the same search at each website. This will reduce time spent by applicants in conducting patent searches and aims to stimulate the use of patent information and research and development.

To take into account the WIPO norms in the WCT and WPPT, Thailand is contemplating changes to its Copyright regime. The Copyright Bill proposes to provide protection measures to works of copyright in digital format. These include (1) amending the definition of the right of "communication to the public" to make it clear that the act of making available to the public works in such a way that members of the public may access works from a place and at a time individually chosen by them is covered in the definition; (2) separating the right of "distribution" from the right of "communication to the public" and make it clear that the distribution right will be exhausted after the first sale or other transfer of ownership of the original or a copy of the work with the authorization of the copyright owner; (3) clearing the definition of the right of "reproduction" to cover the reproduction in digital form; (4) provisions concerning the internet

service provider's liabilities; (5) provisions concerning the right management information and impost penalty against infringers; (6) provisions concerning technological protection measures and impost penalty against infringers; and (7) expanding the scope of protection of performers' rights to cover the right of communication to the public of performances and sound recordings via the internet, the right of distribution and the right of rental of the original or copies of sound recordings as well as moral rights.

### **Ensuring the Expeditious Granting of IP Rights**

The DIP has provided facilities for electronic search of patents, designs and trademarks to expedite the approval process. By using computer system, DIP has provided IP Categorized databases and also collaborated with EPO to implement the EPOQUE net project for allowing Thailand's patent searchers to conduct a search on EPO's databases.

The patent examination process is expedited by partial outsourcing to educational institutions; however, DIP is still in charge to control the quality management scheme of the length of registration process, especially that of patent. DIP has also introduced on-line application for trademark to provide easy access to protection of IPRs.

Following amendment of the Copyright Act, The Patent Act and the Trademark Act are also in the process of amendment and are still being considered by the Council of the State. The revision is to reduce complexity and obstacles in the registration procedure. The proposed amendments to the Patent Act will change the opposition procedure from taking place before granting to after granting a patent, to reduce complexity and obstacles in the registration procedure. It also proposes to reduce the period of time for requesting substantial examination from 5 years to 3 years from the end of publication period. In the past, applicants had to settle among themselves as to whom had a better right to file a trademark application. The new provisions will ensure the first-to-file principle, thereby abolishing unnecessary mutual consultation among the applicants.

### **Effective Enforcement of IP Rights**

The DIP works closely with The Royal Thai Police, the Department of Special Investigations, the Customs Department and representatives of IP owners in laying down measures and

mechanisms for the effective enforcement of IPR in all aspects, i.e., production, distribution and export/import. The Prime Minister established a Committee on Prevention and Suppression of IPR Violation in May 2008. This Committee is chaired by the Deputy Minister of Commerce and which includes but is not limited to the heads of various government agencies such as Police, Customs Department, DSI, IP Attorney's Office, Ministry of ICT, Council of the State, Ministry of Education.

The Committee is empowered to direct, cooperate, lay down measures and follow up on the prevention and suppression of IPR violation by various government agencies. The formation of the Committee enables members of the Committee to share information and to work together in an integrative manner.

The team to suppress violations of IPRs has conducted approximately 120 raids per month and has inspected CD factories approximately 30 times per month. From January to June 2008 the Royal Thai Police and the DSI conducted 2,512 raids (approximately 420 times a month) and seized 3,746, 036 infringing goods. The Customs Department intercepted pirated shipments 243 times (approximately 40 times a month) and seized 911,921 infringing goods. The outcomes of the raids can be found on the website of the Customs Department, the Department of Intellectual Property and International Trade Litigation (Office of the Attorney General) and the Central Intellectual Property and International Trade Court.

According to penalties, the Copyright Act is being amended to increase penalty for a large scale commercial piracy. In the current Act, penalties are divided into 2 levels (general and commercial) but in the proposed amendment penalties are divided into 3 levels (general, commercial, and large scale commercial). The new penalties are more severe than those in the current Act but the minimum penalties have been withdrawn. Large scale commercial infringement attracts imprisonment penalties. More information and the proposed amendment can be found on the DIP's website.

DIP also conducted seminars among enforcement officers and among interested parties to educate officers on related laws and regulations as well as good practices when conducting raids and

inspections. The seminar also provided forums for discussing and clarifying problems arising in the course of infringement suppression.

DIP has also published a manual on the fair use of copyright software on its websites in order to enhance the knowledge and understanding on the method and scope of using software without violating copyright.

### **Public Education and Awareness of IP, Enhanced IP User Skills**

To educate the public on the importance of IPR protection, DIP holds various seminars and workshops throughout the year and to provide both conventional and online learning systems. Moreover, DIP holds various themes of IP exhibitions and contests to raise public awareness.. Recently, DIP has invested in a large public awareness project which uses public media as a means to disseminate IP knowledge to various target groups. DIP also collaborates with Ministry of Education to provide and integrate basic IP courses at a tertiary level. Every year, DIP holds an IP Fair which aims to stimulate public awareness of the importance of IP protection, creation and commercialization. DIP also provided distance learning in collaboration with WIPO. The DIP has now had a DL 101 in Thai language version which has been approved by WIPO.

To strengthen Public Education and Awareness of IP, DIP also worked in collaboration with many educational institutions to create an IP network so as to disseminate IP knowledge to society more efficiently. DIP has concluded MOUs with many Thai universities in order to create a network for distribution of IP knowledge to the locals by providing intensive training for the staff of the universities and appoint them as special IP agents to help DIP in spreading knowledge to local people and SMEs.

The Cabinet has instructed every ministry and department to use legal software. However, this Cabinet resolution regarding use of legal software normally binds only government agencies. Public institutions are free to craft their own policy, but they are always encouraged by the government to use legal software as the use of illegal software is caught by the current copyright law which applies equally to public and private sectors.

DIP has established the Intellectual Property Center (IPC) to promote innovation and commercialization of IP. Its role includes promotion of public education and awareness as well as enhancing IP users' skills. In 2007, several seminars on the enhancement of public awareness and IP user skills were held at various locations in Thailand, with the focus on SMEs, IP agents. The topics of the workshops for SMEs are, for example, the drafting of patent application, techniques for designing brands and techniques for patent search.

Various IP campaigns were also carried out to stimulate awareness and exploitation of IP such as IP Fair, IP market place, IP Expo and IP matching. The most important event of in 2007 was the King's IP Grand Exhibition.

The IP capitalization scheme has been introduced and is intended to maximize the creativity of Thailand's IP. It has proven to be a useful mechanism for SMEs to further develop their IP , and to expand their businesses. Although the scheme faced difficulties at the early stage, it has finally received great attention and cooperation from various sectors.

In educational program, IP awareness has been added as a subject in some courses at tertiary institutions. DIP also introduced an Initiative on Building Copyright Conscience and held, as part of this Initiative, a school contest on writing a song against counterfeiting and piracy products. In collaboration with Writer Associations, DIP also held a contest on a slogan for raising awareness of copyright issues.

### **APEC Cooperation on IP Issues**

Thailand has co-sponsored the Model Guideline to Strengthen IPR Capacity Building and Promote Information Sharing and the Project on Raising Awareness and Providing Policy Insights on access to genetic resources and protection of traditional knowledge in APEC Economies proposed by China and Peru respectively.

Thailand also contributed to many guidelines and surveys proposed by members of IPEG such as APEC Model Guidelines for Effective Public Awareness Campaigns, APEC Model Guideline to



Secure Supply Chains Against Counterfeit and Pirated Goods, Survey on Plant Variety Protection, and Survey on Copyright Exceptions and Limitations.

### **Promoting Transparency of IPR**

Thailand has already conformed to the Transparency Standards on Intellectual Property Rights as indicated in Thailand's notification submitted in 2007. The law on Government's information ensures that any interested party can access information relating to that party. Every law on IP in Thailand also requires the communication between the registrar and the applicants be done in writing.

To increase transparency of IPR requirements, Thailand reports that various IP laws have been amended and promulgated to increase transparency of its registration process including some expansion of coverage of IP matters, i.e., Petty Patent and other physical marks. The proposed amendments aim to make clear what is the subject of patents and what falls within the exceptions to patentability.

DIP has published all its laws and regulations on its website and also provided simple instructions for various types of IP applications and notifications. The principal judgments and decisions on IP matters are also published on the websites of the Central Intellectual Property and International Trade Court and DIP respectively.

## **VIII. Competition Policy**

### *APEC objective*

*APEC economies will enhance the competitive environment to increase consumer welfare in the Asia-Pacific region, taking into account the benefits and challenges of globalization, developments in the New Economy and the need to bridge the digital divide through better access by ICT, by:*

- a. introducing or maintaining effective and adequate competition policy and/or laws and associated enforcement policies;*

- b. promoting co-operation among APEC economies, thereby maximizing, inter-alia, the efficient operation of markets, competition among producers and traders, and consumer benefits; and*
- c. improving the ability of competition authorities, through enhanced capacity building and technical assistance, to better understand the impact of globalization and the New Economy.*

Thailand's trade competition policy is subject to the Trade Competition Act 1999 and the Act of the Price of Goods and Services. The Trade Competition Act is currently under review and will be amended where appropriate and necessary, to reflect continually changing economic conditions in Thailand. The key characteristics of the proposed changes are effective implementation of the competition policy on globalization with a view to ensuring freer movement of capital, goods, services, people, information, and technology. Furthermore, rapid changes and complexity of the world trade rules and regulations, economic integration for trade and investment cooperation as well as bilateral, regional, and multilateral free trade agreements are becoming more serious and need to be addressed properly.

The agency responsible for trade competition policy is the Trade Competition Commission (established November 1999), which is housed in the Ministry of Commerce. The TCC has part time members with two-year terms: 4 ex-officio members (Minister of Commerce as chairman, Permanent Secretary for the MOC as vice-chairman, Permanent-Secretary for the Ministry of Finance as a member, and Director General of Department of Internal Trade as a member and the secretary), and 8 to 12 non-ex-officio members. The latter usually includes qualified persons with knowledge and experience in law, economics, commerce, business administration, or public administration. They are appointed by the Council of Ministers and they should not be affiliated with political office or political party. At least one-half of the non-ex-officio members must be from the private sector. In addition to the TCC, a Central Commission on Price of Goods and Services (CCP) has also been established (1999) to guide the implementation of the Price of Goods and Services Act.

The Act, inter alia, prohibits businesses that are deemed to be dominant from setting unfair price, establishing unfair trading conditions, limiting supply, and intervening in other businesses without proper reason; mergers that may create "monopolistic" power or reduce competition

unless permission for those mergers is obtained from the Trade Competition Commission; conspiring and colluding in order to create “monopolistic” power or reduce competition; any act that may restrict a person in Thailand from purchasing goods or services directly from purchasing goods or services directly from business operators outside Thailand; and any act that has negative effects such as impairing or obstructing business operations of other businesses.

Thailand has engaged in a series of cooperation arrangements with other member economies. For example, Thailand cooperates with Japan Fair Trade Commission (JFTC) and Indonesia Commission for the Supervision of Business Competition (KPPU) to conduct the 2008 APEC training course on Competition Policy held in Indonesia. Thailand has also continued to provide recommendations and non-confidential information related to competition matters as requested by other member economies.

## **IX. Government Procurement**

### *APEC objective*

*To (a) develop a common understanding of government procurement policies and systems, and on each APEC economy's practices (b) liberalize government procurement markets in the APEC region in accordance with Bogor principles and objectives (c) contribute to the government procurement work in multilateral fora.*

Public sector reform in 2002 resulted in major changes to government structure and responsibilities, including the consolidation of responsibility for public procurement in the Comptroller General's Department in the Ministry of Finance. The core principles of government procurement – open and effective competition, transparency, fairness and local industry development – were introduced. Thailand also introduced the concepts of value for money, fair dealing, accountability and due process and non-discrimination to government procurement.

**Value for Money.** Thai officials must procure on the basis of quality rather than simply selecting the lowest cost bidder. Article 23 of the Royal Decree on Good Governance in Public Sector (2003) requires that government agencies carefully consider the costs and benefits of procurement to society and to the public, including quality and maintenance of the goods and services and the objectives of the procurement activities. Thailand is currently working on new regulations to further develop value for money, including better specifying value for money and developing regulations to support procurement of green products and services.

**Open and Effective Competition.** All government agencies must develop and maintain their own websites containing government procurement information and are required to input all procurement information through the Government Procurement Information Center (GPIC) website. There have been no changes to open and effective competition since the last IAP and no further improvements are planned.

**Fair Dealing.** Procurement officers must carefully examine bidder qualification to prevent collusive bidders and unlawful relations between bidders and government officials. The obligation is set out in The Anti-Collusion Act and Article 9 of the Anti-Corruption Act of 1999, which prohibits any State Official from carrying out certain activities that make conflicts between personal and public interest. Collusive bidders are prohibited from submitting bids – the same penalty as imposed on debarred tenders. There have been no changes to open and effective competition since the last IAP and no further improvements are planned.

**Accountability and Due Process.** Article 27 of the Royal Decree on Good Governance in Public Sector (2003) requires that government agencies should delegate appropriate decision making to responsible persons. Delegating this authority will empower procurement officers and make procurement activities more efficient by reducing processes and time. There have been no changes to open and effective competition since the last IAP and no further improvements are planned.

**Non-Discrimination.** The Foreign Business Act provides that domestic and foreign contractors with capital of 500 million baht or more are considered on an equal basis in bidding for highly

technological infrastructure projects. According to Thailand's 2004 IAP Response, this measure was introduced to provide greater access to procurement opportunities for foreign contractors. Previously, foreign contractors were permitted to bid on a case by case basis, though local consultants and products were given specific preferences. There have been no changes to open and effective competition since the last IAP and no further improvements are planned.

The reference to equal treatment of contractors with 500 million baht or more capital implies that foreign contractors with less than 500 million baht capital are not accorded equal treatment. However, In response to a question from Canada, Thailand has indicated that foreign contractors registered under Thai law receive equal treatment.

The core procurement obligations of the Central and Provincial Administration are set out in the Regulations of the office of the Prime Minister on Procurement 1992. These regulations are also considered models to be followed by the Local Administrations, State Enterprises and Independent Local Bodies. The four public organizations of Thailand can be divided into: (i) Central and Provincial Administration; (ii) Local Administration; (iii) State Enterprise; and (iv) Independent Public Bodies.

In addition to these core principles, private sector participation and local industry development have also been identified as core principles of GOT procurement.<sup>42</sup> Increasing private sector participation in the delivery of public services through procurement management measures, such as contracting out.

All government agencies are required to input all procurement through the GPIC website. The Comptroller General's Department has planned to develop a Public Procurement Reform Plan as a framework for improving public procurement and to build good governance in the public sector in the near future. The reform plan will cover all concepts and issues that will improve regulations, electronic procurement development, procurement professional development, SME's participation, international agreements and decentralization of the decision-making to local governments. The reform plan will also emphasize development of all procurement issues in

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<sup>42</sup> Thailand, Trade Policy Review, Report by the Secretariat, W/TPR.S/191, 22 October 2007, para 68

line with international best practices such as transparency, value for money, and effective competition.

Thailand has also drafted new regulations – Regulation of the Ministry of Finance on Procurement B.E – which are being considered by the Council of State. The Regulations are intended to improve Thailand's government procurement mechanisms by amending the requirements for transparency, value for money, efficiency and accountability.

Thailand's government procurement will also be affected by Article 44 of the Royal Decree on Good Governance in Public Sector (2003) states, "Government agencies have to disclose information relate to procurement activities in the current fiscal year." The public can request procurement information at the procuring agencies or search the internet.

### *Development of Electronic Procurement*

Since 2002 Thailand has made progress in electronic procurement initiatives. Thailand is moving forward on electronic procurement initiatives. Thailand is developing an internet portal for government procurement ([www.gprocurement.go.th](http://www.gprocurement.go.th)) that will provide access to all government procurement systems – e-Catalog, e-Shopping, e-Auction and the Vendor Management System – as well as the electronic learning system and other necessary government procurement information (laws and regulations). The internet portal also provides access to information on procurement opportunities. The portal is currently available in Thai, but Thailand intends to extend the system to an English-language version.

The e-Catalog system was initially developed for 25,000 items. The e-Shopping system has been implemented by Central Government agencies and has been applied to five products: facsimile machines, notebook computers, laser printers, televisions and digital projectors. Thailand intends to further develop these systems by expanding the number of products for e-Catalog and e-Shopping. The e-Catalog (Government Products and Services Code) is developing using UNSPSC as a model. The demonstration e-Catalog will be represented on the GPIC website.

The demonstration provides features of some goods and services to be procured by government agencies.

The e-Auction system has been implemented throughout Thailand, including by provincial administrations. Thailand has improved the e-Auction Regulation by changing from “Ministry of Finance Announcement” to “Regulations of the Office of the Prime Minister on Electronic Procurement B.C. 2549” and has additional information. Procurement agencies must publish procurement Terms of Reference on the [www.gprocurement.go.th](http://www.gprocurement.go.th) website and the procuring agency's website for 3 days for public opinions.

Thailand expects to complete development of the electronic web based procurement system by the end of 2009.

Development and implementation of the e-procurement systems has resulted in economic benefits. Thailand has indicated that the move to an electronic procurement process has resulted in cost savings of approximately 7.30% of the procurement budget, or 54,673 million baht between January 1, 2005 and July 31, 2008.

### *Countertrade*

Regulations concerning countertrade and barter were repealed in early 2007 with the result that these are no longer top procurement priorities. The countertrade policy had required that all procurement contracts by government agencies and state enterprises involving imports of a value greater than 300 million baht should have a related countertrade transaction of at least half the procurement value or 20% to 50% of the import price.<sup>43</sup>

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<sup>43</sup> Thailand, Trade Policy Review, Report by the Secretariat, W/TPR.S/191, 22 October 2007, para 77

### *Procurement Agreements*

Thailand is not a signatory to the WTO Agreement on Government Procurement, but participates in WTO Working Group on Transparency in Government Procurement.<sup>44</sup>

Thailand's current procurement agreements are:

Thailand – Australia Free Trade Agreement

Thailand – New Zealand Closer Economic Partnership Agreement

Japan – Thailand Economic Partnership Agreement (JTEPA)

Procurement Agreement currently under negotiation are:

Thailand – U.S. FTA

Thailand – EFTA

ASEAN-Australia-New Zealand FTA

ASEAN-EU FTA

### *“Buy Thai” Requirements No Longer Applied*

While Thailand has made progress in liberalizing its government procurement regime, there are concerns that problems still remain. The U.S. Trade Representative, through the National Trade Estimates Report, notes that an unofficial “Buy Thai” policy that discriminates against foreign products and foreign suppliers may continue to exist. The policy was established in a 2001 Directive from the Prime Minister's Office that, although no longer officially in effect may continue to discriminate through “specific language in government instructions on some procurement tenders [that explicitly exclude] foreign-made non-Thai products from the bidding process.”<sup>45</sup> USTR further notes:

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<sup>44</sup> Thailand, Trade Policy Review, Report by the Secretariat, W/TPR.S/191, 22 October 2007, para 66

<sup>45</sup> USTR National Trade Estimates 2008 Thailand



“Government agencies and state enterprises reserve 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 frequently surface, including charges of bias on major procurements. Despite an official commitment to transparency in government procurement, U.S. companies and Thai media have reported allegations of irregularities. In addition, some U.S. companies have expressed concerns regarding a Thai government decision to no longer include arbitration clauses in concessions and government contracts.”<sup>46</sup>

Thai officials have advised the Review Team that the “Buy Thai” policy is no longer in effect.<sup>47</sup> The officials responsible for these issues were not available in Bangkok at the time of the Review Team visit.

However with respect to the U.S. claims the Thai authorities explained that in the case where the government agencies’ and state enterprises’ procuring units reserve the rights to accept or reject any or all bids at any time and may also modify the technical requirements during the bidding process. Changes will only be made under special circumstances, and do not intend to circumvent the requirements of the procurement regulations such as manipulating and skewing the bidding process.

## **X. Deregulation/Regulatory Review**

### *APEC objective*

*To facilitate free and open trade and investment in the APEC region by improving the transparency of regulatory regimes and eliminating domestic regulations that restricts trade or investment and are not necessary to achieve a legitimate objective.*

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<sup>46</sup> USTR National Trade Estimates 2008 Thailand

<sup>47</sup> The 2001 Buy Thai policy introduced during the financial crisis was amended by the Cabinet’s resolution on May 29th, 2007. Consequently, all government procurements have no longer to follow “Buy Thai” policy. The government agencies must currently comply with the Prime Minister Procurement Regulations B.E. 2535 as amended and the regulation of the Office of the Prime Minister on e-Procurement B.E.2549.

In its 2008 IAP Report Thailand made the following comment concerning its approach to Deregulation and Regulatory Review

Dissolution of the House of Representatives in February 2006 and the ensuing political uncertainties that prevail through much of the year have contributed to suspension of development of deregulation and regulatory policies; because of its interim status, the government (at the time of update, September 2006) has not adopted nor initiated new policy undertaking with respect to deregulation program in general and state enterprise system in particular. Since existing direction as well as policy proposals will be submitted to the new government for consideration and guideline, this report will present only the current direction on deregulation and regulatory policies as adopted and implemented by the previous administration.

Until new policy proposals are submitted to the Government and new policy directions are issued, there will be no further progress in Thailand's efforts in deregulation and regulatory review. Notwithstanding these comments, the Review Team notes that Thailand made progress in deregulation and regulatory review up to the February, 2006 dissolution of the House of Representatives and there is no reason to believe that the Thai Government will not, in a more stable and predictable environment adopt new liberalization policies to guide future deregulation and regulatory review. In this connection the positive and proactive nature of co-operation evidenced in the review meetings underscores the dedication of Thai officials to achieving more open and transparent regulatory systems.

The liberalization efforts made since the last IAP were considerable and were based on work completed prior to 2001.

Thailand has determined that "regulatory inflation" was a key factor that hindered the economic and social development of the nation. On the basis of a consideration of Europe's experience in addressing "regulatory inflation" in the 1970s, the Royal Thai Government embarked on a process of deregulation and regulatory review that began with establishment of the Law Reform Commission (LRC) in 1991. The Commission's role was to conduct a social and economic impact assessment and to undertake public consultation on regulatory proposals. In 2000 the Prime Minister established the Law Reform for the Development of Thailand (LRDT) in 2000 to assist the Law Reform Commission in its regulatory review work.

In 2001 the LRDT introduced a Regulatory Checklist to prevent the influx of unnecessary legislation. The Checklist has been used to extinguish proposals for unnecessary legislation and, in 2005, was annexed to the Royal Decree on Matters to be considered by the Council of Ministers.

In 1998 Thailand introduced a Master Plan for State Enterprise Reform to define the priorities and strategies for reform of state enterprises. Guidelines for the Establishment of Independent Regulatory Agencies were approved by Cabinet in 1999 and provide an umbrella covering utility and infrastructure sectors. Following approval of these guidelines, work was carried out on a case-by-case in the Telecommunications, Energy, Water and Transportation Sectors. Key reforms implemented during this period included:

- Thailand enacted laws on the allocation of broadcasting frequency and on supervising radio and television broadcasting and telecommunications enterprises. An amendment of the Telecom Business Act that would increase the foreign shareholding limit from 25 per cent to 49 per cent is being considered.
- The National Broadcasting Commission was established to allocate broadcasting frequency and to supervise Radio/Television Broadcasting Business.
- An Interim Regulatory Committee was established to regulatory postal service.
- The National Energy Policy Committee was established as the Interim Regulatory Committee to undertake electricity business prior to the permanent committee pursuant to the drafting Energy Industry Act.
- The Department of Air Transport (DAT) has been designated as the economic regulator (as secretariat to the Civil Aviation Board). The framework of the regulatory regime was implemented ahead of the IPO of Airports of Thailand Co.

Ltd in early 2003. The Office of Transport and Traffic Policy and Planning is preparing a plan to establish a regulatory body for the transport sector.

- A regulatory regime for the water and waste water sector is being developed by Natural Resources and Environment and an interim regulatory agency has been established.

Thailand introduced a general policy framework for utility and infrastructure regulation that was consistent with the 1998 Master Plan for State Enterprise Reform. Two Cabinet Resolutions, issued on March 9, 2004<sup>48</sup> and April 7, 2004<sup>49</sup>, further emphasized government policy on establishment of independent agencies, particularly in the infrastructure and monopoly sectors.

The overall focus of these policies is to distinguish policy making, economic regulation and commercial operation of government agencies and state owned enterprises. Separate arrangements were also required to achieve commercialization and reform of state enterprises through corporatization, unbundling and private participation. The State Enterprise Policy Committee (SEPC) was established to coordinate this regulatory restructuring.

In 2001 the Thai government announced a policy for the reform and development of state enterprises that placed priority on the commercialization and development of enterprises and the gradual listing of commercial enterprises on the Stock Exchange of Thailand. The Corporatization Act 1999 was used as a key vehicle for the transformation and commercialization of these enterprises.<sup>50</sup> Since 2001, six corporate entities have been created as a result of corporatization under the Act: PTT PLC in October 2001 (previously the Petroleum

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<sup>48</sup> The March 9, 2004 Cabinet Resolution supported the principle of an economic regulator by directing Ministries responsible for the supervision of state enterprises in infrastructure and monopoly sectors to set up regulatory bodies to separate regulatory powers from the operation of these state enterprises. Further, legislation similar to the law establishing the National Telecommunications Commission and the National Broadcast Commission was to be enacted.

<sup>49</sup> The April 7 2004 Cabinet Resolution increased regulatory oversight and the prevention of abuse of monopoly power to better implement the principles of protect the interests of the nation, people, consumers, and state enterprise employees.

<sup>50</sup> Section 26 of the Corporatization Act provides for the passage of a Royal Decree to remove the regulatory powers of the enterprises and Section 28 of the Act provides for a Royal Decree to repeal the establishment legislation of the enterprise.

Authority of Thailand); AOT PLC in September 2002 (previously the Airports Authority of Thailand); TOT Corp PLC in July 2002 (previously the Telephone Organization of Thailand); CAT Telecom PLC in August 2003 (previously the Communications Authority of Thailand); Thailand Post Co Ltd in August 2003 (previously one department of the Communications Authority of Thailand); and, MCOT PLC in August 2004 (previously the Mass Communication Organization of Thailand.)

In 2003, Prime Minister appointed a Committee to review eleven economic laws enacted as part of obligations under the Letters of Intent with the International Monetary Fund. The Committee submitted proposals, inter alia, for the abolishment of the Corporatization Act and the passage of a new law.

In 2004, the Finance Minister, acting on the Prime Minister's endorsement, appointed a Committee to review the Corporatization Act.

In December 2004, the cabinet adopted the legal reform program under which government agencies are obliged to revise their relevant regulations and laws with a view to modernizing Thailand's legal system. Accordingly, the State Enterprise Policy Office has set up its own Legal Reform Commission to undertake the revision of existing law and regulation, particularly the amendment of Corporatization Act and drafting of State Investment Corporation Act. The authority of previously appointed committee has now been transferred to the Legal Reform Commission.

In 2005 the Royal Thai Government required all government agencies to review conduct and annual review of the existing laws and regulations under their responsibility. Based on this review the Royal Thai Government prepares a yearly law development plan, which is one of the key performance indicators of each agency.

Thailand has undertaken capacity building programs to train regulatory agency staff, including through the APEC Privatization Forum initiative under the APEC Finance Ministers process a regional initiative to create a utility regulator's forum will be undertaken. It is intended that this

forum will strengthen participant's regulatory reform process through collaboration and cooperation.

Thailand's objective is to reform and develop state enterprises as drivers of economic growth. Regulatory restructuring is seen as integral to achieving this objective. However, the degree to which Thailand is moving forward is unclear. The 2007 WTO Trade Policy Review of Thailand noted that the privatization process has been slow and that planned privatization of the Electricity Generating Authority of Thailand was suspended by the Supreme Administrative Court in 2006. "According to April 2004 statements, the Government would maintain a 50% stake in all SOEs and a 75% holding in power and water utilities; thus, the State would remain the majority stakeholder. ... The Government aims to privatize ten SOEs between 2007 and 2009, depending on the political situation."<sup>51</sup>

The 2002 IAP Review concluded that Thailand's efforts to modernize government structures and legislation bode well for its timely attainment of its Bogor goals. The policies and programs are designed to make Thailand competitive in an increasingly globalized trade and investment environment where efficiency and openness will dictate who the winners will be. Thailand appears to recognize these imperatives.

