

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

(1) OVERVIEW

1. Despite constitutional and legislative changes due to the 2006 political developments, the structure of trade policy formulation in Thailand has not changed substantially since 2003. The "Sufficient Economy" thinking is being used as a guiding philosophy for development strategies and policies. Regulatory reform has progressed but regional decentralization has not advanced as scheduled.

2. Thailand has maintained its support for and commitment to multilateral trade liberalization. It also remains committed to "open regionalism" and believes regional FTAs can be an effective catalyst for free trade and complementary to multilateralism. The focus of foreign policy now appears to be the strengthening of regional links with immediate neighbours and deepening ties through FTAs in the wider Asian region.¹ In addition to expanding ASEAN FTA undertakings, Thailand has concluded a network of bilateral preferential trading arrangements with several trading partners (e.g. Australia, Bahrain, India, Japan, Peru, New Zealand).

3. Thailand continues to operate a generally liberal foreign investment regime. Negative lists restricting levels of foreign direct investment in some activities have remained unchanged. Amendment of certain legal provisions is under way to prevent foreign investors from using nominee shareholders or preferential voting rights to take control of Thai companies in restricted sectors. U.S. investors receive preferential treatment, being exempt from most FDI restrictions under a 1966 Treaty.

(2) GENERAL CONSTITUTIONAL AND INSTITUTIONAL FRAMEWORK

4. Following political developments in September 2006, the 1997 Constitution was abrogated and replaced by an Interim Constitution on 1 October 2006.² The Interim Constitution provided for the appointment of a Prime Minister, a legislature, and a 100-member Constitutional Drafting Assembly (CDA) for a Permanent Constitution. (A referendum approved the new Constitution in August 2007.)

5. The 2006 Interim Constitution (39 articles), *inter alia*: prescribed for the constitutional monarchy and the Kingdom of Thailand as the unitary state (Article 1); guaranteed basic rights, human dignity, and equality under the law, in accordance with the democratic rule under the King as head of state and international obligations (Article 3); and outlined the formation and duties of the National Legislative Assembly, which would comprise not more than 250 members appointed from professional groups, geographical areas, and various sectors of society (Article 5).³ In addition, the King appointed a Prime Minister and not more than 35 other ministers on the recommendation of the Prime Minister to constitute the Council of Ministers, having the duties to carry out the administration of State affairs (Article 14).

6. As a result of the 2006 developments, an interim 242-member National Legislative Assembly was appointed in October 2006, consisting of the House of Representatives, the Senate, and the

¹ EIU (2006c).

² EIU (2007b); and Wikipedia online information. Viewed at: http://en.wikipedia.org/wiki/Constitution_of_Thailand [10 May 2007].

³ Ministry of Foreign Affairs (2006a); and Wikipedia online information. Viewed at: http://en.wikipedia.org/wiki/Constitution_of_Thailand [10 May 2007].

National Assembly.⁴ The last valid general elections for the House of Representatives and the Senate were held on 6 February 2005 and 19 April 2006, respectively; the next National Assembly elections are expected to be held in December 2007.

7. The preamble of the 2006 Interim Constitution sets out several objectives including: "the need to restore national unity, the economy and public order, the strengthening of a vigorous system of checks against corruption and an ethical code of conduct, the promotion and protection of the rights and civil liberties of the people, adherence to the United Nations Charter as well as obligations under treaties or international agreements, the promotion of friendly relations with other countries and the philosophy of "Sufficiency Economy" as a way of life."⁵ Unlike the previous (1997) Constitution, the 2006 Interim Constitution does not contain any clauses on economic principles and freedom⁶ due to its temporary nature; nevertheless, its Section 3 guarantees the protection of rights, liberties and equality in accordance with the customary practice of democratic government as well as Thailand's existing international obligations. The draft of the new Constitution contains provisions on a broad range of rights and freedom, including economic.

8. The Thai judicial system consists of a Supreme Court with judges appointed by the King, an independent Constitutional Court, several trial courts, and a Court of Appeals.⁷ There is also the IPCIT Court for intellectual property and international trade (Chapter III). Because courts are independent, no court is under the Thai Ministry of Justice.

9. The 1997 Constitution provided for increased government decentralization, which made slow progress during the period under review (Box II.1). The authorities indicate that they had given priority to the devolution of power to the Local Administration Organization (LAO), allowing it autonomy in setting up policy on administration, personnel, financial, and fiscal management. The central government provides substantial budget expenditures for development in education and health care, which made it impossible for it to meet the target of allocating 35% of its net revenue to the LAO during the FY2007 under the Determining Plans and Process of Decentralization to Local Administrative Organization Act B.E. 2542 (A.D. 1999).

(3) STRUCTURE OF TRADE POLICY FORMULATION

(i) Executive branches of government

10. As a result of the 2002 reforms aimed at correcting weaknesses in the centralized bureaucracy, 11 ministries were given new missions, three were renamed, and six were established; there are currently 20 ministries (previously 14) and 162 Departments. No major changes seem to have occurred since 2003 in the structure of key agencies involved in the formulation, coordination, and implementation of trade and related policies, for example, government ministries, the central bank, and the Board of Investment (now under the Ministry of Industry). Final responsibility for formulating trade and other economic policies remains largely with the Prime Minister and his Cabinet. The Ministries of Commerce and Finance have main responsibility for issues relating to trade and investment, although authority for certain policies extend to the ministries of Agriculture

⁴ CIA (2007).

⁵ Ministry of Foreign Affairs (2006a).

⁶ The 1997 Constitution provided for the freedom to "fairly engage" in free competition, subject to limits set by legislation to benefit consumer protection, urban planning, natural resources or environmental preservation, public safety, anti-monopoly or to eradicate unfairness in competition. State enterprises were limited to where necessary to protect national security or the public interest, or to provide a public utility.

⁷ Wikipedia online information. Viewed at: http://en.wikipedia.org/wiki/Politics_of_Thailand [11 May 2007].

and Co-operatives, Industry, Public Health, Energy, Information Technology and Communications, and Transport, and the Bank of Thailand (the central bank). The Department of Trade Negotiations, within the Ministry of Commerce, is mainly responsible for bilateral and multilateral trade negotiations. It consults widely with other government and non-government agencies.

Box II.1: Regional decentralization, 2007

Thailand is a unitary state with a centralized economy. While there are 76 provinces (excluding the Bangkok Metropolitan Administration), each administered by an appointed governor and divided into districts and villages, local governments have little administrative and legal autonomy. Most public spending is by the national government. The previous (1997) Constitution provided for increased government decentralization, as a way of reducing regional inequalities. Under the recently amended National Decentralization Act (Determining Plans and Process of Decentralization to Local Administrative Organization Act) B.E. 2542 (1999), the National Decentralization Committee, was formed to implement and monitor the decentralization process, to be fully implemented by FY2010. The local administration is to become self reliant and capable of providing efficient public services according to its duty and responsibility.

The 1999 Act specified that at least 20% of total government revenue would accrue to local governments in FY2001, and that this would rise to a minimum of 35% by FY 2006. The Decentralization Act No. 2 (2006) (announced in the *Royal Gazette*, 28 January 2007) postponed the timeframe for achieving the target of 35% by 2006, but did not specify a new target year for this. According to the authorities, the target share of local authority revenue to government revenue increased from 12.63% in FY2000 to 20.68% in FY2001; from FY2002 to 2007 it rose annually as follows 21.88%, 22.19%, 22.75%, 23.50%, 24.05%, and 25.17%. The new law states, however, that the share of local government revenue to central government revenue shall not be less than the FY2007 target of 25% and that the amount of funds transferred shall correspond to the activities transferred to the local governments. In FY2006, only 24.1% of central government revenue was allocated to local administrations.

An overall Master Plan was set in 1999 to decentralize administrative powers to local governments. Functions to be transferred to local governments within four years included infrastructure and planning, education, health, social welfare, social order, promotion of investment, commerce, tourism, environment and local culture; in practice, up to six years was allowed to enable local governments to improve their administrative capacities. No information on progress in the transfer of functions since 2003 was available from the authorities. Since 2003, only 0.4% of government officials have been transferred to local government, due partly to limited capacities of local authority to carry out new responsibilities. The Local Administration Law drafted in January 2006, identified responsibilities of all local administrations and specified financial management and budgetary procedures; no information on the progress in passing the Law was available from the authorities. Meanwhile, the Government provides support to local administrations on capacity building regarding how to handle new responsibilities in the future.

Few expenditure functions have been transferred to local governments, and central government grants remain heavily tied to specific purposes; no more than 30% are general purpose grants based on local governments' expenditure needs and revenue-raising capacities. Local government revenue sources are mainly building, land, and signboard taxes; some 90% of revenue comes from the central government, either as grants or as their share of certain national taxes (VAT, liquor, excise, gambling, mineral and petroleum, and motor vehicle taxes). To enhance the fiscal capability of local governments, the Government is considering introducing new taxes such as property tax, environment tax, inheritance tax, etc. to help increase local revenue in the long run. Local financing and local fiscal discipline are also to be reviewed as they are considered as measures to strengthen and build the capacity of local governments.

Source: IMF (2002), *Thailand: Selected Issues and Statistical Appendix*, Country Report No. 02/195; World Bank (2007), *Thailand Economic Monitor*. Viewed at: http://siteresources.worldbank.org/INTTHAILAND/Resources/Economic-Monitor/2007april_tem_report.pdf [23 April 2007]; and APEC (2007), *Individual Economy Report of Thailand*. Viewed at: http://www.apec.org/content/apec/member_economies/economy_reports.html [11 May 2007].

11. The Committee on International Economic Relations Policy, chaired by the Deputy Prime Minister, and its sub-committees, retains its main role of coordinating Thailand's international economic policies.

(ii) Advisory, planning, and other bodies

12. Various institutions within the Government, such as the Office of the National Economic and Social Development Board (NESDB) in the Office of the Prime Minister, review and assess of public policies; no independent body is directly responsible for publicly evaluating or advising government on trade and sectoral assistance policies.⁸ The NESDB is also responsible for preparing Thailand's five-year national economic and social development plans and monitoring their implementation (section (4)). Independent research institutes or research units of universities in Thailand may be entrusted to assess and analyse the impact of public policies. The results and findings are normally made public or are available upon request.