In response to specific questions from the ABAC concerning the right of aliens to own land, Thailand has indicated that aliens may apply for the acquisition of land in two situations. Individuals may inherit as a statutory heir under Section 93 of the Land Code if the land is for residential purposes and the total area of the land is not more than 1 rai or they may purchase land if they invest at least 40 million baht, purchase land for a residential purposes that has a total area of not more than 1 rai and they receive permission from the Minister responsible. A company (a juristic person) may hold land in Thailand if no more than 49% of the shares in the company are held by aliens. It is also possible to acquire land under other laws, such as the Promotion of Investment Act, B.E. 2520 (1977), the Industrial Estate Authority of Thailand Act, B.E. 2522 (1979) and the Petroleum Act, B.C. 2514 (1971). Specific information on how to

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<sup>51</sup> Thailand, WTO Trade Policy Review 2007, Economic Environment, WT/TPR/S/191, para 20

acquire land under this legislation must be obtained from the Board of Investment and the Industrial Estate Authority of Thailand.

In response to a further question from the ABAC concerning restrictions on the number of aliens permitted to work in Thailand, Thailand has noted that the Alien Work Permit Act of 1978 was completely revised in 2007 to deregulate this area of law. However, the regulations required to give effect to the amended legislation have not yet been promulgated.

Thailand has taken steps toward deregulation and regulatory review that began with the 1991 Law Reform Commission and which continued until dissolution of the House of Representatives in February 2006. During this time, Thailand introduced numerous programs to avoid “regulatory inflation”, including the introduction of a Regulatory Checklist which is used as a screening tool for new legislative and regulatory proposals and the 2005 decision to require that government entities conduct an annual review of laws and regulations. Overall, Thailand has made significant progress in deregulation and regulatory review. The Review Team notes that officials are waiting for new policy directions to be issued by the Royal Thai Government. The Review Team believes that Thailand will achieve its Bogor goals by 2020, so long as the Government issues new policy directives that continue progress towards greater liberalization.

## **XI. Implementation of WTO Obligations (including Rules of Origin)**

### *APEC objectives*

*To ensure full and effective implementation of Uruguay Round outcomes within the agreed time frame in a manner fully consistent with the letter and spirit of the WTO. To ensure APEC economies' rules of origin fully comply with internationally harmonized rules and that they are prepared and applied in an impartial, transparent and neutral manner.*

Thailand has made progress in implementation of WTO obligations since the 2004 IAP Review and has indicated its ongoing commitment to the multilateral trading system and to implementation of WTO obligations.

Thailand does not have preferential rules of origin for imports or exports.

Thailand removed the local content requirement in ready-to-drink milk in 2003.

Beginning in 2005 Thailand has restructured its tariff schedule which has resulted in the reduction of most tariff rates based on the following production process target rates:

- (i) 1% for raw materials and inputs that are not locally produced
- (ii) 5% for semi-finished products
- (iii) 10% for finished products, products requiring extra protection and luxury goods.

In 2007 Thailand further reduced tariff rates on industrial and agricultural products. The agricultural products affected by these tariff reductions included dried leguminous vegetables, caraway seeds, wheat and meslin, inulin and soybeans.

Thailand has progressively reduced tariffs on 748 agricultural products.

Thailand has indicated that it will continue to reduce domestic support to agriculture and that it will continue to participate in the WTO, the WCO and the WTO Technical Committee on Rules of Origin.

Thailand has moved to liberalize services regulations to improve access to Thailand's services sector but has not yet liberalized basic telecommunications because of concerns that Section 84(11) of the Constitution may affect the level of foreign ownership in basic infrastructure. The Government of Thailand is studying this Section before taking steps towards further liberalization.

Thailand has reviewed its intellectual property laws (Patent Act, Copyright Act, Trademark Act, Protection of Layout Design of Integrated Circuits Act, Protection of Plants Variety Act, Trade Secrets Act and Protection of Geographical Indications Act) to ensure that they are consistent



with WTO TRIPs obligations. Thailand is amending the Copyright Act to ensure that it is capable of keeping up with rapid changes in technology and is also moving to enact new copyright-related law to control the production of CDs.

Thailand has worked closely with its partners in the Association of South East Asian Nations (ASEAN), the Asia-Europe Meetings (ASEM), and APEC to ensure that the activities and schemes of these organizations are consistent with WTO obligations.

In accordance with the Thai Government's policy to liberalize trade and minimize trade distortion, most products can be imported freely into Thailand. However, imports of goods that are obscene, dangerous to health, or harmful to the national economy may be prohibited in accordance with Thailand's international trade rights and obligations. Specific goods may be restricted from time to time, and these require prior government permission before importation. Apart from that, most goods may be imported after complying with the necessary customs procedures and the payment of customs tariffs, where applicable.

The 2007 WTO Trade Policy Review of Thailand noted that for many products the TRQs are underfilled due to lack of demand while imports of four items – milk and cream, potatoes, soya beans and soya bean cake – exceeded quota levels.

“... there is concern that access to tariff-rate quotas is often managed in an arbitrary and non-transparent manner; at the time of Thailand's previous TPR, it was also noted that import licenses were seemingly issued only to selected animal and poultry producers. The authorities maintain that access to tariff rate quotes is regulated by the committees in charge and based on fair and equitable criteria.<sup>52</sup>

The Review Team notes that Thailand amended TRQs to increase duty-free access for several products because Thailand's domestic supply of these products did not meet domestic demand. It is not clear whether Thailand intends to similarly relax any of its other TRQs or whether it will revert to the bound commitment levels for these TRQs.

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<sup>52</sup> Thailand, WTO Trade Policy Review 2007, Trade Policies and Practices by Measure, WT/TPR/S/191, para 39

## **XII. Dispute Mediation**

### *APEC objectives*

*To (a) encourage members to address disputes cooperatively at an early stage with a view to resolving differences in a manner to help avoid confrontation and escalation, without prejudicing WTO rights and obligations or duplicating or detracting from its dispute settlement procedures (b) facilitate and encourage the use of procedures for timely and effective resolution of disputes between private entities and governments and disputes between private parties in the APEC region (c) ensure increased transparency of government laws, regulations and administrative procedures aimed at reducing or avoiding trade and investment disputes so as to promote a secure and predictable business environment.*

Thailand approach to dispute settlement is a preference for negotiation and consultation rather than litigation. To this end, Thailand has developed mechanisms to encourage arbitration and mediation as an alternative to litigation, including the right to apply independent mediation review procedures at any stage before a court renders its judgment.

Thailand has concluded 39 Bilateral Investment Treaties, most recently with Turkey (13 January 2005) and Tajikistan (9 August 2005). Thailand has concluded bilateral investment treaties with the following APEC member economies: Canada, China, Chinese Taipei, Indonesia, Korea, Peru, the Philippines, Russia and Viet Nam. These treaties include dispute settlement mechanisms. Thailand has indicated that it will continue to pursue bilateral investment treaties with potential partners and will seek to speed up conclusion of negotiation of treaties that are currently in the works. The Royal Thai Government is currently conducting a review its "Model BIT"; this is a general review that does not focus on any specific provision.

Thailand has been active in developing mechanisms for dispute mediation as an alternative to the Courts. However, the Review Team recognizes that Thailand's national courts retain jurisdiction over disputes between private parties. Depending on the nature of the dispute, the private parties can have recourse to the Civil Courts, the Centre Intellectual Property and International Trade Court and the Administrative Court.

Thailand allows for international arbitration as a mechanism for dispute settlement between the government and private entities. These arbitral dispute settlement provisions are set out in the Bilateral Investment Treaties that Thailand has negotiated and is negotiating. Thailand relies on the dispute settlement mechanisms of the International Convention on the Settlement of Investment Disputes (the ICSID Convention) and the ASEAN Investment Area Agreement, which allows disputes to be referred to either the ICSID Additional Facility Rules or to the Arbitration Rules of the United Nations Commission on International Trade Rules (UNCITRAL). Thailand has also become a member of the Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group. Thailand has not yet implemented the ICSID Convention. A working group has been established to draft enabling legislation required to implement the ICSID Convention.

Thailand encourages private entities to use arbitration or conciliation as to resolve disputes as an alternative to recourse to the judicial system. Thailand became a Contracting Party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) in 1960. The obligations in the Convention have been given effect in Thailand's legislation. The obligations in the Convention are implemented in the present Arbitration Act of 2000 (B.E. 2545) and the Regulation of the Office of the Prime Minister on Compliance with Arbitration Award (B.E. 2544). As a result of the Act and Regulation, the Courts have the authority to enforce foreign arbitral awards.

Thailand has established the Thai Arbitration Institute, a body that principally administers arbitral proceedings as well as providing consultation and facilities to the private sector.

Thailand's Dispute Resolution Office (DRO) also resolves disputes through mediation, arbitration and conciliation. Officials in the DRO organize and hold public seminars to promote and develop alternative dispute resolution, serve as an information center for various means of dispute resolution and provide the services and facilities for conciliation and arbitration cases. The DRO does not charge for these services. The only fees charged are related to the cost of the arbitrators and disbursements (out of pocket expenses).

Working with the Department of Export Promotion of the Ministry of Commerce, the DRO also acts as an intermediary between parties to encourage and assist in amicable resolution of disputes.

Thailand has provided the following statistics on the use of arbitration to resolve disputes:

2005

- 136 new cases (51 between private parties and 85 between private parties and government)
- 169 cases from past years
- 84 cases resolved

2006

- 126 new cases (45 between private parties and 81 between private parties and government)
- 221 cases from past years
- 101 cases resolved

2007

- 148 new cases (66 between private parties and 82 between private parties and government)
- 299 cases from past years
- 95 cases resolved

January – August 2008

- 148 new cases (23 between private parties and 58 between private parties and government)
- 320 cases from past years
- 60 cases resolved

Thailand publishes all of its laws and regulations on alternative dispute settlement and holds seminars and conferences to disseminate information on alternative dispute resolution. The DRO is currently developing a website that will be used to provide this information to the public. Thailand also arranges seminars and conferences on alternative dispute resolution which are held two to three times per year. These means have been introduced to ensure greater transparency and public awareness.

Thailand has participated in fifteen WTO dispute settlement proceedings; twelve as complainant and three as respondent. Thailand has been a respondent in the following cases:

*Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H Beams from Poland (DS122)*

*Thailand – Customs Valuation of Certain Products from the European Communities (DS370)*

*Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines (DS371)*

Thailand is currently working with WTO members to amend provisions of the DSU in accordance with the mandate under paragraph 30 of the Doha Ministerial Declaration. Thailand has submitted two proposals to this process:

1. To increase the number of the Appellate Body members so as to increase the efficiency of the dispute settlement system.
2. To regulate the carousel practice so as to ensure that the level of any retaliation action authorized is well equivalent to the level of nullification or impairment of the retaliating member, both in law and in practice.

The United States has reported, but has not raised in the context of this IAP review that the Thai government has decided to no longer include arbitration clauses in concessions and government contracts.<sup>53</sup> If this is the case, this practice could go some way to undermining Thailand's significant progress in developing and adopting alternative dispute settlement procedures.

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<sup>53</sup> USTR National Trade Estimates 2008 Thailand

### **XIII. Mobility of Business Persons**

#### *APEC objectives*

*To (a) exchange information on regulatory regimes on mobility of business people (b) examine the possibility of regional cooperation aimed at streamlining and accelerating (i) processing of short term business travel (ii) arrangements for temporary residency of business people to engage in trade and investment (c) establish and maintain a dialogue on mobility issues with the business community.*

Thailand has implemented a number of procedures to facilitate the entry of business people, including a new three year multiple entry non-immigrant visa. Multiple entry visas are being issued for short-term business visitors and Thailand remains committed to providing efficient services to facilitate the entry of business people into Thailand.

Information on Thailand's business visa arrangements are provided on the APEC Business Travel Handbook ([www.businessmobility.org/travel/index.asp](http://www.businessmobility.org/travel/index.asp)). Information on Thailand's Working of Aliens Act of Act of 1978, which concerns visa and work permit requirements for foreign nationals seeking to work in Thailand, is available on [www.doe.go.th/workpermit/index.html](http://www.doe.go.th/workpermit/index.html). The information listed on this websites is regularly updated.

Thailand introduced a new short-term business visa – the multiple-entry three-year Non-Immigrant “B” Visa in September 2006. Business people holding the Non-Immigrant “B” Visa will be permitted to enter Thailand for business purposes and to remain in Thailand for up to 90 days. The Non-Immigrant “B” Visa was adopted to give business travelers more options for short-term stays in Thailand and to provide a better means of facilitating business travel. Employment of any kind is strictly prohibited for holders of this visa.

Foreign business people that have a Thailand Privilege Card (Elite Card) are granted 5-year multiple-entry “Special Entry Visas”.

Thailand is an active participant in the APEC Business Travel Card (ABTC) Program. As of December 2008 Thailand had more than 2,700 active ABTCs in circulation. Thailand has introduced ABTC lanes at international airports to facilitate entry by ABTC holders.

As of December 2008 Thailand had already established its own ABTC printing centre and will begin printing operations in the near future. Thailand is also endeavouring to improve and streamline its ABTC vetting process to increase operational effectiveness.

Approximately 50,000 ABTC Travel Card holders can enter Thailand without an additional visa for a period of up to 90 days. In 2007 approximately 800,000 foreign nationals entered Thailand with a Non-Immigrant Visa or a Non-Immigrant Re-entry Visa. However, far more foreign nationals entered Thailand without the requirement to have a visa. Short-term business travelers from 42 countries/economies, including the United States, Canada, Australia, Japan and Indonesia are subject to Thailand's unilateral visa exemption scheme which allows tourists to remain in Thailand for up to 30 days. Business travelers from other countries, such as Chile, Peru, Russia and Viet Nam, may enter Thailand without visas on the basis of bilateral visa exemption agreements.

Thailand has introduced a One-Stop Service Center to facilitate visa and work permit request and extensions and to make all related arrangements. The objective of the Service Center is to make all arrangements for foreign business people within three hours. The Immigration Bureau coordinates with foreign Chambers of Commerce in Thailand to ensure that they are aware of this service.

Thailand has participated in APEC BMG working groups and workshops held in Australia and Peru to discuss the use of biometric technology for electronic passports and facilitation of entry for travellers.

Thailand has a continuous review process to ensure that its border measures meet, to the maximum extent possible, the evolving needs of the global business environment.

#### XIV. APEC Food System

##### *APEC objective*

*APEC Ministers agreed that the overriding objective in building the APEC food system would be “to efficiently link together food production, food processing and consumption to meet the food needs of our people as an essential part of achieving sustainable growth, equitable development and stability in the APEC region.” Leaders endorsed key recommendations to:*

- address rural infrastructure development;*
- disseminate technological advances in food production and processing, and*
- promote trade in food products.*

Thailand applies MFN tariffs to imports of agricultural products that are generally equal to WTO bound rates, but selected goods used as inputs may be subject to lower rates.

Thailand maintains tariff rate quotas (TRQ) on twenty-three agricultural products. While, as noted above there have been concerns expressed in other for a about Thai administration of TRQs there have been no WTO challenges. It appears that these TRQs are maintained and implemented in a manner that is consistent with Thailand's WTO obligations.

In 2003 Thailand amended its TRQs on soybean and seed potato, soybean cake and onion seed.

Soybean and seed potato – in-quota import volumes have been eliminated and all imports enter at a Free tariff rate.

Soybean cake – in-quota import volumes have been eliminated and all imports enter at a 4% tariff rate. Thailand's bound WTO commitments were to establish a 229,339 ton in-quota volume that would enter at 20% tariff rates.

Onion seed – Thailand increased the in-quota volume from the 3.13 ton bound rate to 3.15 tons and reduced the in-quota tariff from 30% to Free.



Thailand amended these TRQs to increase duty-free access for these products because Thailand's domestic supply of these products did not meet domestic demand. It is not clear whether Thailand intends to similarly relax any of its other TRQs or whether it will revert to the bound commitment levels for these TRQs.

Thailand's food and agricultural standards have been aligned with international standards (Codex Alimentarius Commission, the World Organization for Animal Health and the International Plant Protection Convention and conform to WTO SPS obligations). They are both voluntary and mandatory agricultural standards. Thailand's new or revised food regulations and mandatory agricultural standards must be notified to WTO Members for comment for 60 days.

Thailand is fully implementing its WTO obligations with respect to tariffs and agriculture, safeguards, subsidies, TBT, SPS and Customs Procedures as they apply to Rules of Origin.

There have been some concerns raised with Thailand's TRQ administration. The 2007 WTO TPRM Report noted that for most products the TRQs are underfilled while imports of four items – milk and cream, potatoes, soya beans and soya bean cake – exceeded quota levels.

there is concern that access to tariff-rate quotas is often managed in an arbitrary and non-transparent manner; at the time of Thailand's previous TPR, it was also noted that import licenses were seemingly issued only to selected animal and poultry producers. The authorities maintain that access to tariff rate quotes is regulated by the committees in charge and based on fair and equitable criteria.<sup>54</sup>

The United States has raised concerns with Thailand's "arbitrary management of import licenses and sanitary and phyto-sanitary measures" which are impediments to exports of high value fresh and processed food products to Thailand.<sup>55</sup>

The United States has noted that its U.S. meat exporters consider that the import license fee for meat products (approximately \$142/ton for beef and pork, \$286/ton for poultry, \$142/ton for

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<sup>54</sup> Thailand, WTO Trade Policy Review 2007, Trade Policies and Practices by Measure, WT/TPR/S/191, para 39

<sup>55</sup> USTR National Trade Estimates 2008 Thailand

offal) is higher than necessary to cover the cost of import administration.<sup>56</sup> The United States has also raised concerns that Thailand applies its SPS standards in a non-transparent manner

The United States considers that Thailand's "overall import policy is directed at protecting domestic producers".<sup>57</sup>

Thus, while Thailand has made progress in adopting policies aimed at achieving the objectives of the APEC Food System, there are concerns that these efforts may be undermined by its administration of the programs.

## **XV. Transparency**

### *APEC objective*

*Transparency is a General Principle in the Osaka Action Agenda. To build on this, APEC Leaders agreed in the 2001 Shanghai Accord to develop transparency standards and report progress in the Individual Action Plan. Since 2002, Leaders agreed in the Leaders' Statement to Implement APEC Transparency Standards to General Transparency Standards, including on monetary, financial and fiscal policies and dissemination of macroeconomic policy data, and to area-Specific Transparency Standards on tariffs, non-tariff measures, services, investment, standards and conformance, customs procedures, intellectual property rights, competition policy, deregulation/regulatory review, mobility of business people and government procurement. Leaders agreed to review the Transparency Standards periodically and, where appropriate, review, revise and expand them further.*

Thailand has made significant progress in ensuring transparency.

Thailand's laws, regulations, requirements, practices and guidelines are published on government websites, including information regarding government procurement, visas and Customs requirements. Economic data and related information is available from the Ministry of

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<sup>56</sup> USTR National Trade Estimates 2008 Thailand

<sup>57</sup> USTR National Trade Estimates 2008 Thailand

Finance website. Access to information through the internet is part of the development of electronic systems by the Thai government. Progress on this front is continuing.

In addition, Thailand grants individuals the right to access administrative information. The Official Information Act provides that most official data and information, other than confidential information, should be disclosed to the public. The public information covered by the Act is generated by state agencies (i.e., central administration, provincial administration, local administration, state enterprises, government agencies, courts, professional supervisory organizations, independent agencies of the state and other agencies prescribed by Ministerial Regulation).

Section 4 of the Act requires that these government agencies are to disclose information through three channels, publication in the government Gazette, the provision of information in designated places for public inspection and disclosure upon individual request. Individuals who believe that government agencies have not disclosed information as required may lodge a complaint with the Commission.

In addition, Thailand participates in the Report on the Observance of Standards and Codes (ROSC) Data Module and was assessed against the IMF Code of Good Practices on Transparency in Monetary Policy under the joint IMF-WB Financial Sector Assessment Program (FSAP) and is in the process of participating in the IMF's ROSC on Fiscal Transparency.

Overall, the Review Team considers that Thailand's efforts to ensure transparency through the publication of government information and through its access to information process have gone a long way to achieving its Bogor transparency goal.

## **XVI. Free Trade Agreements/Regional Trade Agreements**

Thailand has a long-standing policy of supporting trade liberalization and the multilateral trading system. Thailand believes that Free Trade Agreements can be an effective catalyst for free trade

and a building block for the multilateral trading system. However, Thailand believes that Free Trade Agreements must be considered carefully to ensure that each stakeholder receive an advantage from the agreement with the result that benefits from the trade environment are optimized.

Thailand considers that participation in bilateral and regional Free Trade Agreements in general offer greater economic benefit to the Parties concerned and benefit the economy of as a whole

Thailand is a member of the following Agreements/Negotiations

(i) Japan – Thailand Economic Partnership Agreement (JTEPA)

(April 3, 2007)

JTEPA liberalizes services and investment obligations between the Parties. Thai service suppliers are allowed to expand businesses in Japan such as spas, hotels and restaurants. Thailand agreed to expand its services commitments for Japanese service suppliers from its current GATS list to include advertising services, logistics consulting services, luxury hotel and human resource management.

Japanese investors are allowed to own less than 50% equity in automobile manufacturers if the remaining equity is held by Thai investors. Thai investors are allowed to invest in all Japanese industries except medicine, aerospace, oil production, energy, mining, fisheries, agriculture, forestry and other related industries and broadcasting.

(ii) ASEAN – Japan FTA

(April 11, 2008)

Sub-Committees on Trade in Services and Investment will be established within one year of the date of entry into force to discuss and negotiate further liberalization in trade in services and in investment. The Sub-Committees will also consider how to better promote and protect investment.

- (iii) Thailand – India FTA Framework Agreement  
(October 9, 2003)

Thailand and India signed a Framework Agreement to establish a Free Trade Agreement on October 9, 2003. Currently the Parties are negotiating an Agreement on Trade in Goods, Trade in Services and Investment. As part of this process Thailand agreed to eliminate import duties on 82 products by September 1, 2006 as part of an “early harvest”.

At the most recent meeting to review the draft agreement, held between January 31 and February 1, 2008, the Parties agreed that there had been good progress in the negotiations overall and approved the draft Chapter on Rules of Origin.

However, tariff reduction approved through the “early harvest” process had not yet been completed because of India’s decision to revise the jointly agreed list of items for tariff reduction. India has taken the position that proposed market access obligations under the FTA would result in a trade imbalance. Thai officials believe that India is delaying negotiations pending a review of the impact of the India – ASEAN FTA.

- (iv) ASEAN – Australia/New Zealand FTA

Negotiation of the text of the Agreement has been concluded. The Schedules of Tariff Commitments as well as the Schedules of Specific Services Commitments and the Schedules of Movement of Natural Persons Commitments are undergoing a final verification process. Investment protection measures have been included in the Agreement, while the Schedules of Reservations to the Investment Chapter will be subject to ongoing discussions for the next five years. These discussions will be overseen by the Investment Committee established under this Agreement.

(v) Thailand – Peru

Thailand and Peru signed an Early Harvest Protocol on the acceleration of liberalization of trade in goods and trade facilitation in November 2005. However, it has not yet been implemented, as both parties have to transpose the Tariff Schedules and rules of origin from HS 2002 to HS 2007. After the completion of internal process of the latter party, the implementation date will be scheduled.

(vi) ASEAN – China

The Parties have recently concluded their negotiations for the Investment Agreement and are working towards having the agreement signed at the 14<sup>th</sup> ASEAN Summit to be held in early 2009. On services, the parties are currently negotiating the 2<sup>nd</sup> Package of Services Commitments under the Agreement on Trade in Services.

(vii) ASEAN – Korea

Thailand has not yet signed this Agreement because of concerns that Korea has failed to provide adequate market access for Thai agricultural products such as rice, flour, tapioca products and chicken. Nine ASEAN countries and Korea have signed the Agreement and began reducing tariffs on June 1, 2007. Thailand and Korea reached agreement on market access issues in December 2008. Thailand must submit the agreement to Cabinet and Parliament for approval before it can be signed.

(viii) ASEAN – India

Negotiations on Trade in Goods obligations are progressing but could not be concluded by the July 2007 target date. The Parties agreed to reduce most tariff lines to Free by 2011 (or 2015 at the latest) and to exclude 489 tariff lines (5% of total import value) from tariff reductions. There has been no agreement on Special Products (palm oil, tea, coffee and pepper), which has resulted in delay in conclusion of this Agreement.

(ix) Thailand – EFTA

Two formal meetings of the parties have been held. A draft agreement containing all the negotiating elements has been prepared.

(x) Bay of Bengal Initiative for MultiSectoral Technical and Economic Cooperation (BIMTEC)

The Parties are negotiating Agreements on Trade in Goods, Services and Investment. With respect to trade in goods, little progress has been made on market access because no agreement has been reached on the number of items to be excluded. There has been no progress on services or investment.

(xi) ASEAN – EU

Meetings are being held between the Parties to conclude an Agreement. The most recent meeting, held in June 2007, the Joint Committed on the ASEAN – EU FTA discussed technical barriers to trade, customs procedures and trade facilitation, rules of origin, services and investment, market access, intellectual property rights, competition policy, government procurement and sustainable development. The Joint Committee meeting was scheduled for October 2008,

Thailand plans to launch or continue the following Agreements.

(i) Thailand – Australia

Further negotiations reviews will begin in Services, Competition Policy and Special Safeguard as provided for in the TAFTA Agreement. Discussion on Market Access for Goods and Government will also take place.

(ii) Thailand – New Zealand.

Negotiations reviews will begin in services and special safeguard as provided for in the TNZCEP Agreement. Discussions on Market Access for Goods and Government Procurement will also take place.

(iii) Thailand – United States of America

Negotiations have been suspended pending policy directions from the new Thai government.

(iv) Thailand – Bahrain

Negotiations have been suspended pending policy directions from the new Thai government.

(v) Thailand – Chile

Thailand and Chile have completed a joint study on the Feasibility of an FTA in mid 2006. Currently, Thailand aims to undertake an additional study including issues on trade remedy measures and sectors affected by the FTA, which are required by the present Thai Constitution before having an FTA negotiation.

(vi) Thailand – Pakistan

Thai officials are waiting for directions from the new government before proceeding with these negotiations.



(vii) Thailand – Hong Kong

Thai officials are waiting for directions from the new government before proceeding with these negotiations.

The Review Team considers that Thailand has adopted an active and ambitious program of negotiating Free Trade Agreements and Regional Trade Agreements, and that these negotiations will result in policy and administrative changes which will accelerate attainment of Bogor goals.

## **XVII. Trade Facilitation**

*In the Shanghai Accord APEC Economic Leaders committed to implement the Trade Facilitation Principles with a view to reducing the transaction costs in the region by 5% by 2006. Leaders, in 2002, further endorsed the Trade Facilitation Action Plan which laid down clear timelines for implementation in a progressive manner. A mid-term review was conducted to review on the status of implementation at SOM III in 2004.*

Thailand has recognized the importance of trade facilitation in the development of business conditions conducive to trade and in the reduction of business transaction costs and has delegated trade facilitation work to relevant government agencies with a view to achieving a 5% reduction in transaction costs. To this end, Thailand is working to implement trade facilitation actions and measures selected from the four major areas of APEC trade facilitation. Thailand's National Economic and Social Development Board is leading 29 government agencies and the business sector in the development of a national logistics system that is intended to significantly reduce national logistics costs. And, Thailand has engaged in regular information sharing with business through ongoing information sharing sessions and consultations.

### ***Customs Procedures***

Improvements to Customs procedures introduced by Thailand are primarily focused on the expansion of electronic systems. Thailand has taken the following steps.