13. The private sector interacts with the Government formally and informally. On international trade matters, the Government regularly consults the Thai Chamber of Commerce, which is also responsible for issuing certificates of origin. The Federation of Thai Industries and the Thai Bankers' Association also provide advice. These bodies are represented in the Joint Standing Committee on Commerce, Industry and Banking (JSCCIB) and the WTO Committee, which the JSCCIB formed in 1999. The WTO Committee aims to facilitate private sector participation in multilateral negotiations to help enhance Thailand's competitiveness.⁹ Other important committees with private and public representatives are the National Economic Social Development Committee, the Board of Investment Committee, and the National Competitiveness Committee.

(4) TRADE POLICY OBJECTIVES

14. Under its Tenth National Economic and Social Development Plan for 2007-11, Thailand aims for balance and sustainability in all areas of national development.¹⁰ Its guiding principle is that of the "Sufficiency Economy" based on the idea of building economic resilience to internal and outside shocks, keeping investment and household debt within sustainable levels, and ensuring growth with stability. The Plan focuses on effectively using the country's economic, social, and natural resources to empower Thai society at all levels, and further strengthen institutional capacity throughout the country, which would in turn develop Thailand's potential as a knowledge-based society. Priority areas include human and social capital development, community strengthening, economic restructuring, environmental diversity, and good governance.

15. To adhere to the "Sufficiency Economy" principle, the authorities are attempting to develop the economy in a liberal market-based way with fair competition to ensure sufficient and sustainable economic growth.¹¹ To boost the economy, the Government is promoting local and foreign

⁸ For more information on the NESDB's work, see NESDB online information. Viewed at: <http://www.nesdb.go.th/>.

⁹ The WTO Committee comprises sub-committees on agriculture and fisheries, services, industrial goods, legal and investment issues, food safety, rules of origin and government procurement under the WTO framework.

¹⁰ World Bank (2006a); and Asian Development Bank (2007).

¹¹ Reportedly, the "Sufficiency Economy" thinking has three key principles: moderation, wisdom of insight, and the need for built-in resilience against risks that arise from internal and external changes/shocks. In addition, those applying these principles must value knowledge, integrity, and honesty, and conduct their lives with perseverance, toleration, wisdom, and insight. It advocates growth with quality, stability, and equity over rapid but unbridled growth, and emphasizes sustainable development, sound macroeconomic policies and the equitable sharing of the benefits of economic prosperity. It calls for prudent management of the economy, a

investment in very competitive industries, focusing on technological development and building intellectual property, including the small- and medium-size enterprises that count on IPRs. The Government is also promoting exports and services; and encouraging the private sector to drive growth.

16. According the authorities, Thailand's trade policies embody the guiding principles of: sufficiency and sustainable economy; free, fair and progressive trade liberalization; income and happiness distribution; and good governance and transparency. They aim to build Thailand into a trading nation, cultivate more service providers, strengthen competitiveness and lay the groundwork for Thailand to become an investor-country. Action is focused on promoting: export-oriented business-driven trade; stability and prosperity in the agriculture sector; consumer welfare protection; development of the services sector, reform of trade regulations; competitiveness enhancement and capacity building; and free and fair trade (at multilateral, regional bilateral levels) with an appropriate safety net. To further integrate Thailand into the global economy, Thailand supports free trade in the multilateral arena, including seeking improved outcomes from negotiations on trade and investment that better reflect Thailand's and other developing country interests, advancing the ASEAN Free-Trade Area, and promoting regional trade and investment generally.

17. Thailand is committed to voluntary trade liberalization within APEC and regional liberalization within ASEAN, and is looking to expand its bilateral trading arrangements (section (6)(ii)(c)).

(5) TRADE LAWS AND REGULATIONS

18. Reform of the legal and judicial regime has progressed.¹² The National Law Reform Committee was appointed in July 2004 to oversee the reform of the legal and judicial regime under the National Laws Development Plan 2005-2008; 377 laws identified by line ministries as redundant, outdated, or in need of replacement are to be reviewed. At least 50% of these laws should be completely reviewed and revised by end 2008; 13 laws have been reviewed and 26 laws or law drafts related to trade and international trade matters have been proposed (16 in 2005 and the rest in 2006-2007). Reportedly, prescribed comment periods for new legislation and regulations are sometimes not honoured.¹³

19. Ministry/government regulations and notifications that do not require legislative approval are commonly used in conjunction with Acts to implement trade-related policies.¹⁴ Despite concern over the alleged complexity of the system of laws and regulations¹⁵, the authorities maintain that the Thai regulatory system is transparent and very simple compared with that of other major trading partners (Table II.1). Several laws or amendments have been enacted during the review period (e.g. customs valuation, intellectual property rights, competition policy, bankruptcy) or are under different stages of preparation (government procurement, energy, electricity, telecoms, e-commerce, tourism).

step-by-step approach to market liberalization, developing the economy to keep up with the world in the era of globalization, and strengthening of society's immunity against the negative side effects of globalization. It shuns excessive risk-taking, untenable inequalities, and the wasteful use of natural resources/factors of production (NESDB, 2007). See also U.S.-Asian Business Council (2007), and Royal Thai Government (2006).

¹² APEC (2007).

¹³ EIU (2006b).

¹⁴ For example, applied tariffs may be increased up to 50% above the statutory rates. Other important issues requiring inter-ministerial coordination but not parliamentary approval include: investment incentives; VAT, excise, interior taxes, and surcharges; controls on imports and exports; and anti-dumping and countervailing policies.

¹⁵ EIU (2006b).

Table II.1
Main trade-related legislation, May 2007

Legislation	Description
Anti-Dumping and Countervailing Duty Act, B.E. 2542 (1999)	Ministry of Commerce can impose anti-dumping or countervailing measures
Bankruptcy Act (No.5), B.E. 2542 (1999)	Amendments to bankruptcy provisions
Corporatisation Act, B.E. 2542 (1999) (also called Capital of State Enterprise Act)	Provides regulatory framework for converting state enterprises to private or public limited companies
Direct Sales and Direct Marketing Act, B.E. 2543 (2000)	Protects consumers against business operators taking "wilful advantage" of them through deception or coercion. Internet sales and marketing seem to be covered
Electronic Transactions Act, B.E. 2545 (2002)	Governs both civil and commercial electronic transactions
Establishment of and Procedure for Bankruptcy Court Act, B.E. 2542 (1999)	Established the Bankruptcy Court and sets out the rules governing its procedures
Foreign Business Act, B.E. 2542 (1999)	Replaced the 1972 Alien Business Law. Identifies the scope of foreign participation in businesses in Thailand
Governing Leasing of Immovable Property for Commercial and Industrial Purposes Act, B.E. 2542 (1999)	Rights to lease commercial or industrial property for a term of 30-50 years, to use as loan collateral, to transfer leases and to sub-lease
Money Laundering Control Act, B.E. 2542 (1999)	Combating illicit drug trade and corruption. An Anti-Money-laundering Prevention and Suppression Office established
Price of Goods and Services Act, B.E. 2542 (1999), and Trade Competition Act, B.E. 2542 (1999)	Replaced the 1979 Act on Price Fixing and Anti-Monopoly; Trade Competition Act aims to promote free and fair competition by preventing monopoly; administered by the new Trade Competition Commission
Protection of Layout Designs of Integrated Circuits Act, B.E. 2543 (2000); Protection of Plant Varieties Act, B.E. 2542 (1999); Trade Secret Act, B.E. 2545 (2002); Copyright Act (No. 3), B.E. 2542; Patent Act (No. 3), B.E. 2542; Patent Act, B.E. 2522 (1979); Trademark Act, B.E. 2534 (1991)	Intellectual property protection, including protection of trade secrets
Quarantine Act (No. 2), B.E. 2542 (1999)	Quarantine regulations
Ministry of Commerce Notification on Safeguard Measures, B.E. 2542 (1999)	Safeguard measures on imports
Land Code Act (No. 8), B.E. 2542 (1999), Condominium Act (No. 3), B.E. 2542 (1999)	Foreign ownership of land and property
Customs Act	Customs and import procedures, including customs valuation
Telecommunications Business Act, B.E. 2544 (2001)	Defines types of telecommunication licences, licensing scheme, network interconnection, rights of way, tariff regulations, universal service obligations and the role and responsibilities of the National Telecommunication Commission (NTC)
Act on Organizations to Assign Radio Frequency Spectrum and to Regulate Broadcasting and Telecommunication Services, B.E. 2543 (2000)	National Broadcasting Commission (NBC)
Life Insurance Act, B.E. 2535 (1992) Non-life Insurance Act, B.E. (1992)	Provide for licensing requirements and procedures, technical reserves, solvency margins, security deposits; administered by the Department of Insurance
Commercial Banking Act, B.E. 2505 (1962)	To be replaced by the new Financial Institutions Act, which is designed to strengthen supervisory practices and procedures in line with international best practices. It will combine the Commercial Banking Act and the Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business, thereby creating a uniform standard of supervision
Act on Undertaking of Financial Business, Securities Business, and Credit Foncier Business, B.E. 2522 (1979)	Covers finance business for commerce, development, disposition and consumption, housing and other types prescribed by ministerial regulation. Legislation also covers the formation of a company and application for a licence for finance, securities, and credit foncier companies

Table II.1 (cont'd)

Legislation	Description
Public Company Act, B.E. 2544 (2001)	Listed companies expected to benefit in terms of management and new tools to enhance efficiency in generating investor returns. Aims to promote debt workouts and raise the stock exchange to international standards. Key features include the abolition of the minimum par value for shares and provision of debt to equity conversion to assist creditor-debtor workouts
Mercantile Marine Promotion Act, B.E. 2521 (1978)	Provisions on possible measures to promote the maritime transport sector, prevention and prohibition of unfair practices, registration of maritime transport, port and shipyard operators, and submission of data and information to relevant authority

Source: Information provided by the Thai authorities.

20. A more effective regulatory frameworks and institutional arrangements would promote transparency and facilitate investment, including from overseas. Legislation is published in the official *Government Gazette*. Most ministries, including the Ministry of Commerce, have websites to disseminate information, mainly in Thai. An E-Government Action Plan (2005-2007), approved on 6 August 2005, should increase transparency.¹⁶ It should promote e-services and develop a government portal, enhance efficiency of infrastructure and networks, and improve laws and regulation related to e-commerce, security, and computer crime. So far the authorities have proposed six laws related to e-commerce, security, and computer crime.¹⁷

21. Thailand has made efforts to meet its transparency obligations concerning WTO notifications in certain areas, e.g. agriculture, subsidies, customs tariff (WTO Integrated Database (IDB)) (Table II.2) and import licensing procedures (first notification submitted in 2007).