- Thailand fully implemented the e-Import/e-Export system in July 2008.
- Thailand has partially replaced the EDI system with e-Customs, which consists of e-payment, e-declaration and e-manifest.
- Thailand has introduced an on-line systems to reduce the burden of placing guarantees and to expedite refunds has been established between Royal Thai Customs and the Banks
- Thailand has introduced a paperless Customs service for e-Export using the ebXML standard and introduced e-Customs systems (paperless) for the Express Consignment Clearance categories 4 and E-express for the four major express consignment carriers and other for Express Consignment categories 1 – 3. The electronic documents used for paperless Customs services have been designed using the WCO Data Set
- Thailand has established a Single Window system exchange information with other government agencies and the trading communities.
- Thailand has offered services such as the BAHTNET and SMART systems to facilitate e-commerce payment via banks.
- Thailand has implemented a RFID card truck manifest system has been developed for trucks passing through the check posts, has implemented x-ray container inspection technology, and has improved the Cargo Terminal for express to Customs Free Zone Area.
- Thailand allows duty refunds to be made on the filing of drawback applications by companies qualified under the “Gold Card” and “Licensed Brokers” program

- Thailand has redesigned its Valuation Database System to be in conformity with WCO guidelines on the development and use of a national valuation database as a risk assessment tool
- Thailand implemented the ASEAN Harmonized Tariff Nomenclature (AHTN 2007/1) in accordance with HS 2007.
- Thailand has developed a reference database pertaining to tariff classification and Customs valuation.
- Thailand has reduced the inspection rate on imported goods to 10% and has eliminated inspection of exported goods.
- Royal Thai Customs has signed an MOU with the Port Authority of Thailand, Airports of Thailand Public Company Limited and Thai Airways International Public Company Limited, which enables faster Customs clearance through exchange of movement of goods information via electronic means and simplified Customs procedures.
- Thailand has established a One-Stop Service Center for issuance of necessary certificates and documents which will eventually lead to an electronic single-window process. Currently 13 Customs Houses participate in the One Stop Service Center Pilot Project. These Customs Houses facilitate issuance of import and export licenses. The e-Licensing in these Customs Houses has not yet been linked to other institutions.
- Thailand has established the e-Commerce Complaint Handling Center to mediate problems related to on-line transactions.

- Thailand has explored new payment infrastructure, such as Interbank Transaction Management and Exchange (ITMX) to support e-commerce by linking e-marketplaces, payment providers and financial institutions.

In accordance with Thailand's Customs Strategic Plan 2009, the Thai Customs Standard Procedures and Valuation Bureau is currently conducting a study of the time spent in the cargo release process. The outcomes of the study will be reviewed and used to estimate the cost of shipping goods to Thailand. Based on the study results, Thailand should be able to determine whether it has achieved the Shanghai Accord objective of reducing costs by 5%.

Thai authorities have established close consultations between Customs and the business community as a method to improve communications and to jointly solve day-to-day problems that may arise and promptly publishes Customs laws, regulations, procedures and administrative rulings on the internet. Thailand has launched the e-Revenue web service which provided automatic information sharing with stakeholders using web services technology. Thailand makes Customs information on import/export statistics, import/export Customs clearance, the Customs tariff database and current exchange rates available on the Royal Thai Customs website. Thailand has also published the Client Service Charter with clear information on Customs procedures and contact points in Thailand and English. Thailand has established a Customs Call Center.

Thailand has taken steps to strengthen integrity and to address corruption through several measures, such as establishment of the Clean and Transparency Public Service Coordinating Center.

Thailand has launched a project to redesign the Customs Department's existing systems to web-based applications and paperless systems. Thailand has linked license data among relevant authorities such as Royal Thai Customs, Ministry of Commerce, Ministry of Industry and the Board of Investment. Thailand has developed a system to allow Royal Thai Customs clients, including shipping companies, to electronically transmit data such as declaration forms and cargo manifests. To this end, Thailand has expanded the Electronic Fund Transfer System and

has provided a channel to transmit trade data for undertaking Customs procedures via the internet.

Thailand has taken steps to prepare for accession to the Revised Kyoto Convention.

### *Intellectual Property Rights*

Thailand has proposed establishing a government entity – the Office of Public Sector Development Commission – to be directly responsible for enforcing intellectual property rights.

### *Standards and Conformance*

In 2007 Thailand aligned 50 national standards to international standards. At present, Thailand has aligned 738 standards of its 2,736 national standards with relevant international standards. The alignment of national standards with international standards has been done on a voluntary basis.

Thailand's standard development procedure complies with ISO/IEC Guide 59 Code of Good Practice for Standardization. The degree of alignment in SCSC priority (IECEE/CB Scheme) is 57%. The remaining standards will be reviewed between 2008 and 2012. Thailand's objective is to align its standards with international standards to the maximum extent possible and to fulfill its commitment under SCSC priorities and under other bilateral agreements.

Thailand has implemented the WTO TBT Committee Decision on Principles for the Development of International Standards, Guides and Recommendations and has promoted implementation of the APEC Food MRA by organizing the 2<sup>nd</sup> APEC Sectoral Food MRA Seminar in 2006 and the Seminar on Administrative Procedures for APEC Sector Food MRA in 2007.

Thailand's Laboratory Accreditation Scheme has become a signatory to the APLAC and ILAC MRAs.

Thailand has become a signatory to the PAC multilateral MRA pertaining to environmental management systems, has become a signatory to the International Accreditation Forum (IAF) multilateral arrangement pertaining to environmental management system.

Thailand has participated in the global MRA on Metrology, the Mid-Term Technical Infrastructure Development program and in the establishment of an on-line TIC-CAR Database.

### ***Mobility of Business People***

Thailand established the three-year Non-Immigrant "B" Visa in September 2006 as a way to facilitate entry of business people.

Thailand has applied the APEC Business Travel Card system since 2002. As of March 2008 Thailand had issued over 1,500 ABTCs.

Thailand has taken steps to establish its own ABTC printing facility as a way of allowing greater flexibility and efficiency in management of the ABTC system.

Thailand has complied with the 30-day processing standard for applications for temporary residence, including those received from executives and senior managers on intra- company transfers and from specialists.

Thailand maintains and regularly updates its visa information on the Ministry of Foreign Affairs website ([www.mfa.go.th](http://www.mfa.go.th)).

### *Government Procurement*

Thailand has implemented e-auction method for government procurement and developed the Thai Government Procurement Website ([www.gprocurement.go.th](http://www.gprocurement.go.th)) which contains information on procurement opportunities, contracts awarded and the list of blacklisted suppliers.

### *Conclusion*

Thailand has made significant efforts to facilitate trade through improvement to its Customs intellectual property, mobility of business persons, standards and government procurement procedures. In its 2007 Trade Policy Review of Thailand, the WTO noted improvements made by Thailand which have facilitated trade,

“The transparency and simplicity of customs procedures, a crucial element of trade facilitation, has been increased: clearance times were shortened with extensive use of paperless trading, and corruption is being tackled with several preventive measures. Further regulatory changes and training activities have enhanced the implementation and understanding of the WTO Agreement on Customs Valuation; nevertheless, the process of repealing legal provisions allowing for the use of reference prices, which the authorities maintain were never applied, is still under way.<sup>58</sup>

Thai authorities have noted the benefit of improved trade facilitation, reporting that by 2006 approximately 92% of declaration forms were processed through EDI, up from 85% in 2002. Implementation of an entirely paperless system, which was scheduled for 2007, was intended to facilitate international trade by shortening Customs procedures and improve Thailand's competitiveness.<sup>59</sup>

Although Thailand has made significant progress in developing programs to better facilitate trade, the United States has raised concerns with Thailand's administration of these programs. In its 2008 National Trade Estimates Report, USTR notes,

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<sup>58</sup> Thailand, WTO Trade Policy Review 2007, Trade Policies and Practices by Measure, WT/TPR/S/191, para 3

The lack of transparency of the Thai customs regime and the significant discretionary authority provided Thai officials remain serious concerns for the United States. Despite Thailand's commitment to fully implement the WTO Customs Valuation Agreement, the Thai Customs Director General retains the authority to arbitrarily increase the customs value of imports. The United States continues to urge Thailand to implement legislation to revoke this authority. U.S. industry is increasingly reporting inconsistent application of the WTO transaction valuation methodology and repeated use of arbitrary values. Representatives from the alcoholic beverages industry (wines and spirits) report that transaction invoice values provided by importers have been routinely rejected since September 2006 and replaced with arbitrary deductive values by Thai customs authorities. Exporters of powdered tea products report similar problems. The United States raised these customs valuation concerns both bilaterally and in WTO meetings and sought clarification from Thai customs and other Thai agencies throughout 2007. The U.S. Government will continue to work to address these concerns.<sup>60</sup>

The United States has raised concerns with Thailand's Customs regulatory procedures directly with Thai officials and has requested that Thai Customs authorities publish proposals for changes in Customs laws, regulations and notifications and allow time for comments on these proposals. The United States has also requested that Thai Customs impose a time limit on the issuance of rulings, that it respond to appeals within an established time period, that it provide a full explanation of its decisions on appeals and establish a reasonable time period for completion at the beginning of an audit or verification and that Thai Customs provide a written report of the findings of an audit or verification.<sup>61</sup>

The United States has also raised concerns that Thailand's Customs incentive program, which rewards officials for identifying violators by giving the official a percentage of recovered revenues, "encourages revenue maximization rather than compliance with legal requirements."<sup>62</sup>

The European Union a non -member has also raised concerns about Thailand's implementation of Customs valuation. The European Union claims that Thailand officials appear to have systematically challenged and, in many cases, rejected the declared transaction price of certain

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<sup>59</sup> Thailand, WTO Trade Policy Review 2007, Trade Policies and Practices by Measure, WT/TPR/S/191, para 10

<sup>60</sup> USTR National Trade Estimates 2008 Thailand

<sup>61</sup> USTR National Trade Estimates 2008 Thailand

<sup>62</sup> USTR National Trade Estimates 2008 Thailand



EU products imported into Thailand. The EU considers that Thailand measures and their application appear to violate the WTO Customs Valuation Agreement requirement that Customs valuation be based on the transaction value of the imported goods. The EU requested WTO consultations on these practices in January 2008.<sup>63</sup> The United States and the Philippines have requested to join the consultations. It is not clear consultations have been held to consider this matter, identified as *Thailand – Customs Valuation of Certain Products from the European Communities* (DS370), but a Panel has not yet been requested.

The Review Team considers that the Thailand has made significant progress in developing systems that facilitate trade and that Thailand is well on its way to achieving its Bogor goals before 2020. The Review Team notes the concerns raised by the United States in another forum concerning Thailand's administration of its Customs measures. If the United States is correct, Thailand's administrative action would undermine its efforts to facilitate trade. Therefore, the Review Team encourages Thailand to consider the complaints raised by the United States to determine whether they are valid and, if so, to take corrective action.

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<sup>63</sup> EU Requests WTO Consultations over Thai Customs Practices, EU Press Release, 27 January 2008, and Factsheet: Thai Customs Practices, Global Europe

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## Review Process Questions and Answers

### I Tariffs

Q. (Canada) While happy to see progress on reducing tariffs in Thailand, Canada would note that there remain many unbound tariffs. What are Thailand's plans to bind the remaining unbound tariffs?

A. Thailand has already bound 100% of agricultural tariff lines and 70% of its non-agricultural products. Nevertheless, to enhance our commitments, Thailand has no objection to bind all tariff lines as the result of the DDA negotiations.

Q. (Hong Kong China) We commend Thailand for its efforts in tariff reduction in recent years. We encourage Thailand to keep up with its efforts in reducing the applied tariff, particularly in sectors with relatively high applied rates, such as textiles and clothing products.

A. Thailand supports trade liberalization policy. As a result, Thailand has been unilaterally reducing tariffs for most of the industrial products including those in textiles and clothing sector. Moreover, Thailand has joined many free trade agreements and, therefore, significantly reduced tariff rates for many textiles and clothing products for trade partners. In the future, more tariff reduction can also be expected in textiles and clothing product because of the expansion of Thailand's FTAs with more trade partners.

Q. We note that among other goods, transport equipments have the highest applied and bound tariff rate. Has Thailand reviewed the impact of this high tariff on the performance on transport sector? Does Thailand have plans to reduce it in the near future?

A. Thailand had been through a tariff restructuring. By 2005, the tariff rates on most products had been reduced and the range had narrowed to the new targeting rates following production process, namely:

- (a) 1% for raw materials and inputs not produced locally
- (b) 5% for semi-finished products
- (c) 10% for finished products, products requiring extra protection, and luxury goods

For products with higher tariff rates, Thailand will reduce the existing WTO bound tariff rates significantly as the result of the DDA negotiations.

Q. Could Thailand please advice the progress and the current status of the free trade negotiations of EFTA, India, and BIMST-EC, as well as ASEAN-India, ASEAN-Korea, ASEAN-Australia and New Zealand, and ASEAN-Japan? When does Thailand expect to complete all these negotiations? Does Thailand have any further plan for free trade negotiations with other countries? If so, which countries are they?

A. **ASEAN-Japan:** THE ASEAN-Japan Comprehensive Economic Partnership Agreement has been signed in April 2008. Currently, the Agreement was ratified by 6 parties, and has entered into force for Japan, Singapore, Lao PDR, Myanmar and Vietnam, since 1 December 2008. While the rest of the parties have not yet ratify and are in the process of completing domestic procedures before ratifying the Agreement.

**ASEAN-Korea:** ASEAN and Korea have completed the negotiations on the Agreement on Trade in Goods and Agreement on Trade in Services under the ASEAN-Korea FTA. The ASEAN-9 (except Thailand) and Korea have signed and enter into force of the agreements in 2007, while Thailand is at present waiting for approval from its national parliament and expected to sign these two agreements around end of 2008. For the agreement in investment between ASEAN-Korea is still under further negotiations.

#### **ASEAN-India**

- The Framework Agreement on Comprehensive Economic Cooperation between ASEAN and India was signed on 8<sup>th</sup> October 2003 at Bali, Indonesia.
- ASEAN and India concluded the decision on modality for tariff reduction/elimination. It is expected that the Agreement on Trade in Goods can be signed at the sideline of the ASEAN-India Summit in December 2008.
- Agreement on Trade in Services and Investment will be negotiated later.

#### **Thai-India**

- The Framework Agreement for Establishing India-Thailand Free Trade Area was signed on 9<sup>th</sup> October 2003 at Bangkok, Thailand.
- India and Thailand agreed on tariff reduction under Early Harvest Scheme of 82 products. Import duties on those products were reduced to 0% since 1<sup>st</sup> September 2006.
- Currently, India and Thailand are in the process of negotiating the Agreement on Trade in Goods, Agreement on Trade in Services and Agreement on Investment.

#### **BIMSTEC**

- The Framework Agreement on BIMSTEC Free Trade Area was signed on 8<sup>th</sup> February 2004 at Phuket, Thailand.
- Currently, Agreement on Trade in Goods, Trade in Services and Investment are in the process of negotiations

Q. Under transparency of tariff regimes section, it is mentioned that the Customs Appeals Committee is responsible for making decisions concerning any valuation discrepancies between customs officers and concerted parties. On average how many appeals per month does the committee receive from exporters/importers? How then the committee would proceed after receiving an appeal?

A. The Customs Appeals Committee is responsible for making decisions concerning any valuation discrepancies between customs officers and concerned parties under the Customs Law. The committee receives about 25 issues per month and solves the valuation discrepancies by meeting in working group.

1. There are about 78 appeals per month which the Customs Tariff Appeal and Rules of Origin division have received from the exporters and importers. Most are customs tariffs and duty rates appeals, totally 623 appeals have been submitted from January to August 2008.

In addition, there have been four appeals submitted to the Customs Valuation Appeal division and those appeals were not concerning valuation issue. The Customs Department has imposed the Customs Regulation to clarify the customs valuation process at the customs house of port of

entry. Moreover, the new regulation also designates the guarantee process for indecision import entry and clarifies customs valuation compliance with the GATT valuation.

## 2. The process of appeals:

The exporter/importers fill their appeals in Customs Form 171 and submit to Customs Tariff Appeal and Rules of Origin division.

(1). Customs officer review Form 171 and the attached documents, and verify that the appeal has been submitted within 30 days after the export/import received the Customs notice from the Customs.

(2). The responsible Customs officer gathers the facts, information, discussion from exporter/importer and Customs and inform the exporter/importer to submit more information if needed. Hence, the officers summarize the information and submit their suggestion to the supervisor to put the appeals into the sub-committee on Customs Appeal meeting agenda for consideration.

(3) The sub-committee on Customs Appeal considers and justifies primary decision on the appeals.

(4) The Customs Appeal Committee reconsiders the appeal from the sub-committee and approves the final decision on appeal.

(5) The responsible Customs officer informs the final decision to the exporter/importer and concerning parties. If they are dissatisfied with the Customs' final determination, they may obtain judicial review of such determination in Court. A lawsuit to review the Customs' final determination must be commenced within 30 days after the decision is rendered.

Q. Also under transparency of tariff regimes section, it is mentioned that the Import Policy Administration Board aims to maintain a stable economy while balancing export promotion and import administration as a general policy. Could Thailand please advice the effectiveness of this board in raising the economic efficiency and productivity?

A. The Import Policy Administration consists of the representatives from relevant ministries, such as Ministry of Industry, Ministry of Agriculture and Cooperatives, Ministry of Health and Ministry of Commerce as well as private sectors. The objective of the Board is to be a forum to discuss, monitor and advise on the Thailand 's import and export figures. The raison d' etre of the Board is to maintain a healthy balance between export and import performances of the country so that effectiveness and efficiency can be achieved.

Q. Could Thailand please advise the impact of Thailand-Australia FTA (TAFTA) and Japan-Thailand Economics Partnership Agreements (JTEPA) on Thai's economy in general?

A.

It is only about 1 year since JTEPA has been taken into force, so the impact of the Agreement may not be easily seen. However, the statistics has shown that trade between Thailand and Japan is continuously increasing by 15 percents (in terms of US dollars) comparing with the same period in the last year. Currently there is no claim from private sector that JTEPA affects their business in an unpleasant way. Moreover, JTEPA is one of Thailand's existing FTAs that the usage rate is relatively high.

There does not appear to be any substantive negative impact from the Thailand-Australia Free Trade Agreement (TAFTA) on the Thai economy. However, the sectors that are expected to be affected include meat and dairy products which Australia holds significant production and export potential. The importation of such products into Thailand not only generates huge competition in the domestic industry but also creates a substitute for Thai products, which would be disadvantaged due to a higher cost of production. However, Thai consumers would benefit in terms of greater variety and choice of products at lower prices.

Bilateral trade opportunity between Thailand and Australia have expanded under the TAFTA. The success of TAFTA highlights the progress in relations between Thailand and Australia, especially in the areas of trade and economic relations. TAFTA will no doubt continue to represent an important mechanism to accelerate bilateral trade and investment flows between the two countries.

**In 2007** bilateral trade between Thailand and Australia amounted to US\$ 9.5 billion, which is an increase of 22.75% from 2006. Thai exports to Australia rose by US\$ 5.7 billion or an increase of 31.63% compared to the previous year while Thai imports from Australia had increased by US\$ 3.8 billion or an increase of 11.4% from 2006.

**During the first six months of 2008,** bilateral trade between Thailand and Australia amounted to US\$ 5.72 billion, which is an increase of 31.63%. Thai exports to Australia rose by US\$ 3.51 billion or an increase of 31.45% compared to the previous year while Thai imports from Australia had increased by US\$ 2.46 billion or an increase of 37.51%.

## II Non-Tariff Measures

Q. (Hong Kong China) We note that Thailand only maintains NTMs for the purpose of protection of public morals, national security and health. Nevertheless, for the sake of trade facilitation, we encourage Thailand to regularly review its NTMs with a view to reducing their use as far as possible.

A. Ministry of Public Health, Thailand have technical cooperation with APEC under 3 issues for protection health e.g. 1.) Communicable Disease Control 2.) e-health cooperation and 3.) Human Resource Development: HIV/AIDS, Tuberculosis, Avian Influenza, Surveillance, Laboratory Improvement and Food Safety etc.

Q. (United States) To what extent has Thailand recognized international standards on animal and plant health (e.g., the World Organization for Animal Health and the International Plant Protection Convention)?

A. Thailand is a member of the World Organization of Animal Health ( OIE ), Thailand has fully recognized the OIE standards and Guidelines.

Q. (United States) Thailand operates domestic absorption practices under Tariff Rate Quota (TRQ) administration, particularly for imports of soybeans, soybean meal, skimmed milk, and fresh potatoes. Does Thailand believe the current TRQ administration for those aforementioned commodities complies with World Trade Organization rules? If so, please explain.

Additionally, how does Thailand intend to terminate the practice that eligible importers must purchase domestically produced goods at determined prices?

A. Thailand believes that the current TRQ administration for those aforementioned commodities complies with World Trade Organization rules. Thailand manages each TRQ product differently. For soybeans, soybean meal, skimmed milk powder, and fresh potatoes, these products' quantities grown domestically do not meet the internal consumption. Thailand has normally allowed the imports of these products more than the WTO bounded quantity. Furthermore, the quota allocation for these products is based on "Licensing on Demand" manner. The eligible importers can submit their requests specifying their required amount of importing along with the required documents to the concerned committee. The committee would generally issue license for importing these products as much as the industries request. There is no such domestic purchasing requirement as a condition for eligible importers to get an import license.

Q. (United States) Presently Thailand permits importation of pork from certain supplying countries under import licensing procedures required by the Thai Food and Drug Administration on foods and by Department of Livestock Development (DLD). Traders in Thailand report that Thai authorities never issue import license for pork and broiler meat, essentially protecting domestic producers and Thai exporters. Can you confirm approved shipments of pork into Thailand from international suppliers? If so, please identify the country of origin for the approved imports.

A. Presently, Thailand has imported pig's products from countries, including China, Italy, Denmark, Spain, Germany, Korea, Australia, Japan. Since January 2008, Thailand has approved shipment of pork's product from Italy. Regarding to importation data from Import and Export Inspection Division, no pork and broiler meat are imported to Thailand whereas imported meats to Thailand are frozen turkey, Swine edible offal and pig skin.

Q. (United States) The Thai government requires import license fees for meat products of approximately U.S. \$142 per ton on beef and pork, U.S. \$286 per ton for poultry, and U.S. \$142 per ton on offal. The fees, however, do not appear to reflect the costs of import administration. Can Thailand confirm the costs of its inspection fees as they relate to beef, pork, and poultry? Additionally, can Thailand identify the fees that are applied to similar items produced domestically?

A. The import license fees have been implemented according to the country's Animal Epidemic Act Laws B.E.2499. The fees reflect only costs of administration, and vary dependent on type and weight of meat products. Please see the attached for the rate of import license fees. Note that different rate is used for export license fees, and no fee has been applied to domestic movement of animals / animal products for trading purpose.

Q. (United States) Duties on imported consumer-ready food products typically range between 30 percent and 50 percent – the highest in the Association of Southeast Asian Nations (ASEAN) region – with some as high as 90 percent (e.g., coffee). Tariffs on meats, fresh fruits (including citrus fruit and table grapes), vegetables, and fresh cheeses 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 a tariff of 30 percent. In a domestic economic environment of consumer food price inflation does Thailand view lower tariffs as an opportunity to control rising domestic food costs? If so, please explain in detail.

A. Thailand's tariff rates are in accordance with its commitments under the WTO. In fact, tariff rates on some agricultural products have been reduced below their WTO bound rates, for example, green peas (reduced to 5% instead of 40%) and apples (reduced to 10% instead of 30%). Furthermore, quotas of some products have been granted beyond WTO bound quantities, for instance, soybeans and soybean meals have been allowed to be imported with quota free and currently have 4% tariff rates (instead of 20% of in-quota rate, for 230,599 tons, and 119% of out-of-quota rate).

Q. (United States) Thailand maintains duties for many imported feed items (e.g. dried distillers grains with solubles (DDGS)) which effectively increase the cost of feedstuffs production in Thailand. Does Thailand view lower tariffs for feedstuffs as an opportunity to reduce feed costs and improve the competitiveness of its livestock sector? If so, please explain in detail.

A. Thailand's tariff rates are in accordance with its commitments under the WTO. In fact, tariff rates on some agricultural products have been reduced below their WTO bound rates, for example, green peas (reduced to 5% instead of 40%) and apples (reduced to 10% instead of 30%). Furthermore, quotas of some products have been granted beyond WTO bound quantities, for instance, soybeans and soybean meals have been allowed to be imported with quota free and currently have 4% tariff rates (instead of 20% of in-quota rate, for 230,599 tons, and 119% of out-of-quota rate).

Q. (United States) Thailand operates domestic absorption practice under TRQ administration, especially for the imports of soybeans, soybean meal, skimmed milk, and fresh



potatoes. Can Thailand clarify how the current TRQ administration for those mentioned commodities comply with WTO rules? How will Thailand make an effort to terminate the practice that eligible importers must purchase domestic production at determined prices?

A: The current TRQ administration of Thailand has complied with the country's WTO commitment. The commitment has allowed Thailand to maintain TRQ on certain sensitive agricultural products as well as to require local purchases.

Q. (United States) What steps has Thailand taken towards recognizing international standards, particularly with respect to the Codex Alimentarius Commission's ad hoc Intergovernmental Task Force on Foods Derived from Biotechnology? This would include both the guidelines and the annexes to the guidelines related to the safety assessment of foods derived from biotechnology.

A. In case of risk assessment on Food Derived from Genetically Modified Organisms (GMOs) that may impact to human health, Food and Drug Administration considers on the safety aspect by sending information and data to the subcommittee on food Biosafety as the National Center for Genetic Engineering and Biotechnology (BIOTEC), working for a technical consultant of risk assessment on biosafety. The BIOTEC undertakes the risk assessment according to CODEX criteria as follows:

1. Guideline for the conduct of food safety assessment of foods derived from recombinant-DNA plants
2. Guideline for the conduct of food safety assessment of foods produced using recombinant-DNA microorganism
3. Principle for the risk analysis of foods derived from modern biotechnology
4. Assessment of possible allergenicity

Nevertheless, Food and Drug Administration is going to collect and study regulation and implementation measures of monitoring and controlling food derived from biotechnology from other countries and international standards constantly in order to be used to improve and develop appropriated implementation measures on food derived from biotechnology in Thailand which are also complied with international standard.

Q. It is good to know that many Non-Tariff Measures in Thailand have been relieved. Could Thailand describe its experience in reducing NTMs, as well as the positive and negative impact of the effort?

A. Regarding to the agricultural sector, NTMs in this area are minute. Even though there is a few of them, they are mostly in line with the WTO rules.

Q. In IAP, export of automobiles to Taiwan is subject to quota allocation administered by the Department of Foreign Trade. However, in actual fact, this is a quantitative restriction on imports imposed by Chinese Taipei, which Thailand monitors to avoid administrative problems of exports in excess of the import restriction. Does Thailand act the same way to products from Chinese Taipei or from other countries? If so, please provide the list of these goods/products?

A. The arrangement of import automobiles between Chinese Taipei and Thailand has been effective since 1998. Chinese Taipei had allocated import quota for Thailand at amount of 10,000 units in 1998. As agreed, the quota has been gradually increased at 20% in following

years. However, only General Motors applied to obtain export license. During 2002-4, the company is allocated for a quota of 2,000 units but it exported only 302 units. Since 2005, no application for export license has been filed. In addition, Thailand has not had such agreement with any other country.

Q. Could Thailand please inform the progress on new laws and regulations related to Discretionary Import Licensing?

A. The Ministry 's Commerce 's Notification has prohibited importation of ceramic food containers coated with LEAD and CADMIUM solubility more than 5 and 0.5 mg/liter, respectively. Nevertheless, a health certificate from the Competent Authority in the country of origin is required to attest its conformity to this standard. Please also see attachment 1 and 2.

Q. Under general policy section, it is mentioned that since 1996, Thailand has abolished licensing requirements for imports of eight products. Moreover, the Ministry has also removed and amended the regulations regarding some products in conformity with the WTO agreements. Does Thailand have any further plans to abolish more licensing requirements in near future? Could Thailand provide the timeframe for it?

A. Thailand has made considerable progress in termination of import licensing requirement. Namely, these include gunny bag woven of jute of kenaf and Jute or kenaf and marble (HS 2515 12 10, 6802 91 00, 6802 92 00, 6802 93 00, 6802 99 00).

### III Services

#### Transport Services: Land

Q. From section of foreign entry in Chapter 3 (K:4) of the Annex-Annual Sectoral Report, foreign businesses are prohibited to engage in domestic land transport businesses since these businesses are included in the list of prohibited activities for foreign businesses under section 8 of Foreign Business Act. Could Thailand please explain the reasons for this restriction?