Table II.2
Principal notifications under WTO Agreements, 2003 to July 2007

Agreement	Requirement/content	Document symbol and date of latest notification
Agreement on Agriculture		
Articles 10 and 18.2	Table ES:1 and ES:2 – Export subsidies	G/AG/N/THA/61, 20 December 2006
Article 18.2	Table MA:1 – Administration of tariff quotas	G/AG/N/THA/62, 22 January 2007
Article 18.2	Table MA:2 – Imports under tariff quotas	G/AG/N/THA/63, 22 January 2007
Article 18.2	Table DS:1 and the relevant supporting tables – Domestic support	G/AG/N/THA/59, 13 July 2006
Article 5.7 and 18.2	Table MA:5 – Use of special safeguard provisions	G/AG/N/THA/60, 21 December 2006
General Agreement on Tariffs and Trade (GATT) 1994		
Article VII	Customs valuation legislation	G/VAL/N/1/THA/1, 23 July 2003
Article XVII:4(a)	Notification of the understanding on the interpretation of Article XVII on State-trading	G/STR/N/11/THA, 17 August 2006
Article XXIV:7(a) - Free-Trade Areas	Free-trade agreement between Thailand and New Zealand	WT/REG207/N/1, S/C/N/361, 2 December 2005
	Free-trade agreement between Thailand and Australia	WT/REG185/N/1, S/C/N/311, 5 January 2005

Table II.2 (cont'd)

¹⁶ APEC (2007).

¹⁷ These are: the Electronic Transaction Act; the Computer Related Crime Act; the Royal Decree to Regulate e-Business Service relating to e-Transaction under Electronic Transaction Act B.E. 2544 (2001); the Royal Decree on Electronic Transactions in Public Sector; the Royal Decree to Regulate the Electronic Payment Service Provider; and the Royal Decree to oversee the Certification Authority.

Agreement	Requirement/content	Document symbol and date of latest notification
Agreement on Implementation of GATT Article VI of the GATT 1994 (Anti-dumping)		
Article 16.4	Ad hoc reports of anti-dumping actions	G/ADP/N/159, 12 July 2007
	Semi-annual reports of anti-dumping actions (taken within the preceding six months)	G/ADP/N/153/THA, 24 January 2007
Article 16.5	Competent authorities	G/ADP/N/14/Add.23, 24 April 2007
General Agreement on Trade in Services		
Articles III:4, and IV:2	Enquiry and contact points	S/ENQ/78/Rev.9, 1 December 2006
Article V:7(a)	Free-trade agreement between Thailand and New Zealand	WT/REG207/N/1, S/C/N/361, 2 December 2005
	Free-trade agreement between Thailand and Australia	WT/REG185/N/1, S/C/N/311, 5 January 2005
Agreement on Import Licensing Procedures		
Article 7.3	Replies to questionnaire	G/LIC/N/3/THA/1, 22 March 2007
Agreement on the Application of Sanitary and Phytosanitary Measures		
Article 7 and Annex B	Notification of SPS measures	G/SPS/N/THA/161, 7 May 2007
Agreement on Subsidies and Countervailing Measures		
Article 25.1	Notification of subsidies	G/SCM/N/123/THA/Corr.1, G/SCM/N/128/THA/Corr.1, 5 July 2005
Article 25.11	Semi-annual report on countervailing duty actions	G/SCM/N/153/Add.1, 18 April 2007
Article 25.12	Competent authorities	G/SCM/N/18/Add.23, 24 April 2007
Agreement on Technical Barriers to Trade (TBT)		
Article 2.10	Notification regarding environmental measures, technical barriers and technical regulations	G/TBT/N/THA/201, 28 April 2006
Article 2.9	Notification of technical regulations	G/TBT/N/THA/241, 27 June 2007
Article 5.6	Notification of products covered by conformity assessment procedure	G/TBT/N/THA/244, 24 July 2007

Source: WTO documents.

(6) TRADE AGREEMENTS AND ARRANGEMENTS

(i) Thailand and the WTO

22. Thailand accords at least MFN treatment to all WTO Members, but not necessarily to non-members. Thailand is neither a member nor observer of the WTO Agreement on Government Procurement; however, it participates in the Working Group on Transparency in Government Procurement. As a party to the Ministerial Declaration on Trade in Information Technology Products (the Information Technology Agreement), Thailand phased out tariffs on eligible products in 2005 (Chapter III).

23. During the period under review, Thailand, a member of the Cairns Group of agricultural producers and exporters¹⁸, reiterated that a successful outcome of the ongoing Round of multilateral trade negotiations would require Members to comprehensively address the needs and well-being of the people in the agricultural sector; real improvement in market access and reductions and or elimination of trade-distorting support would be crucial.¹⁹ An agreement on the agricultural sector

¹⁸ Within the WTO, Thailand has joined other developing countries in strongly supporting efforts for multilateral trade liberalization in agriculture; these include major reforms to market access, domestic support, and export subsidies, including their elimination, as key outcomes of the Doha Development Agenda.