A. Domestic road transport services are described in the List Two under the Foreign Business Act B.E. 2542 (1999), which do not allow foreigners<sup>1</sup> to operate in the territory of Thailand due to the fact that this kind of business relates to the national safety or security. If the foreigners wish to operate such businesses, they must be permitted by the Minister of Commerce with the approval of the Cabinet.

Q. Thailand has indicated to review restrictions on market access for road transport services under GATS and also want to have further consideration on undertaking progressive actions to facilitate the supply of road transport services. Could Thailand please advise the current status or the progress of that plans?

A. According to the Limitations on Foreign Equity Participation of the Inventory of Trade in Services Limitations, foreign equity participation must not exceed 49% of the registered capital. The ASEAN Economic Community (AEC) also puts a 49% limit on foreign ownership in land transport services, which is in accordance with the Land Transport Act BE 2522.

Foreign businesses are not allowed to engage in domestic land transport businesses under the Foreign Business Act, section 8 mainly because Thailand considers land transport professions to be one of great importance to the country's national security and safety. Therefore, foreign businesses in this area are considered to be among prohibited activities under the Act.

Regarding the restrictions on market access for road transport services, Thailand is open to consider adjusting the current 49:51 ratio of foreign equity participation against Thai ownership. However, Thailand has conducted several studies indicating the nature of land transport entrepreneurship in the country and they show that the competency of most Thai entrepreneurs is not yet on the same level as those of the foreign entrepreneurs. Having more foreign competitors, therefore, will hinder growth potential of the domestic businesses. The current plan for Thailand, therefore, is to develop the capacity of these local entrepreneurs than to relaxing the restrictions on market access for road transport services for foreigners

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<sup>1</sup> A foreigner (alien) is a non-Thai national, a non-Thai registered company, a locally incorporated company with more than 50% overseas share ownership, or a partnership with a foreign managing partner.

## Transport Services: Maritime

Q. According to the Thai Vessels Act BE 2481 (as amended by the Act BE 2540), foreign ownership in Thai domestic shipping companies should not exceed 30% of the total equity. Could Thailand please advise whether or not this will be adjusted to 49% in the future (as in port operations)?

A. Currently, the scope of liberalization of Thailand's maritime transport services focuses primarily on international shipping and related services in accordance with its commitments scheduled under GATS/WTO. The reason for imposing a requirement of 30% of foreign equity in Thai domestic shipping companies is to ensure national security through a strong genuine link between shipowners and the government. The tendency of smuggling, trafficking, illicit drugs and armed robbery using domestic vessels to commit unlawful acts in Thailand's territorial waters has indicated the necessity of maintaining such requirement.

Q. Thailand's IAP report mentions that the country "will be looking to apply privatization policy to services [other than port operation] relating to maritime transport such as pilotage, dredging, etc". Could Thailand please inform the progress on this?

A. Privatization has been applied to maritime transport related services in appropriate forms and in consistent with Thai national laws as follows:

1. Port operations Port operations of Laem Chabang Port, which is the major deep sea port in Thailand, have been leased out to private operators on a concession basis. Joint ventures between Thai operators and foreign companies are allowed according to the Foreign Business Act, B.E.2542.

2. Pilotage Pilotage services rendered by government pilots are compulsory only in certain areas where maritime traffic is congested, namely, Bangkok bar to Bangkok Port, Sattahip Port, Laem Chabang Port, Songkhla Port and Phuket Port. Special pilots appointed from experienced Thai ship masters are also allowed to render services in such areas if the ship masters meet the established qualifications and requirements.

3. Dredging The Marine Department has maintained some dredging facilities for development and maintenance of navigation channels, both in inland waterways and coastal areas. Dredging activities carried out by the Department are necessary and have to be maintained since the unit cost of dredged material is much lower than those carried out by private sector and prompt operation is possible in case of urgency. (Engaging private sector involves a bureaucratic procedure which takes time (3-4 months) before actual dredging can commence.) However, since the Department's dredging facilities are limited in terms of quantity and capacity, some dredging activities have been contracted out to private sector, particularly those carried out in large navigation channels in coastal areas or part of a river dredging project.

Q. Thailand's IAP report mentions the government has imposed a minimum requirement on national ship crew working on board of Thai vessels. Could Thailand please inform what these minimum requirements are?

A. According to the Ministerial Regulation No.8 issued in 1997, Thai vessels engaging in international shipping are required to maintain 50% of national ship crew, including officers and ratings, at a minimum. Foreign ship crew can be allowed to work on board Thai vessels if Thai ship crew are not available or in shortage subject to certain conditions. Foreign officers are required to obtain recognition of Certificate of Competency in accordance with the International Convention on

Standards of Training, Certification and Watchkeeping for Seafarers (STCW) while foreign ratings are required to take mandatory courses from recognized institutions in Thailand.

Thai vessels engaging in domestic shipping are required to maintain 100% of national ship crew for the purpose of ensuring national security.

## **Transport Services: Air**

Q. (Canada) Canada would like to learn more about aircraft repair and maintenance services and current entry requirements for foreign entities. According to Chapter 3 (K:2) of the Annex-Annual Sectoral Report, this activity is prohibited to foreign entities unless specific permission is granted. Canada would be grateful for information on the conditions under which such permission would be granted.

A. Repair and maintenance services are described in List Three under the Foreign Business Act B.E. 2542 (1999), which do not allow foreigners to operate in the territory of Thailand unless permitted by the Director-General of Department of Business Development with the approval of the Foreign Business Committee. Moreover, the entity must have sufficient capital, and comply with other conditions set by the Thai government. The Department of Civil Aviation is currently drafting the conditions and principles with regard to the application of these services in line with the amended Air Navigation Act. The permission to operate such services is also subject to the conditions of the airport owner. However, the foreign operator may operate repair and maintenance services for its own aircrafts subject to the regulations set by the Director General of the Department of Civil Aviation and the permission from the airport owner.

Q. Thailand's IAP report mentions that the government is in the process of setting up the National Telecommunication Council to look after the Computer Reservation Systems (CRS) Services operation. Also, the Cabinet has approved the draft of CRS Code of Conduct. Could Thailand please inform what the key characteristics of the Code are and what the progress of NTC establishment is, so far?

A. The draft of CRS Code of Conduct had been reviewed by various authorities as it might duplicate other relevant legislations. At present, the Council of State of Thailand has been reviewing the contents and considering whether to proceed. For the key characteristics, the Code's main characteristics are similar to EU Code of Conduct and ICAO Code of Conduct on CRS which contain principles on operation of vendors, rights, obligations and responsibilities of concerned parties with the objectives to have fair, transparent competition on non-discriminatory basis as well as protect consumers' rights and personal information of the users. In the meantime, the National Telecommunications Commission has already been established to look after the telecommunication and other related services in Thailand.

## **Financial Services**

Q. (China) As for accounting, whether foreign firms can accept their home country clients' entrustment to go to Thailand to audit their subsidiaries or affiliated companies in Thailand with a view to auditing their consolidated financial statements? Can foreigners or foreign organizations set up liaison offices or accounting firms in Thailand? Whether foreign accounting firms are permitted to set up branches or representative offices in Thailand? If so, are there any limitations for scope of business. How can a foreigner obtain the certificate of Certified Public Accountant of Thailand?

A. **As for accounting, whether foreign firms can accept their home country clients' entrustment to go to Thailand to audit their subsidiaries or affiliated companies in Thailand with a view to auditing their consolidated financial statements?**

- No. Foreign auditors cannot perform auditing practices in Thailand unless they are complied with all qualification requirements regulated by the Accounting Professions Act, B.E. 2547 (2004)

**Can foreigners or foreign organizations set up liaison offices or accounting firms in Thailand?**

- Please check with the Department of Business Development (Foreign Business Act, B.E. 2542 (1999))

**Whether foreign accounting firms are permitted to set up branches or representative offices in Thailand? If so, are there any limitations for scope of business?**

- Please check with the Department of Business Development (Foreign Business Act, B.E. 2542 (1999))

**How can a foreigner obtain the certificate of Certified Public Accountants in Thailand?**

### **Accounting Professions Act, B.E. 2547 (2004)**

**Section 37** If there is a provision of law requiring auditing or requiring a document to be affixed with an auditor's signature or opinion, a person shall be prohibited to certify auditing or a document, or to provide an opinion as an auditor unless such person is a certified public accountant or he has been authorized by competent authority to do so.

**Section 38** A person who wishes to be a certified public accountant shall obtain a license from The Federation of Accounting Professions.

Application, approval, and issuance of a license of a certified public accountant shall be in accordance with forms and criteria as prescribed in the regulations of the Federation of Accounting Professions

If the license is not suspended or revoked, a certified public accountant shall be exempt from receiving permission from the Director of the Revenue Department to audit and certify an account under the law on revenue collection.

**Section 39** An applicant for a license of a certified public accountant shall have the following qualifications and shall not have the prohibited characteristics below:

(1) Being an ordinary member or an extraordinary member under Section 14 paragraph two. In the case that an extraordinary member is a foreigner, he shall be proficient in Thai to be able to audit and to prepare a report in Thai and shall have domicile in Thailand. After obtaining a license, he shall obtain a work permit in accordance with the law on aliens' work;

(2) Having passed an examination, training, or apprentice or having practiced in accounting professions as prescribed by the regulations of the Federation of Accounting Professions;

(3) Never having been imprisoned by a court's judgment for offences under Section 269 and Section 323, or offences related to property except offences on loss of property and trespassing under Criminal Code, offences under accounting law, auditing law, or corporate liability law as limited to offences relating to fault or untrue certification of financial statements, accounts or reports, or offences under Chapter 5 and Chapter 6 of this Act unless he has been released for not less than five years;

(4) Not being a bankrupt; or

(5) Having qualifications and having no prohibited characteristic prohibitions as prescribed in the regulations of the Federation of Accounting Professions

**Additional requirements:**

professional examination/assessment

A CPA applicant must pass 6 subjects within 3 years (plus completing 3,000 hours of practical experiences within 3 years) in order to become a CPA. Each subject passed remains valid for only 3 years if a CPA applicant has not yet passed the whole examinations.

work experience

A CPA applicant must complete 3,000 hours of practical experience within 3 years as pre-qualifications before becoming the CPA.

practice and training

CPDs are required for both bookkeepers and auditors (both practicing and non-practicing).

○ For bookkeepers, 27 hours of CPDs is required within 3 years.

○ For auditors, 12 hours of CPDs is required within a year.

language skills

**Section 39** An applicant for a license of a certified public accountant shall have the following qualifications and shall not have the prohibited characteristics below:

(1) Being an ordinary member or an extraordinary member under Section 14 paragraph two. **In the case that an extraordinary member is a foreigner, he shall be proficient in Thai**



**to be able to audit and to prepare a report in Thai and shall have domicile in Thailand.**

After obtaining a license, he shall obtain a work permit in accordance with the law on aliens' work;

Q. (China) According to Thailand IAP on financial services, in principle, Thailand only allows foreign investors to own up to 25% foreign equity in local commercial banks. Even with the approval of finance minister, the additional shares acquired by foreign shareholders cannot exceed the maximum of 49%. Does Thailand have any plan to loosen these restrictions and allow foreign banks to setup operation institutes in Thailand?

A. In accordance with the Financial Institutions Businesses Act 2008, which took effect in August 3, 2008, the Bank of Thailand (BOT) may consider allowing foreign shareholdings above 25% and up to 49%. The Finance Minister, with the advice of the BOT, have the power to permit the holding of shares by foreigners above 49%, for the purpose of rectifying the condition or operation of a commercial bank, or for the protection of the financial stability of a financial institution or financial institution system.

Q. (China) Please introduce, if any, the potential open-up measures or actions to be taken in the next 3 years in insurance sector.

A. Office of Insurance Commission (OIC) performs the functions of the insurance supervisory agency in Thailand with the status of an autonomous insurance supervisory authority. Principle regulatory instruments are Life Insurance Act B.E.2535 (1992), Non-Life Insurance Act B.E. 2535 (1992), Life Insurance Act (No.2) B.E.2551 (2008) and Non-Life Insurance Act (No.2) B.E. 2551 (2008) in which operating requirements and other necessary information for insurance organizations are stipulated. Many amendments have been made to the Acts with the aims of encouraging insurance companies to improve their financial soundness, risk management and good governance. The significant amendment indicating the open up measures shown as follows:

- The ability to increase in number of foreign shareholders and directors

According to Life Insurance Act (No.2) B.E.2551 (2008): section 10 and Non-Life Insurance Act (No.2) B.E. 2551 (2008): section 9, not exceeding three fourth (3/4) of the total number of directors have to be Thai nationality and hold shares more than 75% of the total number of voting shares that have been sold.

If the Commission deems appropriate, it may permit persons of non-Thai nationality to hold shares, in a proportion of up to forty-nine percent (49%) of the total number of voting shares that have been sold, and permit persons of non-Thai nationality to serve as directors, in an amount exceeding one fourth (1/4), but less than one-half (1/2), of the total number of directors.

Q. (Hong Kong China) Under "Foreign Entry", the IAP invites readers to visit the website of the Bank of Thailand, from which we found a circular entitled "Application to Establish a Branch of Foreign Bank". The circular stipulates, inter alia, that it is necessary for a foreign bank to have an office of "international banking facility" in Thailand before it can establish a branch in Thailand. We would like to enquire about the reasons behind such a requirement. Also, we would like to know whether a foreign bank is required to seek approval from the Bank of Thailand or any relevant regulatory authorities before setting up such a facility and if yes,

what are the approval criteria?

A. Currently, international banking facility license (IBF license) is no longer available and all foreign bank branches and IBF licenses have either upgraded to branches or subsidiaries. Subsequently IBF license were returned to MOF. Under the Financial Sector Master Plan I, the foreign banks can establish the presence in two forms either a foreign bank branch or a subsidiary. (See <http://www2.bot.or.th/fipcs/Documents/FPG/2547/EngPDF/25470003.pdf> and <http://www2.bot.or.th/fipcs/Documents/FPG/2547/EngPDF/25470004.pdf>)

However, currently there is no new license for Thai or foreign banks, but the Financial Sector Master Plan II, which is under consideration, will examine the question of increasing competition and entry.

Q. Under section “Licensing and Qualification Requirements of Service Providers”, Venture capital management licenses will be granted to the applicants who have an efficient operating system, including internal control and system for report preparation. How does Thailand assess the efficiency of operating system in this requirement?

A. In order to ensure that the applicant has an efficient operating system, the SEC requires the applicant to submit a supplementary document which elaborates the applicant’s operating system on various areas. When assessing, whether or not, the operating system is efficient, the SEC focuses on 4 main areas: internal control, investment management operation, record-keeping system and reporting system.

1. Internal control:

- We look into the applicant’s organizational chart to see if chains of command are clearly prescribed. The company’s structure should enable the compliance unit to function independently, for instance, does the compliance unit report directly to the Board?
- The internal control system must be in place to protect the client’s assets and to control associated risks. For instance, there should be records of client’s assets which are segregated from those of the company.
- The applicant should have sufficient measures to control and prevent conflicts of interests. To meet this criteria, the applicant may, for example, demonstrate that it has in place guidelines or practices regarding transactions with related parties. In this regard, the guidelines should clearly stated that the benefits of the investors is always the priority.
- Check and balance system should also be in place.

2. Investment management operation:

- The applicant should be able to elaborate on how investment decisions will be made. For example, the company may prescribe that there is a team of analyst collecting information and looking for investment opportunities for the fund. And the investment unit uses such information provided by the analysts and considers making an investment and then makes a proposal to the investment committee.

3. Record-keeping:

- There must be a separate unit that solely responsible for preparing and keeping documents.

- In keeping records, the applicant must ensure that confidentiality is preserved at all levels and throughout the process, for example applicant should have control over the access to information.

4. Reporting system:

- The applicant shall assign a unit that will be responsible for sending out reports to investors, the SEC and other related government agencies. A check and balance should also be conducted prior to sending out such reports.

Q. Under section “Foreign Entry”, The IAP stipulates that where it is deemed necessary to improve the condition or business of commercial banks, finance companies and credit foncier companies; the Minister of Finance, upon recommendation of the Bank of Thailand may allow foreign investors to hold up to 100% of shares in these institutions for a period of ten years. We would like to know the criteria or conditions required by the Ministry of Finance before allowing foreign investors to have 100% of shares on a particular bank or finance company.

A. According to the Financial Institutions Businesses Act 2008, for the purpose of rectifying the condition or operation of a commercial bank, or ensuring the integrity and stability of the financial institution or financial institution system, the MOF upon the recommendation of the BOT may permit foreign shareholdings above 49%.

Q. Under the operational requirements for Derivative Fund Management Business, The SEC plans to introduce a guideline on operating system and internal control for derivatives fund managers to spell out details of operating requirements. Could Thailand please inform the current status of that plan?

A. The said guideline has already been drafted and it is currently under the review process.

Q. Has Thailand completed the second phase of Financial Sector Master Plan (FSMP II)? Could Thailand please inform the key points from the FSMP II related to Licensing and Qualification Requirements of Service Providers for Commercial Banks, Finance Companies and Credit Foncier Companies?

A. The FSMP II is under consideration of the relevant authorities.

Q. According to the Foreign Business Act B.E. 2542 (1999), securities companies with foreign investors holding up to 100% shareholding may engage in securities brokerage businesses. Could Thailand please advise the sort of measurements to control such company?

A. All licensed brokerage companies are treated equally (regardless of their percentages of foreign shareholdings), provided that major shareholders have received prior approvals by the SEC. In this regard, major shareholders mean shareholders who own more than 10% of total shares. The criteria in granting such approval focus on the past records of such shareholder.

Q. In IAP, Foreign entry in mutual fund management business is allowed to set up a new limited company or public limited company whose at least 50% of the total outstanding shares are held by local financial institutions and applying for mutual fund management license. Does Thailand have any further plan to loosen this restriction?

**A. The SEC:** Yes, from the year 2012, foreign companies will be permitted to apply for a license to manage mutual funds in Thailand. Prior to 2012, the current regulatory regime still applies. In summary; foreign shareholder participations are allowed under the following conditions:

- In case of the CIS operators which have been operating for less than 5 years: foreign shareholder participations are allowed up to 49.99%. The rule also requires that the rest must be owned by Thai financial institutions.

- In other cases, foreign shareholder participations are allowed up to 100%, upon an approval from the Ministry of Commerce.

### **Communication Services: Audio-Visual**

Q. (Chinese Taipei) How does Thailand promote the shift from the existing cable TV system to the digitized cable TV system? Does the authority have any specific policy to encourage or guide the cable TV industry to make the shift?

A. Thailand is in a period of transition and the broadcasting service including cable TV (and IP-TV) has been confronted with major changes. The 2007 Constitution of Thailand requires, in Article 47, the establishment of the National Broadcasting and Telecommunication Commission (NBTC) as a single regulatory body for broadcasting and telecommunication. The Act reacting to the establishment of NBTC is in the process of passing through the Parliament.

For more information on digital broadcasting, Thailand has launched DVB-T Pilot Broadcasts. In cable TV industry, the only nationwide cable TV station, True Vision Pty. Ltd., has provided digital service.

On this point, the policy on digital broadcasting and principles of setting rates and tiers of the cable TV (and/or IP-TV) system service has yet to be set by the new authority, NBTC, which is not established yet.

Q. (Chinese Taipei) Would Thailand please provide us with information on the principles of setting rates and tiers of the cable TV (and/or IP-TV) system service in both the analog and digital systems? Does the authority have any standard or formula for inspecting (or surveying) rates of basic tiers in Thailand? Is there any information available on websites regarding this matter?

A. Thailand is in a period of transition and the broadcasting service including cable TV (and IP-TV) has been confronted with major changes. The 2007 Constitution of Thailand requires, in Article 47, the establishment of the National Broadcasting and Telecommunication Commission (NBTC) as a single regulatory body for broadcasting and telecommunication. The Act reacting to the establishment of NBTC is in the process of passing through the Parliament.

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On this point, the policy on digital broadcasting and principles of setting rates and tiers of the cable TV (and/or IP-TV) system service has yet to be set by the new authority, NBTC, which is not established yet.

## Communication Services: Telecommunication

Q. (Canada) Canada notes that Thailand's IAP report states that the National Telecommunications Commission is "well on the way of setting up...criteria to promote free and fair competition in telecommunication market...to be in conformity with the international obligations and agreements". Are the criteria and conditions set up by the National Telecommunications Commission consistent with the principles of the WTO Reference Paper on Basic Telecommunications?

A. The criteria and conditions regarding competition, being undertaken, are in conformity with international practices.

Q. (Chinese Taipei) The section "Foreign Entry" (page 8 of the "Thailand\_Communication\_Services\_Telecommunications" file), it mentioned that increase of 25% of foreign shareholding proportion and elimination of the 75% requirement for directors to be of Thai nationality have been published in January 2006. Please advise whether such amendments have taken into effect and if so, the requirements.

A. The amendments to the Telecommunications Act of 2001 have taken into effect in January 2006. The amended Act removed the requirements that the share holding proportion of Thai national shall not be less than 75% of its total capital, and not less than three fourth of the total amount of the directors shall be of Thai nationality.

The Telecommunications Act (No.2) of 2006 requires that the applicant for type 2 and type 3 licenses shall not be a foreigner under the Foreign Business Act, and The NTC may prescribe the prohibition that the applicant for certain nature or categories of telecommunications business, shall not commit any other act which has the nature of business takeover by a person who is not of Thai nationality.

Q. (Hong Kong China) We note from Chapter 3 (b:3) of Thailand's IAP that the second issue of the Telecommunications Business Act has been published in January 2006. It increases the foreign shareholding proportion to 25% and eliminates the 75% requirement for directors to be of Thai nationality. We would be grateful for Thailand's advice on the prevailing ceilings applicable to foreign equity participation and the number of foreign shareholders of a telecommunication company in Thailand.

A. The Telecommunications Act (No.2) of 2006 requires that the applicant for type 2 and type 3 licenses shall not be a foreigner under the Foreign Business Act. For type 1 license, there is no limitation on foreign share holding proportion.

Q. (Hong Kong China) The above improvements made since the last IAP exercise should have further widened the gap between Thailand's current telecommunication regime and its existing commitments made in the context of the WTO General Agreement on Trade in Services (GATS), which cap both foreign equity participation and the number of foreign shareholders of a telecommunication company at 20% for most of the telecommunication services found in its GATS schedule. Does Thailand have any plan to reflect those improvements in its next services offers to be tabled to the WTO, so as to enhance the predictability of its services regime?

A. It appears that section 84 (11) of the 2007 Constitution of the Kingdom of Thailand may have an impact on the level of foreign ownership in certain infrastructure areas. The Government

is now studying the implications of this section before further liberalizing the telecommunication sector.

Q. Thailand's IAP report mentions that the National Telecommunication Commission is now formulating the second Telecommunication Master Plan for 2008-2010. Could Thailand please advise the progress on this?

A. The second Telecommunication Master Plan for the year 200-2010 was formally published in the Royal Gazette in April 2008. The NTC, thus has started initiating the implementation plan to be in line with the Master Plan focusing on the following eight eminent area.

- Promotion of Competition
- Telecommunication Resources Management
- Consumer Protection in Telecommunication Services
- Universal Service Obligation (USO) and Corporate Social Responsibility (CSR)
- Telecommunication Industry Research and Development and Telecommunication Personnel Development
- Telecommunication for Specific Services
- Telecommunication Infrastructure and Technology Management
- Modernization of Organization

Q. The Thailand's IAP report mentions about the plan to grant licenses for the 3G mobile phone system by the end of 2006. Could Thailand please inform the progress on this? Can foreign business engage in this sector?

A. The National Telecommunication Commission (NTC) is now on the way of undertaking licensing criteria to determine assignment method, number of operators and its relevant conditions to be applied. It is expected that licensing criteria will be introduced by 2008, and the process of granting licenses will possibly be implemented by 2009. The engagement of foreign business in this sector is subject to foreign equity prescribed in the Telecommunications Business Act and its amendment B.E. 2549 (2006).

## **Environmental Services**

Q. (Canada) General Comment: Canada is interested in hearing more about Thailand's environmental services regime and regulations given that an IAP chapter for this sector has not been prepared.

Q. (China) For Thailand, whether indoor environmental services are included in environmental services, such as indoor air cleaning, water cleaning, waste collection, etc.? What are the conditions or restrictions on environmental services provide by a foreign service supplier?

A. Environmental Services such as water cleaning, waste collection services are categorized as services businesses which do not allow foreigners to operate in the territory of Thailand unless permitted by the Director-General of Department of Business Development with the approval of the Foreign Business Committee. The relevant regulations are

- Business Act B.E. 2542 (1999)
- The Enchantment and Conservation of the National Environmental Quality Act B.E.2535 (article 94(2))

Ministerial Regulations Copy II B.E.2527

## **Tourism and Related Services**

Q. (Hong Kong China) We welcome that the Ministry of Tourism and Sports of Thailand is considering to allow foreign language speaking tour guides to practice their duties as interpreters in Thailand territory with the company of local guides. Such initiative can help achieve the policy goal of removing impediments to tourism business as contained in the Seoul Declaration through facilitating the mobility of skills and labour.

A. According to the Travel Business and Guide Act. 2008, tourist guide services are preserved for Thai nationals. The Ministry of Tourism and Sports may consider allowing other foreign language speaking tour leaders to practice their duties as interpreters in Thai territory with the company of local guide.

Q. We note that foreigners may establish business in tourism in Thailand, but Foreign Business certificate for operation is needed. What are the requirements to have it?

A. Foreigners who establish tourism business in Thailand must follow “the Foreign Business Act, B.E. 2542 (1999)” under the responsibility of Department of Trade Registration, Ministry of Commerce. This Act also covers the establishment of travel agency and tour operator services under responsibilities of Bureau of Tourism Business and Guide Registration, Office of Tourism Development therefore, foreigners who are permitted to set up travel agency and tour operator services in Thailand according to the Act must submit for license from the Tourism Business and Guide register and qualify the requirements as stated in Article 16 of the Act.

Q. 2008 IAP of Thailand states that “there is no discriminatory treatment for domestic and foreign service suppliers in this sector”. Could Thailand please elaborate if there are requirements for foreign suppliers to qualify for this non-discriminatory treatment?

A. Once all services suppliers have already got licenses to operate their businesses, there is no discriminatory treatment for domestic and foreign services suppliers .



## Energy

Q. (Chinese Taipei) As indicated in the Annual Sectoral Report, 4 independent power producers (IPPs; 2 coal-fired and 2 natural gas-fired) accounting for a total capacity of 4,400 MW have been selected to supply power generated to the grid. In the pricing of power from the IPPs, can the additional power purchasing price (Adder) be applied? If yes, what is the reason?

A. “Adder” is initiated as a means to promote greater use of renewable energy for power generation, particularly by Small Power Producers (SPPs) and Very Small Power Producers (VSPPs). Since IPPs normally use commercial energy as fuel, the provision of “Adder” is not applicable to the pricing of power from IPPs.

Additional Information: The provision of adders will be for a period of 7-10 years, depending on the fuel type used, as from the Commercial Operation Date (COD).

*Adder Rates for SPPs Using Renewable Energy – approved on 9 April 2007*

- For the required 530 MW from SPPs using renewable energy, the provision of Adder is divided into:

“**Fixed Adder**” (230 MW) -- for SPPs using **municipal solid waste** (100 MW) & **wind** (115 MW), the adder rate will be 2.50 Baht/kWh (about US¢ 7.35), and **solar energy** (15 MW) at 8.00 Baht/kWh (about US¢ 23.53).

“**Adder Bidding**” (300 MW) -- for SPPs using **other types of renewable energy**, such as rice husks or wood chips, the provision of adder will be via a competitive bid. However, the maximum adder rate is set at 0.30 Baht/kWh (about US¢ 0.88).

Fuel	Adder (Baht/kWh)	Purchase Capacity (MW)	Duration of Adder Provision
MSW	2.50 (US¢ 7.35) }	100	7 yrs.
Wind	3.50 (US¢ 10.30) }	115	10 yrs.
Solar	8.00 (US¢ 23.53) }	15	10 yrs.
Other RE Types	0.30 (US¢ 0.88) }	300	7 yrs.
<b>Total</b>		<b>530</b>	

Remarks: FOREX Rate: 34 Baht/USD.

- To implement the Adder Bidding for purchase of 300 MW, a Request for Proposals (RFP) from SPPs using renewable energy, other than MSW, wind and solar energy, to bid for the Adder was issued on 1 May 2007. The proposal evaluation has been finalized since 12 October 2007, with 7 SPPs selected accounting for a total proposed sale of 335 MW (average price = 0.297 Baht/kWh). The selected SPPs are obliged to sell electricity to the grid by 2012.

*Adder Rates for VSPPs – approved on 6 December 2006*

- The Adder Rates for ≤10 MW VSPPs that supply power to the grid are at the following **fixed rates**.

<b>Fuel/Technology</b>	<b>Adder (Baht/kWh)</b>	<b>Duration of Adder Provision</b>
Biomass/ Biogas	0.30 (US¢ 0.88)	7 yrs.
Mini-hydro (50-200 kW)	0.40 (US¢ 1.18)	7 yrs.
Micro-hydro (< 50 kW)	0.80 (US¢ 2.35)	7 yrs.
MSW	2.50 (US¢ 7.35)	7 yrs.
Wind	3.50 (US¢ 10.30)	10 yrs.
Solar	8.00 (US¢ 23.53)	10 yrs.

Remarks: 1) PEA/MEA announcements issued on 1Feb07 and 2Feb07 respectively.  
2) VSPPs must submit the proposal to sell electricity by Dec 2008.

- After the PEA and MEA issued the Requests for Proposals for power purchase from ≤10 MW VSPPs in December 2006, together with the announcement in early February 2007 on the provision of “Adder,” a great number of applications for sale of electricity have been received, which is considered a great success of the introduction of “Adder” measure.
- The number of participating VSPPs has considerably increased from 35 VSPPs (186.68 MW) in March 2007 to 442 VSPPs in June 2008, making a total proposed sale of 1,858.43 MW. As of June 2008, 98 VSPPs are already on stream, with a total capacity supply of 213.59 MW to the grid.

*Special Adder Rates for Renewable Energy SPPs/VSPPs in the 3 Southernmost Provinces (to compensate for the risks from the political unrest)*

<b>Fuel/Technology</b>	<b>Normal Adder (Baht/kWh)</b>	<b>Extra Adder (Baht/kWh)</b>	<b>Special Adder for the 3 Southernmost Provinces (Baht/kWh)</b>
Biomass, Biogas	0.30	1.0	1.30
Mini Hydro (50-200 kW)	0.40	1.0	1.40
Micro Hydro (< 50 kW)	0.80	1.0	1.80
MSW	2.50	1.0	3.50
Wind	3.50	1.50	5.00
Solar	8.00	1.50	9.50

- The Ministry of Energy has set a target to increase the share of renewable energy in the country’s energy mix to 12.2% of the energy demand in the year 2011. The use of **biomass and biogas**, including wastewater from such factories as tapioca starch and palm oil, to produce energy will be promoted to optimize the domestic energy resources, to generate more income for farmers and, at the same time, to alleviate the environmental problems.

Q. (Chinese Taipei) As indicated in the Annual Sectoral Report, the Thai Government is actively promoting the use of biofuels in recent years. But debate on the development of biofuels arose early this year, regarding the adverse socio-economic and eco-environmental impacts of biofuels. Therefore, will those arguments affect the promotion target and policies of biofuels used in Thailand?

A. No. Thailand has clearly devised energy development plans and strategies based on the concept of sustainable development, aiming at strengthening energy security while reducing environmental impact, with balance between demand and supply for sustained economic growth of the country.

Thailand has abundant sources of oil plants for use as feedstock for the production of biofuel, which is considered clean energy and hence will help to reduce adverse environmental impact, especially from energy use in the transport sector.

In Thailand, the feedstock of biofuel production is the excess supply of oil plant products; therefore, there is no competition between food and fuels. The crop land for oil plants and that for other food plants (e.g. oil palms vs rice), are different areas.

In order to alleviate the potential constraint on the cropland expansion for raw materials for biofuel production and to reduce the concerned conflict between food and energy, Thailand, at the 26<sup>th</sup> ASEAN Energy Ministers' Meeting (26<sup>th</sup> AMEM) as well as at the ASEAN+3 and the EAS Energy Ministers' Meetings held in early August 2008 in Bangkok, has strongly encouraged regional cooperation in the production and trading of biofuel, especially ethanol, at the regional scale. This will be beneficial not only to the financial savings for energy costs in the transport sector but also to the global environment.

Additional Information:

● **Demand, Supply and Feedstock for Ethanol Production**

1. Statistics of Feedstock Production – Sugarcane and Cassava

Sugarcane

Year	Cultivated Area (M rais)	Production (M tons)	Production/Rai (Tons)
2003	7.1	74.2	10.4
2004	7.0	64.9	9.2
2005	6.6	49.5	7.4
2006	6.0	47.6	7.8

Source: Office of Agricultural Economics

Cassava

Year	Harvested Area (M rais)	Production (M tons)	Production/Rai (Ton)
2003	6.4	19.7	3.1
2004	6.6	21.4	3.2
2005	6.2	16.9	2.7
2006	6.7	22.5	3.7

Source: Office of Agricultural Economics

2. Estimates of Molasses Demand and Supply for Ethanol Production

Unit: Million Tons

Item	2007 (Actual)	2008	2009
<b>Production</b>			
Sugarcane yield*	63.7	65	75
Molasses* (excluding remaining stock)	3.00	3.06	3.53
<b>Demand for Molasses</b>			
Breweries*	1.0	1.0	1.0
Animal food/monosodium glutamate*	0.33	0.36	0.40
<b>Excess Molasses for Ethanol Production + Export</b>	1.67	1.70	2.13

Remarks: \* Data from the Office of Cane and Sugar Board.

3. Estimates of Cassava Demand and Supply for Ethanol Production

Item	2007 <sup>(1)</sup> (Actual)	2008	2009
<b>Production</b>			
Yield (ton/rai)	3.55	4.0	4.5
Cassava yield (excluding remaining stock) (M tons)	25	28	30
<b>Demand for Cassava (M tons)<sup>(2)</sup></b>			
Starch Factories	12.80	14.08	15.48
Tapioca strips/pellets (overseas)	6.35	6.99	7.69
Tapioca strips/pellets (domestic)	1.65	1.74	1.82
<b>Excess Cassava for Ethanol Production</b>	4.5	5.2	4.7

Remarks: (1) Data on 2006/07 production is from a survey of 4 cassava associations during 3-9 September 2006.

(2) Data from the Thai Tapioca Starch Association.

● **Demand, Supply and Feedstock for Biodiesel Production – Crude Palm Oil (CPO)**

1. Oil Palm Plantation Areas and Production

A recent study (2007 - early 2008) undertaken by the Department of Alternative Energy Development and Efficiency (DEDE) of the Ministry of Energy shows that during 2004-2006, oil palm plantation areas in Thailand had continuously increased, from 2.40 million rai<sup>2</sup> in 2004 to 3.07 million rai in 2006 and that the yield of fresh palm bunches had also increased from 5.18 million tons in 2004 to 6.24 million tons in 2006 in line with the increased harvested areas whereas the average yield per rai was about 2.60 tons/rai/year. CPO also increased from 0.82 million tons in

<sup>2</sup> 1 hectare = 6.25 rai

2004 to 1.17 million tons in 2006. With the addition of the balanced stock at the beginning of each year, the domestic CPO production was about 0.94-1.28 million tons.

In 2007, the total harvested areas was estimated at 2.72 million rais, with the yield of fresh palm bunches at 7.27 million tons, an increase of 15.37% and 16.51% respectively from 2006. The derived CPO was equal to 1.24 million tons.

	2004	2005	2006	2007
Plantation area (M rais)	2.40	2.75	3.07	3.15
Harvested area (M rais)	1.93	2.03	2.37	2.72
Fresh palm bunch (M tons)	5.18	5.00	6.24	7.27
CPO (M tons)	0.82	0.78	1.17	1.24

Source: Office of Agricultural Economics

## 2. Trend of Plantation Areas, Fresh Palm Yield and CPO Production

- BAU Case:

Year	Plantation area (M rais)	Harvested area (M rais)	Fresh palm bunch (M tons)	CPO (M tons)
2008	3.45	3.08	8.62	1.47
2009	3.75	3.29	9.38	1.59
2010	4.05	3.48	10.07	1.71
2011	4.35	3.78	11.23	1.91
2012	4.65	4.08	13.11	2.23

- In the case of increase in plantation areas at 2.5 M rais and replant at 0.5 M rais during 2008-2012, according to the Oil Palm and Palm Oil Industry Development Plan:

Unit: M Tons

Year	Production		Domestic Demand (3)	Excess CPO Supply (2) – (3)
	Fresh palm bunch (1)	CPO (2)		
2008	8.44	1.48	0.92	0.56
2009	9.18	1.65	0.98	0.67
2010	10.17	1.83	1.05	0.78
2011	12.06	2.23	1.13	1.10
2012	13.56	2.51	1.21	1.30


Source: Oil Palm and Palm Oil Industry Development Plan 2008-2012

### 3. Estimates of CPO Demand for Biodiesel Production

	2008	2009	2010	2011	2012
(1) Diesel demand, with NGV supply (M lt/d)	55.6	57.3	58.7	60.3	62.7
(2) Promotion	B5			B5	
	B2				
(2.1) B100 Demand for B2 (M lt/d)	0.92	0.92	0.92	o	o
(2.2) B100 Demand for B5 (M lt/d)	0.43	0.43	0.43	3.01	3.13
(2.3) B100 Demand for Biodiesel (M lt/d)	0	o	o	0.06	0.07
(3) Total B100 Demand (M lt/d), [(2.1)+(2.2)+(2.3)]	1.35	1.35	1.35	3.07	3.20
(4) = Total B100 Demand (M lt)	492	492	492	1,121	1,167
(5) = Feedstock Demand (M tons)	0.48	0.48	0.48	1.04	1.08
(6) = CPO Demand (M tons)	0.35	0.35	0.35	0.84	0.87

Remarks: Demand for B2 estimated as from Feb08.

- **Targets and Policies on Biofuels – Gasohol & Biodiesel**

<b>Gasohol Promotion &amp; Future Demand</b>	
<p><b>Gasohol Use:</b>  <b>2006:</b> average 3.5 M lt/day  <b>2007:</b> average 4.8 M lt/day  <b>2008:</b> ↻ <b>target 12 M lt/day</b>  <b>Jan08:</b> 7.1 M lt/day  <b>as of Jun08:</b> 8.5 M lt/day</p> <p><b>(E20 distribution started in Jan08.)</b></p> <p><b>Target in 2011:</b>          ♦ <b>Fuel ethanol use 2.4 M lt/day</b>          ↻ = <b>gasohol ~24 M lt/day</b></p> <p><b>Ethanol Production</b> (as of Jun2008):          ♦ Installed capacity: Total 11 plants with production capacity of 1.6 M lt/day;          ♦ Actual production: 11 plants with average production of 0.95 M lt/day.</p>	 <p><b>Supportive Measures:</b></p> <p><b>Price measure</b></p> <ul style="list-style-type: none"> <li>▪ Tax mechanism to make gasohol cheaper than gasoline;</li> <li>▪ Increase marketing margin for distributors.</li> </ul> <p><b>Government support:</b></p> <ul style="list-style-type: none"> <li>▪ Establishment of ethanol plants and distribution liberalized;</li> <li>▪ Support R&amp;D on increasing ethanol feedstock yields;</li> <li>▪ Support production/ use &amp; distribution of E10, E20 &amp; E85.</li> </ul>

## Biodiesel Promotion & Future Demand

### Target

- Reduce diesel consumption by 5% in 2012.



Target	Blending Ratio (replace diesel consumption)	Distribution Area
2007 - 2011	5% (B5)	certain areas (e.g. in the South, BKK)
1Feb2008 onwards	2% (B2)	nationwide
2012 onwards	5% (B5)	nationwide

### Biodiesel Specifications:

- **Commercial scale** – announced 11Jul05 & effective 23Sep05
- **Community scale** for agricultural machinery – announced 30Jun06 & effective 21Jul06

**Use of Biodiesel (Jun08): B2 = 34.23 M lt/day; B5 = 10.65 M lt/day, equal to use of B100 = 1.2 M lt/day** ⇨ **Target use of B100 = 3 M lt/day in 2011.**

**Production of B100 (Jun08): 9 plants with installed cap. 2.18 M lt/day**

**Actual production (Jun08): average 1.2 M lt/day.**

Q. The Energy Industry Act, B.E 2550 requires the distinction of the policy making, regulation and operating functions of the energy industry. What is the progress of its implementation? What are significant changes, if any, from the previous one? What are expected from the change?

A. Thailand's Energy Industry Act has been enforced since 11 December 2007 and the Energy Regulatory Commission (ERC) has been appointed under the Act, effective since 1 February 2008, to take care of the electricity and natural gas industry operation. The establishment of the Office of the Energy Regulatory Commission (OERC) and the selection of the OERC Secretary General is currently underway.

Now that the ERC has been in place, the function of the energy industry regulation has been entrusted to the ERC. The National Energy Policy Council (NEPC), formerly responsible for both energy policy making and regulation, will be responsible only for the determination of energy policy of the country and let the ERC regulates, through the issuance of regulations, criteria and conditions of the operation of energy business, in compliance with the state policy.

This change will, among others,

- create more transparency and fairness in the energy industry management, which will contribute to a better environment for more investment by investors in the energy industry in Thailand;
- enhance efficiency of energy industry regulation through the terms and conditions of license issuance;
- ensure fair and transparent energy pricing for all stakeholders, particularly the electricity tariffs, which will reflect actual costs of fuel used, and consumers will have access to information about energy situations, changes in various aspects, including fuel costs, share of energy mix and electricity tariffs, via the ERC website, which will foster better understanding of the general public why the tariffs are reduced or increased;

- ensure fairness for the communities surrounding a power plant and better environmental protection, through the requirement of Power Development Fund establishment; and
- help address problems arising from the energy business operation in a shorter time by the ERC and/or the Regional Energy Consumer Committees.

Q. The Energy Industry Act, B.E 2550 has one objective to promote fairness and transparency of the service provision of the energy network system, without unjust discrimination. Accordingly, how does Thailand regulate the Power Development Fund as contribution of the Electricity Industries? Who would be responsible to control the fund? Are the foreign firms treated without discrimination? Could Thailand please provide more detailed information on this?

A. The “Power Development Fund (the Fund)” will be set up under the OERC. The electricity industry licensees, both Thai and foreign firms alike, shall deliver contributions to the Fund in accordance with the regulations prescribed by the ERC under the policy framework of the NEPC. The OERC shall receive, disburse, keep, manage and administer the money of the Fund separately from its operating budget. The receipt, disbursement, keeping and management and administration of the Fund shall be in line with the regulations set forth by the ERC.

According to the Energy Industry Act, the Fund shall be used for the following, in compliance with the ERC regulations and with distinct account separation by activity:

- to compensate/subsidize for electricity industry licensees who provide services for underprivileged power consumers or to enhance extensive electrification;
- to rehabilitate a locality that is affected by the power plant operation;
- to promote the use of renewable energy and technologies for electricity industry operation that have less impact on the environment;
- to increase knowledge, awareness & participation of the society and people in power-related issues; and
- to pay for the costs of the Fund management.

Additional information:

While pending the development of the Fund regulations by the ERC, the existing regulations on the Community Development Fund (CD Fund) shall be applied. The CD Fund obtains revenue mainly from power plants at the amount specified by the National Energy Policy Council, with the objective is to raise capital for the improvement of the environment and quality of life of the communities surrounding a power plant so that the development would be sustainable.

A multi-lateral Community Development Fund Committee will be established to monitor and manage the CD Fund utilization. The CD Fund Committee comprises representatives from the general public sector (more than 50%), qualified persons and representatives from the public sector and the power plant, etc. The Governor of the province where a concerned power plant is located will undertake the selection of the CD Fund Committee in compliance with the stipulated regulations.

In determining the contribution rates, the impact of each type of power plants on nearby communities is taken into consideration. Any power plant that has a PPA with the Utility from 6 MW and greater has to pay money to the CD Fund during the plant commissioning at the following rates:



<b>Fuel Type</b>	<b>Satang/Unit</b>
Natural Gas	1.0
Fuel Oil/Diesel	1.5
Lignite/Coal	2.0
Renewable:	
❖ Wind/Solar	0
❖ Biomass/MSW	1.0
❖ Hydro	2.0

(Remarks: 100 satangs = 1 Baht; 34 Baht = 1 US\$)

Once the Fund (Power Development Fund) regulations are established and enforced by the ERC, the CD Fund will be incorporated into the Fund, which will be used to alleviate the impact and to meet the needs of individual communities, which may differ from each other. At the same time, the electricity industry can be developed through the Fund, i.e. the communities and the general public will be provided with relevant information so that they would understand or accept that the electricity industry also takes care of the environment and communities surrounding a power plant.

Q. It is interesting to know that Thailand has also promoted the development of Nuclear Power Generation. Would Thailand share its experiences regarding the public responses and acceptance so far?

A. The **Public Communication and Consultation Work Plan** under the NPIEP has been devised, under which the following activities will be undertaken:

General Audiences: Organize 8 seminars – 1<sup>st</sup> seminar on the communication plan; others on technical aspects; and then revise/improve the plan after the consultations.

Survey & Media Production: 2 general surveys; research, follow up & analyze both domestic & international news and information; and produce media materials, such as brochures, features, documents, presentation, news scoops.

Specific Audiences: Educate and create understanding of specific audiences, i.e. mass media, private sector (e.g. Federation of Industries, Chambers of Commerce), public/political sector (e.g. Standing Committees), NGOs/academics, woman group, special events, school programs  
So far, only the first seminar has already been organized and the proposed communication plan has been approved. Currently, details of messages on nuclear power/technology to communicate to the public are being developed.

However, in May 2007, the National Statistical Office under the Ministry of Information and Communication Technology, carried out a survey on the public attitude towards the government policy on the promotion of energy saving and alternative energy utilization in order to reduce energy import and to maximize the use of indigenous resources instead. The survey was conducted during 22-30 May 2007, and 5,800 people nationwide, aged 18 and over, were inquired. With regard to the opinion on the construction of a nuclear power plant, 41.3% of people surveyed agreed while 22.7% disagreed and 36.0% were still uncertain/did not know about this matter.

Additional information:

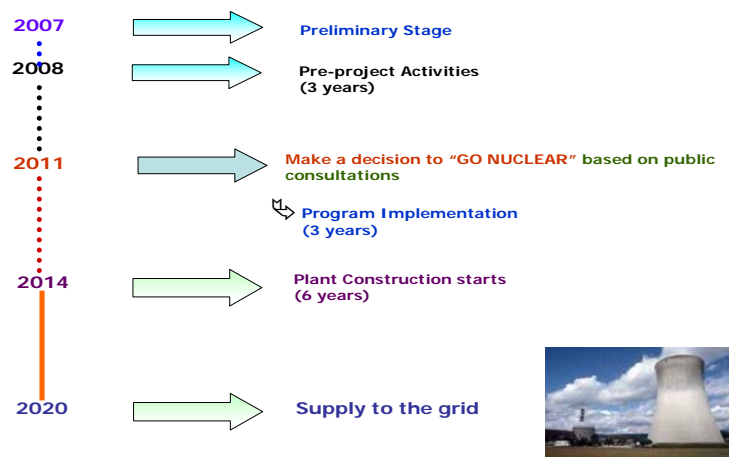
**Development Background:**

- The National Energy Policy Council (NEPC) approved Thailand Power Development Plan 2007-2021 (PDP 2007) and the Thai cabinet approved the PDP in June 2007.
- One major issue stipulated in the PDP 2007 is the designation of nuclear power generation option to supply 2,000 MW of electricity in 2020 and another 2,000 MW in 2021.
- 11Apr2007: The NEPC appointed the Nuclear Power Infrastructure Preparation Committee (NPIPC) to develop the preparatory work for the Nuclear Power Program.
- 30Oct2007: The cabinet approved the **draft Nuclear Power Infrastructure Establishment Plan (NPIEP)**, of which the development follows the guidelines, criteria, standards and work procedures of the International Atomic Energy Agency (IAEA), together with the establishment of the **Nuclear Power Program Development Office (NPPDO)** under the Ministry of Energy.
- 18Dec2007: The cabinet approved the **final NPIEP** together with the establishment of the **Nuclear Program Infrastructure Establishment Coordination Committee (NPIECC)** to develop the Nuclear Power Program according to the NPIEP.

### Current Tasks:

- 5 sub-committees have been set up to assist the NPIECC with the detailed study.
- The NPIEP is to be further improved to attain the international standards of IAEA by covering the main issues: management; safety & environment; industry/technology/HRD; owner/operator; fuel/waste; and site/support.
- Urgent tasks include the public communication, HRD, improvement of the regulatory system on NPP and the study on safety & environment.
- EGAT will work on the feasibility study of the NPP and site selection.
- The critical point will be at the end-2010/early 2011 when a final decision is to be made whether to “Go Nuclear” by Thai people.

In this connection, regular consultations with IAEA have been made regarding technical and academic assistance with a view to establishing a nuclear power plant.



**NPIEP MILESTONES FOR NUCLEAR POWER PROGRAM IMPLEMENTATION**

NPI: Nuclear Power Infrastructure  
 NPIEP: NPI Establishment Plan  
 NPPDO: Nuclear Power Program Development Office  
 NPP: Nuclear Power Plant  
 NRB: Nuclear Regulatory Body



**MS 0.1**  
 ↓  
**Nuclear power option included in PDP2007**

**MS 0.2**  
 ↓  
**To prepare for policy decision**

**MS 1: POLICY DECISION**  
 ↓  
**Knowledgeable Commitment**

**MS 2 : CALL FOR BIDS**  
 ↓  
**Financial Commitments**

**MS 3: START OPERATION**  
 ↓  
**Commissioning 1<sup>st</sup> NPP**

**GO NUCLEAR**

**Phase 0.1 Preliminary Phase**

- NPIPC & 7 SCs appointed
- Issues & Milestones considered
- NPIEP prepared

**Phase 1: Pre-project Activity Phase**

- approve NPIEP
- set up NPPDO
- infrastructure work started
- survey of potential sites
- feasibility study completed
- public information & participation

**Phase 2: Program Implementation Phase**

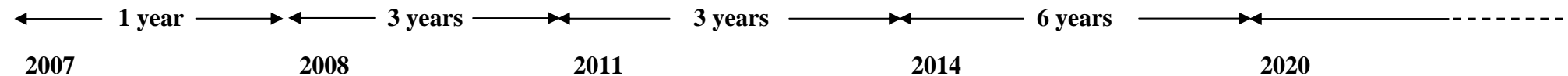
- implement NPIEP with Milestones
- full NRB established
- legislation & international protocols enacted
- suitable sites for bid selected
- technology/qualified suppliers selected
- prepare to call bids

**Phase 3: Construction Phase**

- NPIEP fully implemented
- bidding process completed
- design & engineering
- manufacturing
- construction & installation
- test runs & inspection
- NPP commissioning license

**Phase 4: Operation Phase**

- commercial operation
- O&M
- planning for expansion
- industrial and technology development plan



## IV Investment

Q. (Canada) Canada would appreciate an explanation for what is essentially AIA-minus position with respect to treatment accorded to non-ASEAN investors. Will Thailand legislation be explicit on more favourable treatment to ASEAN investors?

A. AIA – minus position has never been an issue under the Framework Agreement on the ASEAN Investment Area. Thus, clarification is needed from Canada on the AIA –minus position.

However, Thailand legislation provides the same treatment to ASEAN and non-ASEAN.

Q. (Canada) What are Thailand's new government's intentions with regard to the Foreign Business Act?

A. To dates, the Ministry of Commerce stated that the Foreign Business Act B.E. 2542 (1999) will not be amended. The Ministry of Commerce oversees promptly and transparently the foreign business operation in line with the current economic situation. The duties are as follow;

- To set up guideline of consideration of the permission for business operation of foreigners to be easy, comprehensive and transparent
- To scrutinize the foreign business operations in accordance with its laws and regulations in order to create a good governance.

To consider the cancellation of the restricted businesses to foreigners under this Act in properly, the Department of Business Development is on the process of study this issue.

Q. (China) Whether Thailand has introduced any preferential treatment or facilitation policies for foreign investors to invest in agriculture, including agricultural production, agricultural materials production (such as fertilizer and agri-machinery) and agricultural technology cooperation?

A. Thailand Board of Investment (BOI) does provide privileges to investments in agriculture and agricultural products, which are business activities of Section I of the BOI List of Activities Eligible for Promotion and their Conditions. Details of activities in the list can be found at: [http://www.boi.go.th/english/about/eligible\\_activities.asp](http://www.boi.go.th/english/about/eligible_activities.asp)

While activities related to agriculture or agricultural products such as cold storage, trading centers for agricultural goods, and agro-industry processing zones are included in Section 1, farm machinery and food processing machinery are under Section 4 (metal products, machinery, and transport equipment) of the BOI List, and manufacture of fertilizers is included in Section 6 (chemicals, paper and plastics). Generally, BOI privileges are equally provided to both local Thai companies (defined as Thai shares of at least 51%) and foreign firms (defined as foreign shares of at least 50%). But there are criteria for shareholding that Thai nationals must hold shares totaling not less than 51% of the registered capital for projects in agriculture, animal husbandry, fisheries, mineral exploration and mining, and service businesses under List 1 of the Foreign Business Act 1999.

Q. (China) Thailand mentioned in the IAP that promoted companies may be exempted from import duties for machinery, essential materials, and corporate income tax on net profits from 3-8 years depending on the location of the business. Do the “locations of the business” here echo the “3 zones” appeared later in the IAP? What is the rationale on the division of the “3 zones” and linking them to the incentives?

A. Yes, “the location of the business” refers to the “3 zones”. As there are economic development gaps among provinces (cities) in Thailand, the government attempted to reduce this gap through its decentralization policy, particularly by the introduction of BOI zoning system. The incentives vary according to zones in response to the need to decentralize investment activities to less developed areas. Projects located in Bangkok and the metropolitan area (Zone 1) will receive minimum incentives, while the least developed areas, usually remote/disadvantaged areas, which is defined as Zone 3 will receive maximum incentives.

Q. (China) According to Thailand’s laws and regulations, investment protection of international agreements signed by Thailand could only be applied when the investment by an investor of other Parties in Thailand has been specifically approved in writing by the competent authorities. Is the written approval requirement applied to all sectors? What is the rationale for such a policy? How to ensure that such requirement will not undermine obligations of Thailand and rights of other Parties of the international agreements?

A. The principle of approval in writing is applied to all sectors. The rationale of such policy is to ensure that any investment seeking protection under the Agreement shall be recognized by Government through approval process in Thailand. It means that such investment shall give contribution to the national economy in general. Those approval process might be gain through (1) holding license granting under the Foreign Business Act (2) holding the Certificate from Board of Investment of Thailand.

Q. (China) It is mentioned in the IAP that foreign investors cannot own majority of shares in the promoted projects in agriculture, animal husbandry, fishery, mineral exploration and mining, and service businesses under List 1 of the Foreign Business Act of 1999. Whether the list will be amended from time to time? How to deal with the existing companies that are not in line with the future amendment?

A. The Department of Business Development, which is the government agency in charge of FBA (1999), reviews business activities in List 1, List 2 and List 3 every year and makes recommendations to the government. However, the final decision of the revision of the three lists lines in the government’s judgment. Existing companies that received permission to do certain businesses would normally be allowed to continue their activities although they are not in line with the future amendment. In Thailand, usually amendment of existing laws or new laws will not be retroactive.

Q. (China) According to Thai Central Bank regulations, the capital funds of banks can only be invested, apart from for the purpose of purchasing operational buildings and staff apartments and depositing in Central Bank with zero interest, on Thai tap bond, Central Bank bond and publicly guaranteed enterprise bond. Does Thailand have any plan to remove these restrictions so as to promoting the efficiency of capital funds utilization?

A. The Financial Institutions Businesses Act 2008 requires foreign bank branches to maintain assets in Thailand in accordance with the criteria and conditions as specified in the BOT notification. In principle, such assets must be low risk or risk free such as government bond, central bank bond, publicly guaranteed enterprise bond, or cash.

Q. (Hong Kong China) We note that Hong Kong, China – Thailand Investment Promotion and Protection Agreement (IPPA) is missed in the list of APEC economies with which Thailand

has “Agreements for the Promotion and Protection of Investments”. We would like to draw Thailand’s attention on the omission with a view to rectifying it.