¹⁹ WTO documents WT/MIN(05)/ST/11, 14 December 2005, and WT/MIN(03)/ST/16, 10 September 2003.

would advance work on key issues such as the "underpinning rules and disciplines"; fairer and more predictable trade disciplines would avoid backdoor protectionism. All negotiated agreements should faithfully reflect the development dimension, and assist developing countries to better integrate into the global trading system. The Government considers that an open and free global trading environment is the essential ingredient to achieve the poverty reduction goal, and that agriculture trade is the key to lifting income and to sustainable development.

(ii) Preferential, regional, and bilateral arrangements

(a) Preferential arrangements for developing and least developed countries

24. Thailand provides preferential tariff treatment on certain imports from other developing countries under the Global System of Trade Preferences (GSTP) (Chapter III). According to the authorities the utilization rate of GSTP treatment for Thai exports is very low; in 2006, Thai exports under GSTP treatment decreased by 11.2%. No further information was available on changes in import-related GSTP commitments. At the same time, Thailand receives trade preferences under the Generalized System of Preferences (GSP) schemes of 34 partners. About 30% of Thailand's merchandise exports received GSP treatment in 2006 (19% in 2002). Most GSP exports are destined for the EC (33.9% of the total) and the United States 21.7%; 20.2% went to Japan.

25. In 2006, the United States reinstated GSP privileges for nine Thai products (fresh durians, dried papayas, preserved papayas, dried tamarind, rice flour, candied fruit and nuts, oil cake, CRT and VCR colour televisions, and jewellery and non-electrical ornaments); it removed four types of goods (cereals, canned lychees and longans, aluminium products, and plastic goods).²⁰ The EC's recent GSP programme restored benefits (as from 1 January 2006) for fishery products²¹, edible preparations and beverages, plastic and rubber, leather and fur skins, footwear, and consumer electronics.²² However, two sections were removed: vehicles, aircraft, vessels and associated transport equipment; and jewellery. Furthermore, at the end of 2006, the EC concluded an agreement with Thailand (and Brazil) on a new regime for imports of salted poultry meat and cooked chicken meat into the EC pursuant to negotiations under Article XXVIII of the GATT 1994. In mid 2007, the EC in-quota tariff rate on cooked poultry meat from Thailand was lowered to 8% (from 10.9%), while the out-of-quota rate has been €1,024 per tonne.

(b) Regional arrangements

*ASEAN*²³

26. Thailand is an original member of the Association of South-East Asian Nations (ASEAN); it participates in the ASEAN Free-Trade Area (AFTA), which has been in place since 1993 and aims to promote the region's competitive advantage as a single production unit. The elimination of tariff and non-tariff barriers among member countries is expected to promote greater economic efficiency, productivity, and competitiveness. In consequence of the financial and economic crisis, members agreed in 1999 to work towards the elimination of all import duties among ASEAN-6 members (Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, and Thailand) by 2010, and for

²⁰ EIU (2006b).

²¹ The December 2004 tsunami had badly hurt shrimp exporters, and to help them the EU agreed, in September 2005 to introduce the new GSP import tariffs for this sector, retroactively, from August 2005. EIU (2006b).

²² EIU (2006b).

²³ This section is based largely on comprehensive ASEAN Secretariat online information. Viewed at: <http://www.aseansec.org/> and <http://www.aseansec.org/4920.htm>.

ASEAN-4 (Cambodia, Lao PDR, Myanmar, and Viet Nam) by 2015 with some flexibilities, except on some sensitive products. Quantitative restrictions and other non-tariff barriers are also to be eliminated.

27. ASEAN achieved the original target of the AFTA as scheduled in 2003. Tariffs on almost all products traded among ASEAN-6 were reduced to rates between zero and 5%. The ASEAN-4 have been implementing their Common Effective Preferential Tariff-(CEPT) commitments in line with timeframes agreed upon accession. According to Thailand's consolidated CEPT, in 2006 AFTA preferences granted to imports into Thailand from these countries were set at ten rates ranging from zero (49.7% of tariff lines) to 5% (46.9% of tariff lines) as well as nine items at rates of 30% (flowers, potatoes), 35% (copra) and 40% (coffee).²⁴

28. In 2007, ASEAN continued to eliminate tariffs under the CEPT Scheme and was expected to reduce tariffs to zero for at least 80% of products. Thailand, together with other ASEAN Members, transposed its tariff nomenclature from the ASEAN Harmonized Tariff Nomenclature (AHTN) 2002 to AHTN 2007 on 1 January 2007 (Chapter III); upon completion of the process, more than 6,600 tariff lines out of 8,300 (79.5% of all lines) will be at zero tariff rate. This tariff reduction will be effective retroactively (from 1 January 2007). The remaining tariffs (about 1,700 tariff lines) are to be eliminated by 2010.

29. ASEAN countries are also negotiating intra-regional services liberalization (the 1995 ASEAN Framework Agreement on Services - AFAS); AFAS liberalization aims to achieve commitments beyond members' commitments under GATS (GATS-Plus principle). Members have continued to work on further expanding the negotiations to cover all sectors and all modes of supply; steps are being taken to achieve a free flow of services by 2015 with flexibility. ASEAN has concluded five packages of AFAS commitments through four rounds of negotiations since 1 January 1996. Individual commitments contain horizontal and sector-specific commitments and MFN exemptions²⁵; the latest (fifth) package was signed in December 2006. Commitments have liberalized trade in priority sectors, i.e. air transport, business services, construction, financial services, maritime transport, telecommunications, and tourism. Thailand's AFAS commitments go beyond its GATS commitments by broadening the scope of services activities in: business services, telecommunications, construction, financial services, tourism, recreational services, air transport, and maritime transport. Nevertheless, foreign equity limitations of 49% on commercial presence remain in the horizontal section.

30. Other agreements aimed at promoting intra-ASEAN trade, investment, and greater regional integration include the ASEAN Industrial Cooperation Scheme (AICO) and the ASEAN Investment Area (AIA). The AICO, signed in 1996, encourages technology-based investments in ASEAN; ASEAN-based companies meeting certain conditions are eligible.²⁶ AICO-approved products, raw materials, and intermediate inputs are immediately subject to preferential duties ranging from zero to 5% and eligible for local-content accreditation and as yet unspecified "non-tariff incentives". The AIA, signed in October 1998, aims to increase foreign investment from ASEAN and non-ASEAN

²⁴ For individual ASEAN member CEPT status see ASEAN Secretariat online information. Viewed at: <http://www.aseansec.org/18727.htm> [15 May 2007].

²⁵ ASEAN Secretariat online information. Viewed at: <http://www.aseansec.org/19353.htm> [15 May 2007].

²⁶ Companies must incorporate and operate in an ASEAN country; have at least 30% ASEAN equity; and be sharing resources (e.g. sharing of technology, market sharing, or consolidated purchases of raw materials). At least two companies in two ASEAN countries must participate. These conditions may be waived in certain circumstances. In February 2007, there were 145 (90 in 2002) approved AICO applications (annual transaction value of US\$1.8 billion).

regional sources by removing barriers to all ASEAN investors by 2010 and for all investors by 2020.²⁷ Business listed in general exclusions and sensitive products are excluded.²⁸ ASEAN-6 and Cambodia agreed to remove their temporary exclusions for ASEAN investors in manufacturing from 2003. Temporary exclusions in manufacturing, agriculture, fisheries, forestry, mining and related incidental services are to be removed by 2010 for the ASEAN-6 and Cambodia, by 2013 for Viet Nam, and by 2015 for the Lao PDR and Myanmar.

31. In 2004, ASEAN decided to establish the ASEAN Economic Community (AEC) by 2020. Its aim is to turn ASEAN into a single market and production base with free flow of goods, services, capital, investment, and skilled labour. To ensure concrete progress, ASEAN has accelerated integration in 12 priority sectors, i.e. wood-based products, automotive products, rubber-based products, textiles and apparel, agri-based products, fishery products, electronics, e-ASEAN, healthcare, air travel, tourism, and logistics. In late 2006, ASEAN Leaders decided to shorten the timeframe for realizing the AEC to 2015. Key measures to be implemented within a specific timeframe for the priority goods sectors include:

- eliminating CEPT-AFTA tariffs on all identified products by 2007 for ASEAN-6 and 2012 for ASEAN-4;
- improving the CEPT rules of origin by making them more transparent, predictable, and standardized;
- adopting "substantial transformation" as an alternative criterion for conferring origin status;
- extending the application of the AHTN for extra-ASEAN trade;
- developing a simplified, improved, and harmonized customs declaration form;
- ensuring full implementation of the green lane system for CEPT products;
- developing the single window approach, including electronic processing of trade documents at national and regional levels;
- accelerating the implementation/development of sectoral mutual recognition arrangements (MRAs);
- harmonizing procedures for the issuance of visas to international travelers and providing visa exemption for intra-ASEAN travel by ASEAN nationals.

32. Further, ASEAN has strengthened its institutional mechanisms, particularly the ASEAN Dispute Settlement Mechanism, to ensure proper implementation of all related ASEAN economic agreements and expeditious resolution of disputes. The ASEAN Protocol on Enhanced Dispute Settlement Mechanism was signed in November 2004.

33. Currently, ASEAN is developing the AEC blueprint, which will be a single and coherent work plan for advancing AEC. This blueprint is to be a legally binding document through a

²⁷ The AIA is based on opening all industries to foreign investment, and phasing out exclusions; immediate national treatment for ASEAN investors, with few exceptions; eliminating investment impediments; streamlining investment procedures; enhancing transparency; and applying investment facilitation measures.

²⁸ A list of temporary exclusions was adopted for agriculture, forestry, and fisheries in October 2000.

declaration by the Leaders, to be signed at the 13th ASEAN Summit to be held in Singapore in November 2007.