A. BITs between Thailand and Hong Kong (China) is already listed on the website.

Q. (ABAC) Restriction on Majority Ownership by Foreign Investors. Government of Thailand (GOT) restricts entry of the majority ownership by foreign investors in some business sectors. It is requested that GOT repeals or deregulates more this restrictions. Foreign Business Act B.C. 2542 (1999)

Q. (ABAC) Restriction on Majority Ownership by Foreign Investors. Foreign Business Act BE 2542 (1999) (“FBA) prohibits offering of after-sales service by 100% foreign owned enterprises. This Act bars 100% foreign funded enterprises (FFE’s) from enhancing the customer satisfaction with provision of a tripartite consistent service of manufacture/sales/after-sales service. It is requested that GOT repeals this restriction.

A. Manufacture/sales/after-sale services are described in List Three under the Foreign Business Act B.E. 2542 (1999), which do not allow foreigners to operate in the territory of Thailand unless permitted by the Director-General of Department of Business Development with the approval of the Foreign Business Committee. For this permission foreigners are able to hold 100% equity participation.

Q. (ABAC) Minimum Requirements for Foreign Capital Foreign Business Act BE 2542 (1999) authorizes 100% or majority foreign capital FFEs to engage in retail and wholesale distribution businesses, subject to satisfying the minimum total capital requirements prescribed under Annex c, (14 and 14) thereof. It is requested that GOT deregulates or repeals this requirement.

A. In the case foreigners are permitted to operate retail and wholesale businesses as prescribed in List Three (14) and (15), by the Director-General of Department of Business Development with the approval of the Foreign Business Committee, the minimum capital used at the commencement of the operations shall not be less than 3 million baht of each business.

In the case any foreigners who are willing to operate such businesses without getting approval from the competent authority shall follow the following requirements;

- Retailing having the total minimum capital not less than 100 million Baht and having the minimum capital of each shop less than 20 million Baht.
- Wholesaling having minimum capital of each shop not less than 100 million Baht.

Q. (ABAC) Procedure to Obtain BOI Promotion Privileges. The procedure to obtain BOI Promotion Privileges is complex taking much time before it is finally granted. Moreover it is subjected to arbitrary judgment of officers in BOI. It is requested that GOT unifies the basis of BOI’s assessment and judgement.

A. The investment criteria and procedures to obtain BOI promotional privileges are clearly stated and publicized. They are not subjected to arbitrary judgment of BOI officers. Investment applications are appraised by BOI officers according to investment criteria, and then they are submitted to the Board for approval. For projects with investment amount of less than 750 million baht excluding the cost of land and working capital, the Board assigns the Sub-Committee on Project Approval and the Working Group on Project Approval to assess the

projects. Detailed information on BOI investment criteria, procedures, and privileges can be found on its website at the following links:

[http://www.boi.go.th/english/about/investment\\_policies\\_criteria.asp](http://www.boi.go.th/english/about/investment_policies_criteria.asp) (for the investment promotion criteria); [http://www.boi.go.th/english/about/boi\\_promotion\\_procedure.asp](http://www.boi.go.th/english/about/boi_promotion_procedure.asp) (for the procedure to obtain BOI promotion privileges); and [http://www.boi.go.th/english/about/boi\\_privileges\\_by\\_location.asp](http://www.boi.go.th/english/about/boi_privileges_by_location.asp) (for the privileges according to location).

Or at: <http://www.boi.go.th/english/services/guides.asp> (publication on A Guide to the Board of Investment).

In addition, the BOI provides a channel for appeals to its decisions by allowing investors to submit a letter specifying the reasons for the appeal within 60 days of the notification of the decisions.

Q. Thailand mentioned two websites for information on Thailand's investment regime, namely [www.boi.go.th](http://www.boi.go.th) (Office of Board of Investment) and [www.apec.org](http://www.apec.org) (APEC's website) – the latter was said to provide basic information on investment in Thailand. While BOI's website is informative, the latest APEC Investment Regime Guidebook is the 5<sup>th</sup> edition, published in 2003. Is the 'basic information' in the investment guidebook still relevant for the current development in Thailand? (For example: are there any changes to the minimum daily wage rates, number of days needed for project approval, etc). Could Thailand advice if everything a potential investor need to know is available from the BOI website? Also, is the project approval table updated in real-time system? Could Thailand advice what percentage of investors make use of the BOI website? (For example, how many of them apply online using the online application form available from the website?).

A. APEC Investment Guidebook 6<sup>th</sup> edition was completed in 2006. (Please find the attachment for Thailand.) The APEC Secretariat has now completely uploaded this latest edition on APEC website in 2007.

The minimum wage rate is revised every year according to economic situation, particularly inflation. The information can be found at: [http://eng.mol.go.th/statistic\\_01.html](http://eng.mol.go.th/statistic_01.html)

The number of days needed for project approval is occasionally revised. Latest information is available on BOI website. Just recently, the approval timeframe for projects with investment amount of less than 40 million baht (excluding the cost of land and working capital) has been reduced from 60 working days to just 15 working days.

On BOI website, we provide relevant information and news for investors. For example, under the subject of "How to do Business in Thailand", investors can find the information on:

- Thailand in brief
- Company establishment
- Setting up a business in Thailand
- Industrial Estate in Thailand (by BOI Zone 1, 2, 3)
- Business Statistics
- Business Focus: (speeches, policies, analysis, sectors, press release and bulletin)
- Thailand Information Database
- Online services, such as, the application online and BOI forms
- Publications (including a guide to the BOI, a business guide to Thailand, cost of doing business in Thailand)

- Links to other government/ organization/ banks/ media

Press release on the list of approved projects (both Thai and English) will be posted on website every week on the following day after approval. However, summary tables of project application, approval, and certificate issuance (registration of company) are updated every month, within 20 days of the following month.

For the number of visits to BOI website, the statistic shows that we receive about 6 millions HITS every month. And nearly 10% of the regular application is received via online application of which the form is available on website.

Q. Thailand mentioned that in accordance to the Foreign Business Act, approval for businesses under List 3 must be issued by the Director General within 60 days from application date without possible extension. As for businesses under List 2, Cabinet should issue such approval within 60 days with a possible extension for at most another 60 days. Could Thailand please inform how are these enforced? What are the average numbers of days needed for approvals?

A. With regard to the consideration on permission for business operation of foreigners, the Foreign Business Committee considers approving or giving permission to the applications of foreigners wishing to operate the business within 60 days.

Q. List 3 of controlled business in the Foreign Business Act includes those in which “Thai nationals are not ready to compete with foreigners”. Could Thailand please inform if there has been any change or adjustment to this list since 1999? Presumably some businesses are now more ready to compete?

A. Section 9 of the Foreign Business Act B.E.2542 (1999) specifies that the Foreign Business Committee shall review the business categories under the lists attached the Act at least once every one-year period and shall submit its opinion to the Cabinet. However, since then the Lists have not been reviewed.

Q. Same as above for List 1 and List 2 (what are the recent changes or adjustments, if any). For example, it is mentioned in the IAP that BOI has revised its investment promotion policy by August 1, 2000 where the new policy includes facilitation of foreign investment through the relaxation of joint-venture criteria that allows up to 100 percent foreign shareholding in manufacturing activities. Also it is said that Ministry of Commerce reviews lists of reserved businesses under the Foreign Business Act on regular basis, at least every year. Does this mean the lists might change every year? How is this done and what are the supporting legislations that in effect amend the Foreign Business Act?

A. Section 9 of the Foreign Business Act B.E. 2542 (1999) specifies that the Foreign Business Committee shall review the business categories under the lists attached the Act at least once every one-year period and shall submit its opinion to the Cabinet. Amendments or changes of the business categories under the lists attached the Act shall be made by a royal decree except for the businesses under List One and List Two, Group 1, in which case the amendments or changes shall be made by an act of parliament. However, since then the Lists have not been reviewed.

Q. Thailand mentioned that the new BOI policy (August 1, 2000) includes the policy to grant tax incentives. Could Thailand please inform what these tax incentives are so far? Also,



what has been done to continue the decentralization policy that focuses on the granting of greater incentives to projects in remote and disadvantaged areas?

A. Under the current BOI investment policy (August 1, 2000), the Thai government has maintained a liberal investment policy to support foreign investment. There are no restrictions on foreign currency remittances, no export requirement, no foreign equity restriction in manufacturing sectors, and no local content requirement.

The BOI offers investors a package of both fiscal and non-tax investment incentives. Fiscal incentives include corporate income tax holidays of up to 8 years and import duty reduction or exemption on machinery and raw materials. The BOI also offers non-tax incentives, such as permission to own land, and permission to bring in foreign experts and technicians to work on projects.

In an effort to encourage investment to the remote and disadvantaged areas, the zoning system has been slightly changed under the August 1, 2000 policy. Two provinces, Phuket and Rayong, which were formerly classified as Zone 3, are now included into Zone 2 due to their economic development. And 58 provinces in Zone 3 are now divided into two groups: 36 provinces with relatively higher per capita income; and 18 provinces of the least developed areas. Investors based in 36 provinces will receive slightly less incentives than those in 18 provinces.

Q. Thailand mentioned that promoted companies may be exempted from import duties for machinery, essential materials, and corporate income tax on net profits from 3-8 years depending on the location of the business. Could Thailand please advise how this is enforced and who makes the assessment?

A. The investment criteria and procedures to obtain BOI promotional privileges are clearly stated and publicized. Investment applications are appraised by BOI officers according to investment criteria, and then they are submitted to the BOI for approval. Information on BOI investment criteria, procedures, and privileges can be found on its website at the following links: [http://www.boi.go.th/english/about/investment\\_policies\\_criteria.asp](http://www.boi.go.th/english/about/investment_policies_criteria.asp) (for the investment promotion criteria); [http://www.boi.go.th/english/about/boi\\_promotion\\_procedure.asp](http://www.boi.go.th/english/about/boi_promotion_procedure.asp) (for the procedure to obtain BOI promotion privileges); and [http://www.boi.go.th/english/about/boi\\_privileges\\_by\\_location.asp](http://www.boi.go.th/english/about/boi_privileges_by_location.asp) (for the privileges according to location).

Or at: <http://www.boi.go.th/english/services/guides.asp> (publication on A Guide to the Board of Investment).

The BOI takes responsibility for the enforcement of granting tax incentives. Projects are approved at different levels of administration, subject to project value. For the projects with investment amount of less than 750 million baht excluding the cost of land and working capital, the Board assigns the Sub-Committee on Project Approval and the Working Group on Project Approval to assess the projects based on project reports prepared by BOI officials from the Investment Promotion Bureau 1-4 (depending on types of activities). Detailed information is available at the link mentioned above (procedure to obtain BOI promotion privileges).

Q. Thailand mentioned that it had signed 39 Investment Promotion and Protection Agreements with other economies, 33 of which had already entered into force. Could Thailand please inform the progress of the remaining 6? What are the problems, if any?

A. Those remaining BITs do not enter into force yet because the Contracting Parties are proceeding with their internal procedures for enter into force. The procedures are different from economy to economy; some need to go the Parliament which would take times. Thailand expects that the internal process of those economies would complete in the very near future.

Q. Could Thailand please advice where it now stands on the implementation of the ASEAN Single Window?

Q. Thailand has indicated that it will become State Party to the International Convention on the Settlement of Investment Dispute between State and Nationals of other States (ICSID Convention). Could Thailand please inform the progress on this?

A. At the time being, agencies concerned of Thailand are in the process of internal discussion regarding the impact of this Convention upon existing legislations under responsibility of each government agency. Furthermore, Thailand has yet to draft a bill implementing the Convention. And as set out in the Section 190 paragraph 2 of the Constitution, such a bill shall subsequently be submitted to the National Assembly for its approval as to ensure that the ratification of the Convention would bare no undesirable repercussion to national investment regime. Therefore, there are certain steps to be followed in the years to come.

Q. Thailand also mentioned that the website of Dispute Resolution Office is under construction and will be presented to the public in the near future. Could Thailand please inform the progress on this?

A. Yes, please see <http://www.adr.or.th>.

Q. Thailand also mentioned that by August 2008 it had signed 59 Double Taxation Treaties with other economies, 54 of which were in effect. Could Thailand please inform the progress on the remaining 5? What are the problems, if any?

A. Those remaining BITs do not enter into force yet because the Contracting Parties are proceeding with their internal procedures for enter into force. The procedures are different from economy to economy; some need to go the Parliament which would take times. Thailand expects that the internal process of those economies would complete in the very near future.

Q. (ABAC Japan) Restriction by Government of Thailand (“GOT”) on the foreign capital investors (e.g. capital ratio and country of origin) in the services sector of electronic products constrain their activities for customers.

A. Foreigners may be allowed to operate services sector relating to electronic products in the territory of Thailand if they are permitted by the Director-General of Department of Business Development with the approval of the Foreign Business Committee.

Q. (ABAC Japan) It is need to apply the business license at each time of elimination, consolidation and relocation of key business centers. Moreover, it takes more than several months or a year to obtain the license.

A. Licensed businesses wishing to foreclose their business or wish to change their location to a different business address may do so by informing the Business Registration Office of such changes without having to seek further approval.

Q. (ABAC Japan) 100% foreign funded enterprise (“FEEs”) cannot be permitted to enter logistic business in Thailand (Principle of market mechanism does not function well)

A. Logistics services are categorized as businesses under either List 2 and/or List 3 of the Foreign Business Act.

In this regard, Logistic businesses relating to land, waterway, or air transport or domestic airline services are categorized as businesses in List Two, thus foreigners are allowed to hold equity ownership of not more than 60% in such businesses, unless cabinet approval through the Minister of Commerce is granted, in which case foreign ownership would be allowed on a case-by case basis, up to a maximum of 75% with at least two fifths of the board of directors of the business required to be Thai nationals.

For businesses relating to other services listed in List 3, foreigners need permission from the Director-General of Department of Business Development with the approval of the Foreign Business Committee in order to hold 50% or more of the equity.

## V Standards and Conformance

Q. (Canada) Thailand states that it aims to align its national standards with international standards “on as wide a basis as possible.” Thailand indicates that 618 Thai industrial standards are aligned with the relevant international standards, but it doesn’t provide any other statistics. Can Thailand indicate the total number and percentage of its standards that are aligned with international standards?

A. Based on the latest Individual Action Plan (IAP) of Thailand, we reported that Thailand has aligned 50 national standards to international standards in 2007. At present, 738 Thai industrial standards are already aligned with the relevant international standards.

Q. (Canada) Does Thailand plan to notify the WTO of its entrance into a bilateral Mutual Recognition Arrangement with Australia in the area of automotive products?

A. Thailand notified the WTO of the entrance into bilateral Mutual Recognition Arrangement on Automotive Product between Thailand (Thai Industrial Standards Institute) and Australia (The Federal Office of Road Safety) on 22 June 1999.

Q. (China) Thailand has identified in the IAP that 50 national standards have been aligned with relevant international standards as well as 618 industrial standards. Please specify the total number of national standards and industrial standards in Thailand. Are they on mandatory or voluntary basis? What are the alignment rates in SCSC priority areas? Please introduce the standards system structure (e.g. national and industrial standards or other standards) and their dominance and precedence.

A. Based on the latest Individual Action Plan (IAP) of Thailand, we reported that Thailand has aligned 50 national standards to international standards in 2007. At present, 738 Thai industrial standards are already aligned with the relevant international standards.

We totally have 2,736 Thai industrial standards of which 27% are aligned with relevant international standards.

The alignment of international with international standards has been done on voluntary basis. Thailand’s standard development procedure are complied with the ISO/IEC Guide 59 Code of Good Practice for Standardization.

The degree of alignment in SCSC priority (IECEE/CB Scheme) is 57% . The remainder is under review process for alignment during 2008-2012.

Thailand attempts to align its standards with international standards to the maximum extent possible and appropriate and to fulfill the commitment with the SCSC priorities and other bilateral agreements.

Q. (United States) The Codex Committee on Food Labeling is currently working to review strategies regarding diet and health, in part stemming from concerns with the World Health Organization’s *Draft Action Plan for the Implementation of the Global Strategy on Diet, Physical Activity and Health*. What type of strategy is Thailand pursuing to develop labeling schemes that could have the benefit of both encouraging better health and facilitating trade?

A. From the World Health Report in 2002, it showed that some non-communicable diseases such as hypertension disease, high cholesterol disease are related with exercises and consumption behavior causing to the obesity. Risk factors of the non-communicable diseases increase are to consume high calories but low nutrition foods as well as food containing high fat, sugar and salt amounts. It may

adversely effects to consumers especially children group consuming these foods much more than suitable level resulting to obesity disease. Thai FDA concerned on this problem and therefore, 3 strategies were notified as follows:

1. Reduce risk factors of the non-communicable diseases resulting from improper food consumption and non-exercises.
2. Consider on food consumption and exercises.
3. Encourage people to exercise and consume valuable foods which are the main national policy of Thailand.

According to these strategies, Food Control Division concerns on importance of food consumption by:

1. Consume foods as appropriate calories intake
2. Control calories intake from fat, especially saturated fat and trans-fatty acids.
3. Increase vegetable, fruits, and cereal consumption
4. Control sugar intake
5. Control salt intake

From all reasons mentioned above, the measure on food labeling is implemented in order that corrected and standardized information shall be informed to consumers and so, they can understand and select suitable food consumption for their health. Moreover, nutrition fact labeling is implemented following to US FDA measures.

Q. (United States) Under Thailand's Food Act of B.E. 2522 (1979), the "Specifically controlled food" category requires product registration. For the 17 types of food in this category, characteristics of the food (in accordance with a food analysis report), name and quantity of the ingredients are among the requirements listed for obtaining product registration. Given that many of the food types specified are highly processed products, what risk is Thailand trying to address with this registration requirement? If there is no safety risk, why is this information being requested?

A. Specific Controlled Food is categorized as a high risk food product that shall be strictly monitored and controlled because of the reasons as follows:

- This food category is classified as adversely high risk for consumer health and may also impact to human death. Food products in this category are food in sealed containers such as low acid canned food, weight-control food and foods for vulnerable consumer groups, especially infants, such as modified milk for infant and modified milk of follow up formula for infant and children, food for infant and food of follow up formula for infant and small children, and supplementary food for infant and young children.

- Food products that may be hazardous for consumption resulting from uncontrolled process such as cow's milk, flavored milk, yoghurt, ice-cream, food in sealed containers, and other milk products.

- Food products that still incessantly have problem on standard and quality such as beverages

- Food/ food additives which are combined with other ingredients that may have a problem to other food products if the standard and quality is uncontrolled such as food additives.

According to determination of food categories and food registration, it is legally set up under Food Act B.E. 2522 (1979) in section 6 and 35. Producers and importers shall apply for product licence following the regulation by document submission to Thai FDA such as name of food, name and quantity of ingredients in the food, size of packaging, label, name of producer and place of production, result of analysis of the food by government laboratory or institution specified by the commission as well as other relevant information.

Q. Does Thailand have a precise timeframe for aligning its standard to the international standard? When does Thailand expect that all standards will be aligned to the international standards?

A. The degree of alignment in SCSC priority (IECEE/CB Scheme) is 57% . The remainder is under review process for alignment during 2008-2012.

Thailand attempts to align its standards with international standards to the maximum extent possible and appropriate and to fulfill the commitment with the SCSC priorities and other bilateral agreements.

## **VI Customs Procedures**

Q. (China) Under the framework of a free trade agreement, if the originating goods have been transshipped through a non-Party, what supporting documents are required by the Thailand customs authorities to identify the origin of the goods?

A. Through Bill of Lading, Commercial Invoice, Original Certificate of Origin.

Q. (China) Since Thailand does not have domestic regulations governing rules of origin for import and export, how will the government deal with the commercial fraud involving rules of origin?

A. In this case, Thailand has the Customs Laws, the Customs Act and the Commercial Act to support for the matter which related to the fraud involving to the rules of origin such as the Customs Laws B.E. 2469 Section 99, the Customs Act B.E. 2482 Section 10 and the Commercial Act B.E. 2522

Q. (Hong Kong China) Under “Paperless Trading”, we would like to learn if there is any mutual recognition mechanism with other Customs administration(s) under the "Gold Card" facility, which will serve as a good opportunity for experience sharing in the development process of Authorized Economic Operator (AEO) program in Hong Kong, China?

Q. (Hong Kong China) Also under “Paperless Trading”, noting the achievement of Thailand Customs in the implementation of Single Window system, we would like to ask if Thailand Customs is ready for a case study visit from other Customs administrations for sharing her successful experience in this initiative?

A. The Legal Affairs Bureau has amended the Customs Act B.E. 2469 by adding the provisions regarding the use of electronic transaction in customs procedures, as well as other customs standards compliant to the Revised Kyoto Convention, of which Thailand will be a signatory in a near future. For a case study visit from other customs administrations, please kindly ask the Information and Communication Technology Bureau who is directly responsible on a technical matter on Single Window.

Q. (Hong Kong China) Under “Development of a Compendium of Harmonized Trade Data Elements”, we would like to know more about the implementation process for adopting WCO Data Model and the version of the WCO Data Model that will be adopted?

Q. (Peru) Alignment with WTO Valuation Agreement. In the development and use of a national database of valuation as a risk assessment tool to accelerate trade facilitation through increased risk is of public domain or only for internal use?

Q. (Peru) Adoption of Systematic Risk Management Techniques. What were the criteria used to approve the risk management techniques? \

A. There are Regulation and Notification of Customs Department on Risk Management Techniques which are in accordance with Revised Kyoto Convention.

Q. (Peru) Adoption of Systematic Risk Management Techniques. What comprises the selection system? Are there risk profiling an/or models?

A. Yes, risk profiling is comprised in selection system.

Q. (Peru) Adoption of Systematic Risk Management Techniques. Which are the main frauds and how do they prioritize them?

A. The main fraud comprising of various kinds of evasion such as valuation, customs tariff, origin, tax incentives, etc. Among these groups, valuation is the first priority, customs tariff and prohibited and restricted goods are the next main frauds respectively by settling as risk profiles in computerized process.

Q. (Peru) Adoption of Systematic Risk Management Techniques. How is the inspection ratio handled? Is there a maximum top? How do they handle operational ability?

A. There is a Notification of Customs Department providing the maximum top on 10% of random inspection. The operational ability are handled by Computerized System and also by Post Review process per weekly or monthly period.

Q. (Peru) Adoption of Systematic Risk Management Techniques. Do all import goods go through X Ray?

A. No, they are not.

Q. (Peru) Adoption of Systematic Risk Management Techniques. Is there a profiling and scanning according to risk level? If so, how are containers chosen to be scanned (models, filters)?

A. Yes, there is a profiling and scanning according to risk level. In this regard, containers are chosen to be scanned under profiling system.

Q. (Peru) Adoption of Systematic Risk Management Techniques. How do they handle incidence feedback?

A. The incidence feedback will be monthly reported from all over customs houses. With these reports will be reviewing and analyzing to improve risk profiling.

Q. (Peru) Adoption of Systematic Risk Management Techniques. Which is the facilitation ratio used?

A. It depends on the amount of entries exempted from cargo inspection; over 90% of export cargo will be released from the Customs custody without inspection process and around 80% of import cargo will be released with the same concept.

Q. (Peru) Adoption of Systematic Risk Management Techniques. How does the Profiling System work?

A. It is ready-made program implemented by automatic processing.

Q. (Peru) Adoption of Systematic Risk Management Techniques. What is the organic structure of the current Risk Management Unit and its relationship with other units at internal and external level (government and business)?

A. The organic structure of the current Risk Management Unit comprising of Risk Management Committee and Risk Management Working Group. According to the Order of the Customs Department



prescribed its relationship between Central Profile and Local Profile which are monthly reported by various contact points.

Q. (Peru) Development of a Compendium of Harmonised Trade Date Elements. What is the data recorded for the creation of the compendium harmonized data on trade as it is based?

Q. (Peru) Development of a Compendium of Harmonised Trade Date Elements. Is database of public domain or is only for internal use?

Q. (Peru) Implementation of the TRIPs Agreement. 14. How is applied the system harmonization of intellectual property?

A. Question is not clear, please provide clarification.

Q. On paperless trading, we notice that there is further improvement on implementing the electronic methods of an e-Import by using ebXMLa and Information exchange trough single windows system. Could Thailand please explain the said "further action"?

Q. The new Customs procedure with high technology has simplified customs procedures, for example reducing customs services. Could Thailand please inform what the significant changes are in terms of procedure of inspection? How does Thailand anticipate the possible weakness(es) of the system?

Q. 2008 IAP of Thailand stated that working group has completed its mission to prepare the adoption of Kyoto Convention and now the accession is under the parliament. We would like to know what the progress is and what the bottlenecks are that may hinder the adoption of the Convention?

A. The Cabinet rendered its decision; dated 8 November B.E. 2548, approving that Thailand is eligible to become a signatory of the Revised Kyoto Convention. As mentioned above, the Legal Affairs Bureau has amended the Customs Act B.E. 2469 by adding the provisions regarding necessary customs standards compliant with such international agreement. The Royal Tariff Decree B.E. 2530 has also been amended to support Thailand's obligation under the Revised Kyoto Convention. Both drafts of are now waiting for an approval of the Ministry of Finance before going through other internal legislation processed.

Q. Could Thailand inform if there is specific program relating to bureaucratic reform in the Customs Office, e.g. through remuneration adjustment to provide incentive for good public services?

### **Issues and requests relating to foreign trade and investment-Thailand Vol.2 (ABAC Japan)**

Q. Unavailability of Reinvoiced Scheme in the ASEAN/China FTA

For this moment, Thailand still cannot issue some domestic regulation to support for this matter because reinvoiced scheme still have been discussed on the table between ASEAN and China. The discussion still does not finalized.

Q. Substitution of the Origin Certificate for Japan/Thailand EPA.

Thailand does not accept the PDF formatted Origin Certificate instead of original Certificate because the JTEPA Agreement allows only original C/O for import customs clearance. However, electronic C/O is now being the issue considered by the Sub-Committee on Paperless Trading in JTEPA.

## VII Intellectual Property Rights

Q. (Canada) TRIPs Implementation. Thailand notes that “the Copyright Act B.E. 2537 is being amended to provide more appropriate punishment provisions.” Canada would be grateful for more information concerning the punishment provisions contained in the new legislation.

A. The proposed amendments to copyright law categorize the act of infringement into 3 levels, namely general infringement, commercial infringement, and large-scale commercial infringement. For the third type of infringement, a settlement of the dispute is not allowed. Although in the proposed amendments the minimum fine is given up, the maximum fine will be increased. Therefore, the judges will be able to impose appropriate fines in proportion with the seriousness of the infringing activities.

Q. (Canada) Ensuring the Expeditious Granting of IP Rights. Thailand notes that “the patent examination process is expedited by partial outsourcing to educational institutions.” Canada would be grateful for more information on how this process is conducted.

A. DIP has cooperated with educational institutions and contracted IP Australia to help conduct a “search” for the DIP. This outsourcing service is available upon request by the applicants. The applicants, however, have to be responsible for extra expenses charged by educational institutions / IP Australia. The DIP will send the requested applications to educational institutions / IP Australia together with related documents necessary for conducting a “search”. In turn, educational institutions / IP Australia will conduct a “search” and provide DIP with a search report within a specified timeframe.

Q. (Canada) Ensuring the Expeditious Granting of IP Rights. Thailand notes that “The Patent Act and the Trademark Act are also in the process of amendment in order to reduce complexity and obstacles in the registration procedure.” Canada would be grateful for more information regarding the proposed amendments, and possible timelines for their implementation.

A. The proposed amendments to the Patent Act proposes to change the opposition procedure from taking place before granting to after granting a patent. It also proposes to reduce the period of time for requesting substantial examination from 5 years to 3 years from the end of publication period. As the Cabinet asked the Ministry of Commerce and the DIP to consolidate comments and suggestions of other Ministries to the proposed amendments, the DIP has to begin the consultation process and *revise the proposed amendments* once again, thereby not possible to estimate the time line of implementation at this stage.

In the past, the applicants have to settle among themselves as to whom has a better right to file a trademark application. The new provisions will ensure the first-to-file principle, thereby abolishing unnecessary mutual consultation among the applicants. *The proposed amendments to the Trademark Act is being examined by the Council of State. After the Council of State finishes its work, it will then forward the proposed amendments to the Cabinet and Parliament respectively. Therefore, at this stage, it is not possible to forecast the date of implementation as there are several administrative steps and parliamentary procedures to be followed.*

Q. (Canada) Ensuring the Expeditious Granting of IP Rights. Thailand states that the Patent Regulations are being drafted to support the implementation of the PCT System. Canada would

be grateful to hear Thailand's views on when it expects to be in a position to fully implement the PCT.

A. The proposed regulations for PCT procedures are still being considered by the Council of the State. It is not possible to forecast the length of time used for consideration by the Council. However, once the proposed regulations have been approved by the Council, the DIP will proceed to accede to the PCT and will ensure that the system will come into operation within 90 days.

Q. (Canada) Ensuring the Expeditious Granting of IP Rights. Thailand states that DIP plans to provide an electronic searching system on worldwide patent information. Canada would appreciate having more information on how this will be done, on the scope of this searching system and what is the underlying objective behind this project.

A. DIP has created a new search program that links all major database gateways together, namely USPTO, EPO, JPO, KIPO, WIPO, and DIP. The applicants can therefore conduct a single search at the DIP's website without having to conduct the same search at each website. This will reduce time spent by the applicants in conducting patent search and aim to stimulate the use of patent information and research and development.

Q. (Canada) Effective Enforcement of IP Rights. Thailand notes that the "DIP, the Royal Thai Police, DSI and the Customs Department have worked as a team to suppress violations of IPRs. The team conducted raids around 120 times a month and inspected CD factories around 30 times a month." Canada would be grateful to receive more information regarding the outcomes of these raids, and their effectiveness in reducing IP related crimes.

A. From January to June 2008 the Royal Thai Police and the DSI conducted raids 2,512 times (around 420 times a month) and seized 3,746, 036 infringing goods. The Customs Department intercepted pirated shipment 243 times (around 40 times a month) and seized 911,921 infringing goods. The outcomes of the raids can be found on the website of the Customs Department, the Department of Intellectual Property and International Trade Litigation (Office of the Attorney General) and the Central Intellectual Property and International Trade Court.

Q. (Canada) Effective Enforcement of IP Rights. Thailand notes that "The Copyright Act is being amended to increase penalty for a large scale commercial piracy." Canada would be appreciative to know the details of the increased penalties and how they compare to the previous ones.

A. In the current Act, penalties are divided into 2 levels (general and commercial) but in the proposed amendment penalties are divided into 3 levels (general, commercial, and large scale commercial). The new penalties are higher than those in the current Act but the minimum penalties are withdrawn. The large scale commercial infringement attracts imprisonment penalties. More information and the proposed amendment can be found on the DIP's website.

Q. (Canada) Effective Enforcement of IP Rights. Thailand notes that it is contemplating changes to its Copyright regime to take into account the WIPO norms in the WCT and WPPT. Canada would be interested in learning more about the specific changes that are being contemplated or developed.

A. The Copyright Bill proposes to provide protection measures to works of copyright in the digital format as follows:

- To amend the definition of the right of “communication to the public” to make it clear that the act of making available to the public of works in such a way that members of the public may access works from a place and at a time individually chosen by them is covered in the definition.

- To separate the right of “distribution” from the right of “communication to the public” and make it clear that the distribution right will be exhausted after the first sale or other transfer of ownership of the original or a copy of the work with the authorization of the copyright owner.

- To clear the definition of the right of “reproduction” to cover the reproduction in digital form.

- To provide provisions concerning the internet service provider’s liabilities.

- To provide provisions concerning the right management information and impose penalty against infringers.

- To provide provisions concerning technological protection measures and impose penalty against infringers.

- To expand the scope of protection of performers’ rights to cover the right of communication to the public of performances and sound recordings via the internet, the right of distribution and the right of rental of the original or copies of sound recordings as well as moral rights.

However, it should be noted that these proposed amendments have to be re-considered in the light of new Government and Parliament. Therefore, the amendments have yet to be finalized.

Q. (Canada) Public Education and Awareness of IP. Thailand notes that the “DIP worked in collaboration with many educational institutions to create an IP network so as to distribute IP knowledge to society more efficiently.” Canada would be grateful to receive more information regarding the results of these collaborations, the chosen methods of knowledge distribution, and their effectiveness in relaying the messages to the public.

A. DIP has concluded MOUs with many universities around the country in order to create a network for distribution of IP knowledge to the locals. DIP does provide intensive training for the staff of the universities and appoint them to be special IP agents who will help DIP spreading knowledge to local people and SMEs.

Q. (Canada) Continuously strive to increase transparency of IPR requirements, including implementation of APEC Leaders’ Transparency Standards on Intellectual Property Rights. Thailand states that various IP laws have been amended and promulgated to increase transparency of its registration process including some expansion of coverage of IP matter, i.e. Petty Patent and other physical marks. Canada would appreciate more information on whether these amendments are intended to establish a more liberal interpretation of the patentability criteria provided in s.27 of the TRIPS Agreement.

A. The proposed amendments aim to make it clear what are the subject of patent and what fall within the exceptions to patentability. For example, software *per se* and business method will not be patentable. However, as stated on various occasions above, these proposed amendments will have to be revised and re-considered.

Q. (China) Thailand has specific legislation on the protection of the folklore?

A. Thailand has legislation providing protection for national ancient remains, antiques, and museums. However, this law does not cover cultural expression.

Q. (China) It is indicated in the IAP that Thailand has enacted a new copyright-related law controlling the production of CD products and will strengthen measures to monitor production of CD and suppression of pirated CD plants, which involved particular reference to the “Forensic test”. Please provide more detailed information about the “Forensic test”.

A. Since each registered factory (optical disc plants) provided sampler discs to the DIP. The sampler discs were sent to the Royal Thai Police for the forensic test. The test showed the “identity” of each CD which was kept as database. The CD produced from the same factory always bears the same “identity”. When the police officers seized pirated CDs sold in the market they can trace back to the factory where the CDs were produced by comparing the identity of the seized CDs with that contained in the forensic database.

Q. (ABAC) Insufficient Protection of Intellectual Property Rights. Piracy is rampant not just on hardware but also on software such as movie, music and game. It is requested that GOT tighten its control on infringing goods at the point of sale, factory and Customs at water’s edge and penalize such conducts.

A. The DIP works closely with Royal Thai Police, the Department of Special Investigation, the Customs Department and representatives of IP owners in laying down measures and mechanisms for the effective enforcement of IPR in all aspects, i.e. production, distribution and export/import. The Prime Minister has formed the Committee on Prevention and Suppression of IPR Violation in May 2008. This Committee is chaired by the Deputy Minister of Commerce and comprises heads of various government agencies such as Police, Customs Department, DSI, IP Attorney’s Office, Ministry of ICT, Council of the State, Ministry of Education, etc. The Committee is empowered to direct, cooperate, lay down measures and follow up on the prevention and suppression of IPR violation by various government agencies. The formation of the Committee enables members of the Committee to share information and to work together in an integrative manner. Besides the efforts of the government, please note that IPR enforcement is a collective effort that requires not only cooperation among official authorities concerned but also the involvement of the private sectors both domestically and internationally.

Q. The new constitution of the Kingdom of Thailand B.E 2550 gives special emphasis on providing protection in IPR in line with the international accepted standard. What are the practical measures Thailand will take to improve the situation of IPR protection? What are the main achievements of these activities in strengthening the protection of IPR in various fields? Could Thailand please provide detailed information on the enforcement of related laws? What concrete measures have been taken in reality to enforce the adopted laws? Providing detailed statistics of related activities will help assess the achievement of Thailand’s IPR protection greatly.

A. Please see the above answer and please see websites of DIP, Customs Department and ECOTEC Police for detailed information on enforcement activities and achievements throughout the year as well as statistics of arrests and seizures of infringing goods. Please also see the

information paper by Thailand on Success and Challenges in Enforcing IPR in Thailand submitted to the 27<sup>th</sup> IPEG meeting in Lima, Peru.

Q. Under section “APEC Cooperation on IP Issues”, the cabinet has instructed, by its meeting resolution, every ministry and department to use legal softwares. How effective is this cabinet’s instruction in promoting the use of legal software in the public institution? Would there be any penalty imposed if a particular department or ministry is found using illegal software? How does Thailand finance this policy?

A. The Cabinet’s resolution regarding use of legal software normally binds government agencies only. Public institutions are free to craft their own policy. However, they are always encouraged by the government to use legal software as the use of illegal software is caught by the current copyright law which applies equally to public and private sectors.

Q. Could Thailand explain how the government educates the public on the importance of IPR protection?

A. DIP holds various seminars and workshops throughout the year and provide both conventional and online learning systems. Moreover, DIP holds various themes of IP exhibitions and contests to raise awareness of people. Recently, DIP has invested in a large public awareness project which uses public media as a means to disseminate IP knowledge to various target group. DIP also collaborates with Ministry of Education to provide and integrate basic IP courses at a tertiary level. Every year, DIP holds an IP fair which aims to stimulate awareness of the public on the importance of IP protection, creation and commercialization.

## VIII Competition Policy

Q. (China) Apart from Trade Competition Law, are there any other competition regulations on specific sectors such as energy or communication? Are there any sectors could be exempted from the Trade Competition Law?

A. Yes, there are. Thailand has regulatory policy to formulate and supervise the competition which is consistent with the competition law in certain businesses i.e. the National Telecommunications Commission whose duties and responsible are, such as, to set policy and formulate Master Plan on Telecommunications Development, to set criteria and categories of telecommunications services including standards and required technical specifications, to permit and regulate the use of spectrum for telecommunications services etc. Now there are no any sectors exempted from the Trade Competition Act. 1999.

Q. (ABAC) Performance Request. The Board of Investment of Thailand (“BOI”) Promotion Privileges are granted under such conditions added value of 20% request to purchase local as much as possible. It is requested that Government of Thailand repeals or deregulates these requests.

A. There seems to be a misunderstanding about BOI’s investment criterion of “added value of 20%”. Under the current policy of August 1, 2000, one of the criteria for project approval is “value added is not less than 20 percent of sale revenue, except projects that manufacture electronic products and parts, and agricultural activities and products”. This criterion has nothing to do with local purchase. In order to fulfill the criterion of added value of 20%, investors must have sufficient production process within the company. Investors can freely purchase materials or parts from overseas or domestic markets. It should be noted that under the current policy, the BOI maintains a liberal investment policy, and there is no requirement of local content.

Q. (ABAC) Price Control. Currently, 35 items are subject to price control whereby manufacturers or trading firms are required to obtain a prior approval of Ministry of Commerce (“MOC”) by submitting the cost breakdown and the reasons for the price increase, whenever a price increase is desired by a manufacturer or by an importer. Furthermore, currently, more than 200 items are subject to monitoring, whereby manufacturers or trading firms are required to submit to MOC, no later than 15 days prior to the scheduled date of the price increase, the cost breakdown and the reasons for the price increase. Whenever such price increase is deemed by MOC to be improper, MOC will request the business entity in concern to defer such price increase. Because of the price control, it is difficult to set price that reflect inflationary cost of raw material, etc. It is requested that GOT repeals or deregulates this control.

A. At present, Thailand has controlled products and services amount of 35 items which consist of 33 products and 2 services. All of the controlled products are necessary for a living and sugar is the only one price controlled product. Under the Price of Goods and Services Act 1999, the authorized committee will take a consideration to annually review the product and services controlled list according to the cost of living and current economic situation. The committee’s consideration will be submitted to the Cabinet for approval

The mechanism of the suitable price of the control list items are considered from various necessary factors such as cost analysis from the actual expense, cost of raw material, exchange rate, administrative cost, etc. For regulating measure under the Price of Goods and Services Act



1999, The Committee will take action on 200 controlled items by considering the new price from the entrepreneur whether it is fair for the consumers.

Q. Thailand mentioned that the Trade Competition Act is under review. Could Thailand please inform the progress on this? What are the key characteristics of proposed changes? The IAP mentions that Department of Internal Trade “realizes that some parts of the Trade Competition Act are necessary to be reviewed”. What are the parts referred to by DIT?

A. The key characteristics of proposed changes are effectively implementing the Competition Policy is the globalization regarding the freer movements of capital, goods and services, people and information and technology. Furthermore, rapid changes and complexity of the world trade rules and regulations, economic integration for trade and investment cooperation, and bilateral, regional, multilateral free trade agreement are becoming more serious. All these make the implementation of the Competition Policy much more complicated than ever.

Some parts of the Trade Competition Act are necessary to be reviewed is create the effective implementation of the competition law implementation are to properly include the state enterprises into the law enforcement and now under consideration of the Office of Council of State. Furthermore, consider the independence of the Competition Authority.

Q. In its trade policy, Thailand claims to facilitate “free” and “fair” economic policy. Could Thailand please elaborate on the exact definition of “fair” in this context?

A. Fair in this term, is considered case by case under various factors and circumstances which should be right and fair for all stake holders.

Q. Could Thailand please explain the structure of the Trade Competition Commission (TCC)? Does it only involve DIT and MOC? Does it have independent members from outside the government? Does it have a website that publishes cases and decisions on competition?

**Could Thailand please explain the structure of the Trade Competition Commission (TCC)?** A. The Trade Competition Commission (TCC) is a government agency under the Ministry of Commerce (MOC) . The TCC is part-time members and has two years term. The composition of the TCC is 12-16 members which consists of;

1) 4 ex-officio members (The Minister of Commerce as Chairman, Permanent-Secretary for the MOC as Vice-Chairman, Permanent-Secretary for the Ministry of Finance as a member and Director General of Department of Internal Trade as a member and Secretary)

2) 8-12 non-ex officio members (The Council of Ministers appoints the qualified persons who have knowledge and experience in law, economics, commerce, business administration or public administration, in addition, the qualified persons must not be a political official, holder of a political position, executive member or holder of a position with responsibility the administration of a political party, provided that at least one-half of whom must be appointed from private sector)

**Does it only involve DIT and MOC?**

A. Yes, it does, The TCC involves MOC and DIT because it is a government agency under MOC and the Minister is ex officio member of TCC as the chairman. In case of DIT, DIT is an Department under MOC and DIT plays another Concurrent role as the Office of Trade Competition Commission (OTCC) which is responsible for the administrative tasks of the TCC (The Director General of DIT is the Secretary-General of OTCC, who shall be the superior

official responsible for the official affairs of the office) Moreover, the Director General of DIT is an ex officio member of TCC and a secretary.

**Does it have independent members from outside the government?**

A. Yes, it does, At least one-half of non-ex officio members must be appointed from private sector.

**Does it have a website that publishes cases and decisions on competition?**

A. Yes, it does. The website is [WWW.dit.go.th/otcc.indexen.asp](http://WWW.dit.go.th/otcc.indexen.asp).

Q. Thailand listed the 9 types of anti-competitive agreements in terms of horizontal restraints (Section 27 Trade Competition Act). It is also mentioned that business operators may request permission to engage in the activities in item 4 through 9 provided that they have “no serious harm” to the economy. Could Thailand please advice what the definition of “no serious harm” is and who makes the assessment?

A. “no serious harm” means any business operator having no market power shall not enter into and agreement with another operator to do act amounting to monopoly, reduction of completion or restriction of competition in the market of any particular goods or any particular service. In the case where it is commercially necessary that the acts under (4)-(9) be undertaken within a particular period of time. Any business operator wishing to apply for permission to carry out the act under section 27 (4)-(9) shall submit and application in accordance with the form, rules, procedure and conditions prescribed and published in the Government Gazette by the Commission. The application must at least : 1) contain adequate reasons and specify necessity for the act; 2) specify the intended procedures therefore; 3) specify the duration therefore. When the commission has made and inquiry and is of the opinion that the application under section 35 submitted by the business operator is reasonably necessary in the business, beneficial to business promotion, has no serious harm to the economy and has effect on material and due interests of general consumers, the Commission shall issue a written order granting permission in favor of such business operator. But if the Commission issues an order rejection permission, the order shall be notified in writing to the business operator without delay.

## **IX Government Procurement**

Q. (Canada) Non-Discrimination. Given that foreign contractors with capital of 500 million baht or more are considered on an equal basis for highly technological infrastructure projects. Could Thailand please list any other sectors in which foreign suppliers are permitted to bid on government contracts, and what steps, if any, are being taken to further open government procurement to foreign suppliers?

A. Foreign contractors registered under Thai laws would be able to treat on regular basis terms as local companies.

Q. (Hong Kong China) We note that the core principles of Thailand's GP regulations include openness, transparency, fairness and value for money. We encourage Thailand to keep up with its efforts in upholding such important principles in GP.

A. - N/A

Q. At the time of the last IAP, Thailand was gaining experience with on-line procurement of computers. Since that time to what extent has this process been expanded, i.e., what percentage of value of procurement is conducted in this manner?

A. Thailand is still under developing plan for Electronic Government Procurement (EGP) by using Web Base Technology and expected to finish by the end of 2009.

Q. Can Thailand estimate the general magnitude of savings generated by computerization of the procurement process?

A. The cost savings from computerization procurement process of Thailand from January 1<sup>st</sup>, 2005 to July 31<sup>st</sup>, 2008 is 54,673 million Bahts or 7.30 % of procurement budget.

Q. Can other APEC economies access electronic procurement in Thailand? Has the ability of other economies to compete for government procurement increased since the last IAP? Has the volume of business awarded to foreign suppliers increased?

A. Foreign suppliers registered under Thai laws would be able to access electronic procurement on regular basis. Due to limitation of current procurement database system, it would not be able to classify information on the volume of business awarded to foreign suppliers.

Q. Thailand has indicated that the e-Catalog was developed initially for 25,000 items but that would be further developed by increasing the number of items. Could Thailand please explain how many more items will be included in the e-Catalog and how long the process of expanding the e-Catalog will take?

A. Thailand has planned to expand the coverage of e-Shopping system for all provinces and government agencies in order to procure products through e-Catalog. The e-Catalog would contain approximately 4,200 items which consist of 33 products of personal computers, office supply products and so on. It would be finished by the end of 2009.

Q. Thailand has indicated that the e-Shopping system will be expanded so that it covers more products. Could Thailand please advise how many more products will be included in the e-Shopping system and over what period of time?

A. Thailand has planned to expand the coverage of e-Shopping system for all provinces and government agencies in order to procure products through e-Catalog. The e-Catalog would contain approximately 4,200 items which consist of 33 products of personal computers, office supply products and so on. It would be finished by the end of 2009.

Q. When Thailand fully implements the planned expansion of the e-Catalog and the e-Shopping system, how many items and products will be covered by these systems and how many will be excluded?

A. Thailand has planned to expand the coverage of e-Shopping system for all provinces and government agencies in order to procure products through e-Catalog. The e-Catalog would contain approximately 4,200 items which consist of 33 products of personal computers, office supply products and so on. It would be finished by the end of 2009.

Q. Does Thailand consider that any further changes to the e-Auction system are required?

A. Thailand currently has not fully applied electronic to all processes of e-Auction system, only to procurement notification and terms of reference announcement via website, and computerized bidding. The further changes will integrate the e-Auction processes to fully applied computerized system which includes electronic bidding documentation, distribute bidding information, online price offering and proposal, awarding system and e-Auction solution.

Q. Thailand indicates that it intends to develop the website [www.government.go.th](http://www.government.go.th) to be more practical for users. Does Thailand have more detail about the nature of improvements? Has Thailand identified particular concerns which need to be addressed. Does Thailand have a timeframe or schedule for revising the website?

A. All procurement opportunities of government agencies, state enterprises and local administrations will be published in website called "Gprocurement" <http://www.gprocurement.go.th>. Further development of website will cover all procurement methods and all procurement processes such as procurement planning system, purchase order system, bank guaranteed requesting system, and contract management system. Moreover, there will be the linkage between procurement system and Government Fiscal Information System (GFMIS) and banking system.

Q. Under the item "Value for Money" Thailand notes the Cabinet's Resolution of January 22, 2008 requiring government agencies to support green product and services in government procurement. Could Thailand please provide a copy of the Cabinet's resolution and explain the requirement to support green product and service in government procurement?

A. Thailand is still in process of drafting guideline for procuring green products and services. The guideline will be conform with the procuring green products and services criteria of Pollution Control Department and the Regulations of the Office of the Prime Minister on Procurement B.E. 2535 (1992).

Q. What has been the impact of Value for Money changes with respect to required support for green products in terms of selection of the lowest bid, and the selection of local as opposed to foreign contractors?

A. Thailand is still in process of drafting guideline for procuring green products and services. The guideline will be conform with the procuring green products and services criteria

of Pollution Control Department and the Regulations of the Office of the Prime Minister on Procurement B.E. 2535 (1992).

Q. Under the item “Value for Money” Thailand refers to the guidelines for recognizing and implement value of money. Could Thailand please confirm that the guidelines will give effect to the requirement in Article 23 of the Royal Decree on Good Governance in Public Sector (2003) that governments agencies must carefully consider the costs and benefits of procurement to the public, including the quality and maintenance of the goods and services purchased and the objectives of the procurement? Could Thailand please advise whether Article 23 of the Royal Decree currently provides any direct to officials to assist in determining the costs and benefits of a procurement?

A. The guidelines for recognizing and implementing value of money effect to the requirement in Article 23 of the Royal Decree on Good Governance in Public Sector (2003).

Q. Thailand has referred to a blacklist of suppliers and penalties imposed to prevent collusion among bidders and unlawful relations between bidders. Thailand also refers to debarred tenders. Could Thailand please explain the penalties that may currently be imposed on bidders?

A. The penalties of collusion among bidder and government officials will comply with the Act on Offences Relating to the Submission of Bids to State Agencies, B.E. 2542 (1999).

Q. Under the heading “Accountability and Due Process” Thailand refers to the requirement in Article 27 of the Royal Decree on Good Governance in Public Sector (2003) that government agencies should delegate appropriate decision making authority to responsible persons to make procurement activities more efficient. Thailand has indicated that no further improvements are planned under this heading. Could Thailand please advise whether appropriate authority has been delegated to responsible persons and, if so, by which governments and agencies?

A. Authority allocation for procuring decision will be depended on a case by case basis due to the values of procurement.

Q. It is noted that foreign contractors are permitted to bid on a case by case basis, and that local products and consultants have specific preferences. Please provide details of these specific preferences. Please provide details of the criteria used to grant or deny case by case permission to participate in the procurement process.

A. The preferences will be given to suppliers who offer products that certified for Thailand’s national standards (Clause 16 of the Regulations of the Office of the Prime Minister on Procurement B.E. 2535).

Q. Under the heading “Non-discrimination” Thailand refers to the Foreign Business Act and the provision that domestic and foreign contractors with capital of 500 million baht or more will be considered on an equal basis in bidding for highly technological infrastructure projects. Could Thailand please explain whether or not foreign and domestic contracts with capital of less than 500 million baht are considered on an equal basis in bidding on these contracts? Could Thailand please explain whether there is any discriminatory treatment accorded to either foreign or domestic suppliers in the procurement of goods and services?

A. Foreign suppliers registered under Thai laws would be able to treat on regular basis as domestic suppliers in the procurement of goods and services.

Q. Thailand indicates that a “Government Procurement Reform Plan” will be developed and focused on detailed definition and elaboration of the concept of Value for Money. Does Thailand have a timeframe or schedule for development of the plan?

A. Thailand still in process of drafting The Royal Decree on Government Procurement B.E....”, which is now under the revision of the Council of State.

## **X Deregulation/Regulatory Review**

Thailand has not yet provided a response to this Chapter

Q. Does Thailand have a program of regulatory reform which could be applicable to its IAP?

Q. If there is such a program, please provide details of the policies and programs which will be addressed, as well as the probable timeframe.

Q. Since its last IAP has Thailand undertaken any regulatory/deregulatory reform? If so, please provide details of the policies and programs addressed and the progress achieved.

Q. (ABAC) Restriction on Land Ownership by Non-BOI Promoted Enterprises. While the BOI promoted enterprises may own land property regardless of foreign capital ratio, it is extremely difficult for non-BOI promoted enterprises to acquire the land property in Thailand. It is requested that restrictions are deregulated by the type of business entities or by the alien ownership ratio. Land Property Act

A. Department of Lands : Nowadays, an alien may apply for acquisition of land in Thailand in two cases as follows:

### **1. Under the land code**

#### 1.1 Person

(1) Receiving inheritance as a statutory heir under section 93 of the Land Code, in this instance, the total area including the land which has already been acquired (or has not yet been acquired) shall not exceed that specified in section 87 of the Land Code, i.e. not more than 1 *rai* for a residential purpose;

(2) Bringing the money into the Kingdom for investment to the amount as prescribed in the Ministerial Regulation, which shall be not less than Baht forty million. In this instance, the land to be acquired must be for a residential purpose and must be of not more than 1 *rai* in area, provided also that permission must be obtained from the Minister. Under section 96 bis of the Land Code, the application for such acquisition of land shall be in accordance with rules, procedures and conditions prescribed in the Ministerial Regulation.

#### 1.2 Juristic person

Must not be juristic person with more than forty – nine percent of their shares which are registered capital held by aliens or more than half of their shareholders are aliens, as the case may be;

### **2. Under other laws**

Applying for acquisition of land under other laws such as the Promotion of Investment Act, B.E. 2520 (1977), the Industrial Estate Authority of Thailand Act, B.E. 2522 (1979), the Petroleum Act, B.E. 2514 (1971). Detailed Information regarding the Promotion of Investment Act and the Industrial Estate Authority of Thailand Act can be obtained from the Board of Investment (BOI) and from the Industrial Estate Authority of Thailand at tel. respectively.

Q. (ABAC) Restrictions on the Number of Alien Expatriates. Severe restrictions exist in the number of aliens permitted to work in representative or regional offices of FFE. Under the

Japan-Thailand EPA, it is agreed that parties would review the restrictions after two years of the enforcement of the EPA to draw decisions. Thus is it requested that GOT to deregulates or repeals this restriction under the EPA. Alien Work Permit Act of 1978. Announcement made by Ministry of Labour and Social Welfare.

Q. (ABAC) Obligations to Employ Thai Nationals. An alien business entity registered with BOI as Investment Promotion Industry or located in industrial zone controlled by IEAT has relatively less difficulty in obtaining work permits. Otherwise 4 local workers must be employed against 1 alien applicant for work permit as of now. Under the Japan-Thailand EPA, it is agreed that parties would review the employment obligations of Thai nationals after three years of the enforcement of the EPA to draw decisions. Thus is it requested that GOT to deregulates or repeals this obligations under the EPA. Alien Work Permit Act of 1978.



## **XI Implementation of WTO Obligations (including Rules of Origin)**

Q. Thailand has indicated obligations to reduce tariffs and to reduce domestic support on agriculture by 2004. Could Thailand please advise whether these tariff and domestic support reductions were achieved by 2004? If not, could Thailand please explain the current status of its effort to reduce tariffs and domestic support?

A. Thailand had been through a tariff restructuring. By 2005, the tariff rates on most products had been reduced and the range had narrowed to the new targeting rates following production process, namely:

- (a) 1% for raw materials and inputs not produced locally
- (b) 5% for semi-finished products
- (c) 10% for finished products, products requiring extra protection, and luxury goods

In addition Thailand further reduced tariff rates on both industrial and agricultural products in 2007. The agricultural products included dried leguminous vegetables, seeds of caraway, wheat and meslin, inulin, and soybeans.

Q. Has Thailand implemented its obligation to liberalize basic telecommunications under the GATS by 2006? If not, when does Thailand expect this liberalization to be achieved?

A. It appears that section 84 (11) of the 2007 Constitution of the Kingdom of Thailand may have an impact on the level of foreign ownership in certain infrastructure areas. The Government is now studying the implications of this section before further liberalizing the telecommunication sector.

## XII Dispute Mediation

Q. (Hong Kong China) We note that Hong Kong, China – Thailand Investment Promotion and Protection Agreement (IPPA) is missed in the list of APEC economies with which Thailand has Bilateral Investment Treaties. We would like to draw Thailand’s attention on the omission with a view to rectifying it.

Q. Thailand has indicated that it currently has BITs with the following APEC economies: Canada, China, Chinese Taipei, Indonesia, Korea, Peru, the Philippines, Russia and Viet Nam. Does Thailand have current plans to conclude BITs with other APEC economies? Are any such negotiations underway with APEC or non-APEC economies? If so, where does Thailand expect to conclude each of these.?

Q. Thailand has indicated that the concerned agencies in its government are currently reviewing some BIT provisions that may be outdated. Could Thailand please identify the concerned agencies involved in this review? Could Thailand please identify the BIT provisions that it considers may be outdated? In this analysis is Thailand basing its assessments on any particular “model BIT”? If so, which one?

Q. Thailand indicates that it will issue a law to implement of the ICSID Convention before ratifying the Convention. Thailand has indicated that the time frame for this process will depend on its constitutional process. Could Thailand please explain the constitutional process that it has referred to and the relationship with implementation of the ICSID Convention?

A As mentioned before that an Act implementing the ICISID Convention has yet to be enacted before ratifying the Convention, such enactment shall subsequently comply with the Constitutional process set out by Section 190 paragraph 2, which stipulates that:

*“A treaty which provides for a change in the Thai territories or extraterritorial areas over which Thailand has sovereign rights or has jurisdiction in accordance therewith or in accordance with international law or requires the enactment of an Act for the implementation thereof or has extensive impacts on national economic or social security or generates material commitments in trade, investment or budgets of the country, must be approved by the National Assembly.”*

Therefore, bill implementing the Convention has to go through the above-mentioned process.

Q. Under the heading “Disputes between Private Parties” Thailand indicates that it provides for a traditional local remedy for disputes between parties under the judicial system. Could Thailand please confirm whether this is a reference to dispute settlement through the Courts or whether it is intended to refer to another form of traditional dispute settlement? If so, could Thailand please explain the traditional dispute settlement?

Q. Thailand has indicated that it supports the use of arbitration to resolve disputes between private parties and between private parties and the Government. Could Thailand please provide statistics on the use of arbitration to resolve disputes between private parties and to resolve disputes between private parties and government over the past several years?

Q. Under the heading “Transparency” under this Chapter. Thailand indicates that it continues to hold seminars and conferences on alternative dispute resolution. Could Thailand please outline the number of seminars and conferences that are held each year identify the target audiences and discuss the success of these seminars and conferences in disseminating information on alternative dispute settlement?

### **XIII Mobility of Business Persons**

Q. Thailand introduced a three-year business visa in September 2006. Has the 3 year business visa increased business travel to Thailand?

A. Department of Consular Affairs' response: Thailand introduced a three-year multiple-entry Non-Immigrant "B" visa in 2006 as a commitment to APEC's efforts to facilitate mobility of business persons. It is an extra option for foreign short-term business travelers. It is, therefore, not the main element which multiplies the number of foreign business travels to Thailand. A great number of short-term foreign business travelers already have access to measures and schemes which facilitate their travels to Thailand.

Approximately 800,000 foreigners entered Thailand in 2007 with a Non-Immigrant visa or Non-Immigrant Re-entry visa. However, much greater proportion of foreigners entered Thailand with the exemption of visa. Short-term business travelers of 42 countries, for instance; the United States, Australia, Canada, Japan and Indonesia, enjoy the privilege of Thailand's unilateral visa exemption scheme for tourism which allow them to stay for 30 days each time. Besides, a number of business travelers are entitled to enter Thailand without visa owing to bilateral visa exemption agreements, such as nationals of Chile, Peru, Russia and Viet Nam.

More than 40,000 APEC Business Travel Card (ABTC) holders are able to enter Thailand without additional visa label, and are allowed to stay for 90 days each time.

Furthermore, foreign business persons who have acquired the Thailand Privilege Card (Elite Card) are granted a 5-year multiple-entry "Special Entry Visa" free of charge and that they do not need Non-Immigrant visa.

Q. Thailand has indicated that it is committed to information sharing with other APEC member economies on the subject of visa regimes and border management practices and procedures via the Business Mobility Group. Could Thailand please describe the nature of the information shared through this process and its value in facilitating Business Person Mobility?

A. Department of Consular Affairs' response: Thailand has regularly updated necessary information for foreign business travelers on visa regimes and border management practices and procedures in the APEC Business Mobility Group (BMG) website ([www.businessmobility.org](http://www.businessmobility.org)), including in the section of APEC Business Travel Handbook. For example, information on temporary business visit visa and temporary business residence in Thailand are provided in the website. Links to Thai agencies' websites are also indicated therein.

In addition, Thailand has constantly sent representatives to attend the BMG meetings and activities. In such events, Thai representatives always share updates and information on relevant visa and immigration information with colleagues from other economies. Thailand has also been active in the APEC Business Travel Card (ABTC) scheme and always provides timely pre-clearance for foreign applications. Thailand believes that sharing information and being active in the ABTC scheme indeed enhance the facilitation the mobility of business travelers in the APEC region.

Q. Thailand has indicated that it conducts periodic reviews of cross-border measures as a means of improving and enhancing business mobility. Are these reviews ad hoc or has Thailand established a format and schedule for these reviews? Which cross-border measures have been reviewed by Thai officials over the past three years? What were the results of these reviews? Are further reviews planned?

A. Department of Consular Affairs' response for the Immigration Bureau: Thailand values dialogues with business communities and take into account concerns and comments from foreign travelers. The Immigration Bureau is under consideration of a review of requirements for the extension of stay permit for foreign business persons.

The Immigration Bureau holds meeting with business communities and Thai public annually. Results of such meetings contributed to adjustments of rules and regulations where applicable and practicable. The next meeting will be held on 27 August 2008.

The Government also provides venue for high-ranking discussion with business communities as well. For example, Visa, Stay Permit and Work Permit issues were, among others, discussed during the meeting between the Minister of Industry and foreign Chambers of Commerce in Thailand on 6 March 2008.

As for visa issuance, the Department values comments from foreign visitors often revises practices and directives for Embassies and Consulates on visa issuance procedures in conformity with the Immigration Bureau's relevant regulations and practices. Manual on visa-related management for Consuls is regularly reviewed every year.

Q. The working visa issuance/renewal procedure is complex, taking much time before it is finally issued. It needs more time and manpower comparing to other ASEAN countries such as Malaysia and Singapore. There are many problems: it is needed to appear in person at the immigration office to renew the visa once every 1.5 years. It is requested that the Government of Thailand streamlines the visa acquisition procedure and speeds up its issuance. (ABAC - Japan)

A. Department of Consular Affairs' response for the Immigration Bureau: Thailand is committed to promoting businesses and investments, and we seriously take into account concerns of foreign business communities in Thailand including Japanese business community. The Immigration Bureau is in the process of revising relevant regulations that will best serve the immigration policy and the business community.

Some changes in the regulations that will be favorable to foreign businesses, such as the issue of business owner asset, are expected.

In the meantime, eligible APEC business persons especially intra-corporate transferees and specialists are encouraged to utilize the exclusive services provided at the One Stop Service Centre for Visa and Work Permit where the whole process for stay permit and work permit applications take no longer than 3 hours.

#### **XIV APEC Food System**

Q. (Canada) With which international standards have Thailand's food standards been aligned?

A. Answer : Regarding food produced from livestock and poultry, Thailand's food standards align to CODEX, WTO / SPS and OIE's.

Q. Thailand indicates that selected goods considered to be inputs may have lower rates than bound duty rates. Has the list of goods considered to be inputs changed over time?

Q. Thailand reported that in 2003 it expanded its tariff quota and lowered its applied in-quota rates for soybean and seed potato, soybean cake and onion seed. Why did Thailand change its applied TRQs for these products? Does Thailand plan changes to any of its other agricultural TRQs?

A. In the 2003 report, Thailand applied the expansion of tariff quota for the mentioned goods since the domestic supply did not meet the demand, and it reduced its applied in-quota rates providing the affordable prices for the users and consumers. Any future plan in changing the TRQ will largely depend on the equilibrium of local demand and supply.

Q. Does Thailand limit the availability of imports under TRQs to particular or specific groups in the economy?

A. Thailand has established its TRQs in accordance with the WTO's principles of national treatment and Most Favored Nations. Thailand does not limit the availability of imports under TRQs to any member in particular.

Q. Please provide "fill" rates" for each of the 23 TRQs in the most recent period for which information is available.

A. Please refer to the attachment for information.

## **XV Transparency**

Thailand has not yet provided a response to this Chapter

Q. While Thailand has provided comments on Transparency under a number of Chapters, there is no content provided under the specific “Transparency” Chapter. Does Thailand plan to provide additional information on its efforts to improve Transparency in general? If so, when will this be provided?

A. Thailand has already update Transparency information in the Transparency Chapter.

## XVI Free Trade Agreements/Regional Trade Agreements

Q. (Canada) Please explain the difference in scope and obligations between your FTAs negotiated bilaterally and the ones negotiated regionally through your membership in ASEAN:

- Thailand-Japan and ASEAN-Japan
- Thailand-India and ASEAN-India
- Thailand-Australia, Thailand-New Zealand and ASEAN-Australia-New Zealand

A. Under Thailand FTA with dialogue partners considered on economic relationship and mutual benefits of both parties are seriously. The scope of bilateral negotiation inevitably tends to be more comprehensive than that of a regional negotiation. To dates, Thailand has completed FTAs with Australia, New Zealand, and Japan.

Under ASEAN-Dialogue FTA negotiations, Thailand has participated in ASEAN - dialogue negotiations to strengthen our policy to support ASEAN Economic Community (AEC). At present, ASEAN has agreements with Japan, and China (only Trade in Goods and Trade in Services). Moreover ASEAN is in the process of discussion with other countries such as Australia and New Zealand, India, South Korea and EU.

The scope and obligations of bilateral and regional negotiations of Thailand are as follows:

	<b>Services/Investment</b>
<p><b>Japan-Thailand Economic Partnership Agreement (JTEPA)</b>  (signed the Agreement 3<sup>rd</sup> April, 2007)</p>	<ul style="list-style-type: none"> <li>• In terms of trade in services, Thai service suppliers are allowed to expand businesses such as spa, hotel, and restaurant in Japan.</li> <li>• In addition to its GATS commitments, Thailand's commitments under JTEPA cover businesses such as advertising services, logistics consulting services, computer and related services and human resources management.</li> <li>• Japanese investors are allowed to own up to 50% equity in manufacture of auto mobiles, provided that the remaining equity shares are owned by Thai investors.</li> <li>• Thai investors are allowed to invest in Japan in all industries except medicine, aerospace, oil production, energy, mining, fishery, agriculture, forestry and other related industries.</li> </ul>
<p><b>ASEAN-Japan FTA</b>  (signed the Agreement 11<sup>th</sup> April, 2008)</p>	<ul style="list-style-type: none"> <li>• Sub-committees on Trade in Services and Investment will be established within one year from the date of entry into force of this Agreement in order to discuss and negotiate provisions for trade in services/investment towards further liberalization, promotion and protection of investment.</li> </ul>
<p><b>Thailand-India FTA</b>  (signed the Framework Agreement for establishing Free Trade Area between India and Thailand on 9<sup>th</sup> October</p>	<ul style="list-style-type: none"> <li>• Thailand agreed on the Early Harvest Scheme on 82 products, which the import duties were eliminated since 1<sup>st</sup> September 2006.</li> <li>• Currently, Agreement on Trade in Goods, Trade in Services and Investment are under negotiation.</li> </ul>



2003)	
<b>ASEAN-India FTA</b>  (signed the Framework Agreement on 8 <sup>th</sup> October, 2003)	<ul style="list-style-type: none"> <li>• Currently, Agreement on Trade in Goods is under negotiation.</li> <li>• Agreement on Trade in Services and Agreement on Investment will be negotiated in the future.</li> </ul>
<b>Thailand-Australia FTA (TAFTA)</b>  (signed the Agreement April, 2005)	<ul style="list-style-type: none"> <li>• In the specific commitment, Thailand allows Australian to own equity up to 60 percent in the majority of business sectors. However Thailand maintains some market access limitations such as convention services, luxury hotel resort services, theme park services, and mining.</li> <li>• Thai service suppliers are allowed to own 100 percent of juridical person in Australia in any services and non-services sectors except newspaper, broadcasting, air transport and airport services.</li> </ul>
<b>Thailand – New Zealand Economic Partnership Agreement (TNZEPA)</b>  (signed the Agreement April, 2005)	<ul style="list-style-type: none"> <li>• It was agreed to schedule negotiations on the liberalization of services trade within three years of entry into force (i.e. 2008). The Thailand-New Zealand Joint Commission reviews progress of the implementation.</li> <li>• Thailand allows equity participation of up to 100 percent by New Zealand investor in some non-services sectors such as electronic industry and electrical appliances, machinery and mechanical appliances, food processing using modern technology.</li> <li>• Thailand allows total number of New Zealand directors up to 100% of the total number of board of directors is allowed.</li> </ul>
<b>ASEAN-Australia/New Zealand FTA</b>	<ul style="list-style-type: none"> <li>• The negotiation on text of Trade in Services Chapter was concluded, nevertheless, the schedule of commitment is under negotiation.</li> <li>• The negotiation on the text of the Investment Chapter was concluded. However, there will be the discussions on Schedule of Reservations within five years from the dated of entry into force of this Agreement. These discussions shall be overseen by the Investment Sub-committee.</li> </ul>

Q. For TRQs where the fill rate is less than 70%, please explain why Thailand considers there has not been greater utilization of the TRQ.

Q. Thailand has outlined a number of Free Trade Agreements and Regional Trade Agreements that it has concluded and is negotiating with other APEC economies. Does Thailand have plans for future negotiations with other countries or regions?

A. Thailand encourages the entrepreneurs in utilizing the preferential treatments from the existing FTAs. At the present, the Thai government's trade policy has long supported

liberalization. However, the further establishment of FTAs must be considered thoroughly to ensure overall advantage in each stakeholder for the optimum result of trade environment.

Q. How does Thailand describe the relationship between the FTAs and the RTAs that it has negotiated and is negotiating and the WTO?

A. Thailand believes that FTAs can be an affective catalyst for free trade and a building bloc for the multilateral trading system.

## **XVII Trade Facilitation**

Q. With respect to Customs Procedures concerning the movement of goods Thailand has listed a number of improvements including the e-Customs system, the single window and a customs call center. Thailand has also indicated that the Royal Thai Customs has been restructured to respond to change in the trade environment and technology and to adapt to modern management techniques. Has Thailand reviewed the impact of these changes to determine their effect on the cost of shipping goods into Thailand and the time required to clear customs?

Q. Thailand refers to a pilot project launched by Royal Thai Customs to establish a One Stop Service Center for the issuance of certificates and documents and that this pilot project will eventually lead to an electronic single window process. Could Thailand please describe the state of play and any outcomes to date of the pilot project?

Q. Thailand has indicated that it is moving toward a paperless Customs trading system by the end of 2008. Could Thailand please advise the current status of this initiative, whether this process is on schedule and whether or not it is expected that the goal will be achieved?

A. The Legal Affairs Bureau has been inform by Mrs.Chalida Pankravee, a senior office, that the Customs Department of Thailand has started to use a paperless system since June B.E. 2551, and has received a satisfied feed back from private sectors.

Q. Thailand has indicated that it has aligned 731 standards and regulations with international standards. How many standards does Thailand have? How many more standards and regulations does Thailand intend to align with international standards? Does Thailand have a schedule for aligning the rest of its standards and regulations with international standards? Does Thailand regularly review its existing standards and regulations to determine whether they should be aligned with international standards?

A. Based on the latest Individual Action Plan (IAP) of Thailand, we reported that Thailand has aligned 50 national standards to international standards in 2007. At present, 738 Thai industrial standards are already aligned with the relevant international standards.

We totally have 2,736 Thai industrial standards of which 27% are aligned with relevant international standards.

The alignment of international with international standards has been done on voluntary basis. Thailand's standard development procedure are complied with the ISO/IEC Guide 59 Code of Good Practice for Standardization.

The degree of alignment in SCSC priority (IECEE/CB Scheme) is 57% . The remainder is under review process for alignment during 2008-2012.

Thailand attempts to align its standards with international standards to the maximum extent possible and appropriate and to fulfill the commitment with the SCSC priorities and other bilateral agreements.

## Schedule of Meeting

## Thailand : IAP Peer Review

8-11 September 2008

Venue : Department of Trade Negotiations, Ministry of Commerce, Thailand

Monday, 8 September 2008, Venue : Room 1 (40607), 6 <sup>th</sup> Floor	
<p><b>Session 1</b> 9.00 a.m – 09.10 a.m</p> <p>9.10-12.10 a.m</p> <p><b>Issues :</b> Tariff Non Tariff Barriers Standards and Conformance Food System</p>	<ul style="list-style-type: none"> <li>• Opening Remarks by Executive Director of Multilateral Trade Negotiations Bureau</li> <li>• Food and Drug Administration</li> <li>• National Bureau of Agriculture Commodity and Food Standards</li> <li>• Office of Industrial Economics</li> <li>• Department of Industrial Works</li> <li>• Thai Industrial Standards Institute</li> <li>• Customs Department</li> <li>• Department of Foreign Trade</li> <li>• Fiscal Policy Office</li> <li>• Office of Agriculture Economics</li> <li>• Office of Permanent Secretary, Ministry of Public Health</li> <li>• Food Safety Cooperation Center, Department of Medical Sciences</li> <li>• Excise Department</li> <li>• Department of Fisheries</li> <li>• Department of Livestock Development</li> <li>• Department of Agriculture</li> </ul>
<p><b>Session 2</b> 1.30 p.m-4.30 p.m</p> <p><b>Issues :</b> Competition Policy Government Procurement Dispute Settlement</p>	<ul style="list-style-type: none"> <li>• Department of Internal Trade</li> <li>• Trade Competition Commission</li> <li>• The Comptroller General's Department</li> <li>• Department of International Economic Affairs</li> <li>• Department of Treaties and Legal Affairs</li> <li>• Thai Arbitration Institute</li> <li>• State Enterprise Policy Office</li> </ul>

Tuesday, 9 September 2008, Venue : Room 1 (40607), 6<sup>th</sup> Floor

**Session 3**

9.00 a.m – 12.00 a.m

**Issues :**

Communication Services  
Telecommunications  
Energy Services  
Tourisms and Travel Related

- Ministry of Information and Communication Technology
- Communication Authority of Thailand
- National Telecommunications Commission
- Energy Policy and Planning Office
- Electricity Generating Authority of Thailand
- PTT Public Company Limited
- Ministry of Tourism and Sports
- Tourism Authority of Thailand
- Board of Investment of Thailand
- Bureau of Services and Investment Negotiations, Department of Trade Negotiations
- Department of Business Development
- State Enterprise Policy Office
- Department of Consular Affairs

**Session 4**

1.30 p.m-4.30 p.m

**Issues :**

Transport Services : Land  
Transport Services : Maritime  
Transport Services : Air  
Environment Services  
Trade Facilitation (Electronic Commerce)

- Marine Department
- Department of Land Transport
- Department of Aviation
- Port Authority of Thailand
- Board of Investment of Thailand
- Department of Business Development
- Office of Natural Resources and Environmental Policy and Planning
- Bureau of Services and Investment Negotiations, Department of Trade Negotiations
- Ministry of Transport

Wednesday, 10 September 2008, Venue : Room 1 (40607), 6 <sup>th</sup> Floor	
<p><b>Session 5</b> 9.00 a.m – 12.00 a.m</p> <p><b>Issues :</b> Intellectual Property Rights Financial Services Insurances Securities Customs Procedures Trade Facilitation (customs, standards and conformance) WTO/Rules of Origin</p> <p><b>Session 6</b> 1.30 p.m-4.30 p.m</p> <p><b>Issues :</b> Investment Mobility of Business People Deregulation</p>	<ul style="list-style-type: none"> <li>• Department Intellectual Property</li> <li>• Bank of Thailand</li> <li>• Fiscal Policy Office</li> <li>• Office of the Securities and Exchange Commission</li> <li>• Board of Investment of Thailand</li> <li>• Bureau of Services and Investment Negotiations, Department of Trade Negotiations</li> <li>• Department of Business Development</li> <li>• Office of Insurance Commission</li> <li>• Thai Bankers' Association</li> <li>• Federation of Accounting Profession</li> <li>• Department of National Park, Wildlife and Plant Conservation</li> <li>• Custom Department</li> <li>• Department of Foreign Trade</li> </ul> <ul style="list-style-type: none"> <li>• Board of Investment of Thailand</li> <li>• Bureau of Services and Investment Negotiations, Department of Trade Negotiations</li> <li>• Department of Business Development</li> <li>• Department of Consular Affairs</li> <li>• Excise Department</li> <li>• Department of International Economic Affairs</li> <li>• Department of Employment</li> <li>• Department of Lands</li> <li>• Immigration Bureau</li> <li>• Office of the National Economic and Social Development Board</li> <li>• Office of the Council of State</li> </ul>

## Status of Thailand's FTAs

## FTAs Implemented (5 economies)

FTA	Date of Implementation
Thailand - Australia	1 January 2005
Thailand – New Zealand	1 July 2005
ASEAN - China	Goods : 20 July 2005 Services – Group 1 : 1 July 2007
Thailand - India	Goods 82 items : 1 September 2004
Thailand - Japan	1 November 2007 Immediately eliminates tariffs imposed on 31% of Japanese goods imported to Thailand and 86% of Thai exports to Japan.

## FTAs completed but yet to be implemented

FTA	Progress
Thailand - Peru	- Thailand and Peru signed a Protocol to accelerate trade liberalization and facilitation for early harvest products (immediately reduce tariffs to 0% on half the products and to 0% for 20% of all items within 5 years), which was initially expected to be implemented in 2007, but had to be postponed as Thailand had to revert to the new HS 2007, which required adjustments to be made to the tariff reduction schedule and rules of origin. The new implementation date is scheduled for mid 2008.

## FTAs under negotiations

FTA	Progress
Thailand - India	- <b>Trade in Goods:</b> Most recent TNC meeting was held on 31 January – 1 February 2008. Review of the draft Thailand – Indian FTA negotiations made good progress and the draft chapters on Rule of Origin was approved. However, the issue of tariff reduction have yet to be completed due to India's decision to revise the list of items for tariff reductions which had been jointly agreed since September 2007. India argues that its studies reveal that a trade imbalance would result from market access under the agreement. - <b>Trade in Services and Investment :</b> Currently in the process of negotiating a Trade in Services and investment agreements, which was expected to be concluded in March 2008. - Currently, India seems to be delaying the negotiation process with Thailand in order to wait and see the impact from negotiations under the India-ASEAN FTA.

FTA	Progress
ASEAN - China	<ul style="list-style-type: none"> <li>- <b>Trade in Goods:</b> Areas that require further negotiations include TRQ, Product Specific Rules, and Implementation.</li> <li>- <b>Product Specific Rules:</b> Agreement was reached on the First Package, comprising 472 items which mainly consists of textiles, and the second package, comprising 90 items, consisting of such items as prepared and preserved fish (except Tuna under HS 160414) ice-cream, pearls, footwear, and stainless steel.</li> <li>- <b>Trade in Services:</b> ASEAN and China are currently in negotiations for the 2<sup>nd</sup> Package of Services Commitments which is expected to be completed in 2009.</li> <li>- <b>Investment:</b> Have recently concluded negotiations on the Investment Agreement, the agreement is expected to be signed at the 14<sup>th</sup> ASEAN Summit in early 2009.</li> </ul>
ASEAN - Korea	<ul style="list-style-type: none"> <li>- <b>Trade in Goods:</b> Thailand has yet to sign the Agreement on Trade in Goods since Korea is still reluctant to open its markets to key agricultural products from Thailand (such as rice, flour, tapioca products, and chicken) even though ASEAN 9 countries and the Republic of Korea have signed the Agreement and have begun to reduce tariffs among each other since 1 June 2007.</li> <li>- On 17-18 December 2007, bilateral discussions were held between Thailand and Korea, in which the two sides reached agreement on market access for goods.</li> <li>- <b>Trade in Services:</b> Korea and ASEAN (except Thailand) signed the agreement on trade in services in November 2007.</li> <li>- <b>Signing of the Agreement:</b> Thailand must first submit the proposed goods and services agreement under the ASEAN – Korea FTA to cabinet and parliament for approval prior to its signing. Thailand expects that the signing of the protocols to join the agreement on Trade in Goods and Service with ASEAN and Korea can be signed at the beginning of year 2008.</li> <li>- <b>Investment:</b> It is still not possible to reach agreement by the year 2008 because there are still substantial differences between Korea and ASEAN regarding Investment Agreement</li> </ul>
ASEAN - Japan	<ul style="list-style-type: none"> <li>- Agreement on trade in goods has been completed. The negotiations on trade in services and investment will be pursued by sub-committees, established within one year from the date of entry into force.</li> <li>- The AJCEP was signed on the 11 April 2008. Currently, each Party is attempting to complete its domestic procedure in order to ratify the Agreement. It is expected to enter into force at the end of 2008.</li> </ul>
ASEAN - India	<ul style="list-style-type: none"> <li>- <b>Trade in Goods:</b> Agree to reduce most tariff lines (Normal Track) to 0% by 2011 (at the latest by 2015), but to exclude not more than 489 tariff lines (5% of total import value) from tariff reductions (Exclusion List). No agreement has been reached on Special Products from India and ASEAN (Palm oil, tea, coffee and pepper), therefore,</li> </ul>



FTA	Progress
	<p>the negotiations were not able to be concluded by the target date (July 2007).</p> <p>- <b>Services and Investment:</b> Negotiations have yet to begin.</p>
<p>ASEAN – Australia – New Zealand</p>	<p>- <b>Trade in Goods:</b> Australia and New Zealand required to discuss with each ASEAN member country to negotiate tariff reductions and submitted revised offers to The ASEAN Secretariat Office that currently DTN. hasn't received any concerning information.</p> <p>- <b>Trade in Services:</b> Internal factions in ASEAN countries are principal impediment. Agreements haven't been reached in any articles except a provision of e-commerce which ANZ excluded tariff exemption issue on electronic trade and dispute settlement procedure. Other problematic proposals are e.g. Permanent Residence, Safeguard Measures and MFN.</p> <p>- <b>Investment:</b> Agreement has been reached more than 90%. However, free investment allowance issue will not be effective on the date of impediment, there will be only investment protection matter.</p>
<p>Thailand - Peru</p>	<p>Thailand – Peru FTA has been signed and currently in the process of ratification.</p> <p>- <b>Trade in Goods:</b> Still need to negotiate market access for the 30% remaining items, which mostly comprise Sensitive products of Peru, such as rice, sugar, chicken corn and dairy products.</p> <p>- <b>Services:</b> Agreement was reached in key articles, as well as agreement to establish cooperation in certain sectors such as education/culture/and training, transportation, tourism, health, construction, housing, and sanitary services.</p> <p>- <b>Investment:</b> Very little progress has been made in negotiations.</p>
<p>Thailand-EFTA</p>	<p>- Negotiations began in 2005. Two formal negotiations have been held - the most recent on 16-20 January 2006. A draft agreement containing all negotiating elements has been prepared.</p> <p>- Thailand and EFTA held informal discussions in October 2007 to take stock of the current situation.</p>
<p>BIMSTEC</p>	<p>- <b>Trade in Goods :</b> Agreement has yet to be reached on the number of items to be excluded from tariff reductions (Negative List) and on rules of origin. As a result, little progress has been made on market access.</p> <p>- <b>Services and Investment :</b> No progress has been made.</p>
<p>ASEAN - EU</p>	<p>- the 5<sup>th</sup> meeting of the Joint Committee on the ASEAN-EU FTA was hold during 25-27 June 2008 in Manila, Philippines where met sub-committees on technical barriers to trade, custom procedure and trade facilitation, rules of origin, services and investment, including discussion on market access in goods, IPR., competition policy, government procurement and sustainable development.</p> <p>- The next meeting of the Joint Committee will be hold during 15-17 October 2008 in</p>

FTA	Progress
	Vietnam.

## FTAs to be launched

FTA	Progress
Thailand - Australia and Thailand New Zealand	In 2008, negotiations will begin on <b>Services and Market Access</b> for additional goods in line with the TAFTA และ TNZCEP obligations. The TAFTA is entering its fourth year of implementation, in which certain topics such as financial services, telecommunications, government procurement and special safeguard will be picked up for further negotiations.

## FTAs Pending

FTA	Progress
Thailand - US	Suspended – Pending policy directive from new government.
Thailand – Bahrain	Suspended – Pending policy directive from new government.
Thailand – Chile	Awaiting policy directive from new government
Thailand – Pakistan	Awaiting policy directive from new government
Thailand – Hong Kong	Awaiting policy directive from new government