34. ASEAN members are increasingly pursuing bilateral cooperation with non-member states, and other regional inter-governmental organizations.²⁹ Through ASEAN, Thailand is actively pursuing regional trade liberalization. The ASEAN+3 members (China, Japan, and Republic of Korea) agreed in November 2002 to study and formulate options to gradually establish an East Asia Free Trade Area (EAFTA). A Joint Expert Group (JEG) for Feasibility Study on EAFTA, established in 2004 and comprising representatives from ASEAN+3 countries, submitted its 2006 report "Towards an East Asia FTA: Modality and Roadmap", to the ASEAN Economic Ministers Meeting in 2007. It recommends mainly that: (i) the EAFTA process should start within the ASEAN+3 framework; (ii) the EAFTA should be comprehensive in scope with substantial liberalization in all sectors; and (iii) economic development cooperation initiatives with specific action plans must be an integral part of EAFTA. In view of the economic diversity of countries in East Asia, it should take into account the need for capacity building among its members. The Republic of Korea has proposed the Phase II study of EAFTA involving an in-depth sector-by-sector analysis of EAFTA, to examine concrete elements of EAFTA such as market access for goods, services and investment, and rules of origin. The new study is expected to come up with options for realizing EAFTA. The first meeting was in June 2007. Thailand supports stronger ASEAN trade links with Australia, Japan, Korea (Rep. of), India, and New Zealand. Negotiations for an EC-ASEAN FTA were launched in May 2007.

35. At the ASEAN-Japan Summit in Cambodia in November 2002, leaders decided that ASEAN and Japan would develop a framework for realizing an ASEAN-Japan Comprehensive Economic Partnership within ten years. In 2003, ASEAN and Japan signed the Framework for ASEAN-Japan Comprehensive Economic Partnership. There have been eight rounds of negotiations since April 2005. Both sides expect to conclude the negotiations in 2007.

36. The ASEAN-China Free Trade Area (ACFTA), signed in December 2004 aims to eliminate most tariffs on trade between ASEAN and China by 2010 (2015 for the less developed members of ASEAN).³⁰ Tariffs will not be completely eliminated: members will be able to designate a number of sectors as sensitive, and the greatest liberalization is therefore likely to occur in areas where Chinese and ASEAN trade is complementary.³¹ The Agreement on Trade in Goods under ACFTA has been implemented since 1 July 2005. Tariffs on normal-track products, which include approximately 90% of total tariff lines, are not higher than 12% for ASEAN-6 and China; and not higher than 40% for ASEAN-4. Furthermore, ASEAN members and China signed a ACFTA Framework Agreement on Trade in Services in January 2007 (effective July 2007); according to the authorities the Framework Agreement is GATS-consistent.³² In addition to Thailand's GATS commitments, the Agreement covers new sub-sectors (education and transport services) and improvements in terms of expansion in modes of supply (professional and tourism services). An agreement on dispute-settlement was also signed.

37. An ASEAN and Korea (Rep. of) agreement on trade in goods was signed in August 2006.³³ However, Thailand has not signed this agreement due to irreconciled negotiations on the products included in the sensitive list (the sensitive track). The ASEAN-6 is to begin cutting its tariff rates on at least 50% of total tariff lines to a range between zero and 5%, effective 1 June 2007; and Korea is

²⁹ These include the Andean Council, the Australia-New Zealand Closer Economic Relations (CER), MERCOSUR, the South Asian Association for Regional Cooperation, and the South Pacific Forum.

³⁰ World Bank (2006c), Box 6.

³¹ EIU (2006c).

³² World Bank (2007); and APEC (2007).

³³ World Bank (2006c), Box 6.

to eliminate tariffs on at least 70% of its total tariff lines. The other ASEAN members, Cambodia, Lao PDR, Myanmar, and Viet Nam were allowed to have more flexibility on eliminating their tariff rates. ASEAN and Korea are negotiating an Agreement on Trade in Services and Investment, which is expected to be concluded by the end of 2007.

Asia-Pacific Economic Cooperation (APEC)

38. Thailand intends to meet APEC's target of free and open trade, including in services and investment by 2020 for developing economies (2010 for developed economies). These are to be achieved on a voluntary and non-binding basis (concerted unilateral liberalization) using Individual Action Plans (IAPs) as road maps containing the intended actions in 15 policy areas for realizing APEC's liberalization goals. The IAPs are updated annually.

39. APEC's goals are based on key general principles of comprehensiveness, WTO consistency, and non-discrimination (or open regionalism) contained in the Osaka Action Agenda, whereby trade liberalization should not discriminate between APEC economies or between them and non-APEC countries. Nonetheless, many APEC economies, including ASEAN members, have either formed or are contemplating regional trading arrangements that discriminate against other APEC and non-APEC economies. According to the authorities, these agreements help promote economic growth of members while also promoting greater international trade liberalization consistent with WTO rules and disciplines and APEC's goals and principles.

40. APEC has strengthened its peer review process to examine more rigorously the progress of APEC economies in achieving their free and open trade and investment targets. Thailand was reviewed in February 2003; its next review is due in early 2009.³⁴ The review concluded, *inter alia*, that it is in Thailand's interest to liberalize trade and investment. It indicated that Thailand viewed its bilateral/regional arrangements as complementary to its multilateral trade and investment liberalization goals. The APEC Secretariat also noted that Thailand's trade regime risked becoming more discriminatory if concessions under an anticipated network of FTAs provided preferential access to partners.

41. APEC has engaged in extensive work on RTAs/FTAs and is developing "model measures" chapters that could be used by members in their negotiations in order to achieve high-quality, comprehensive RTAs/FTAs. Thailand has been active in this work: of the 17 model measures put forward, it has proposed the measures on cooperation; sanitary and phytosanitary measures; subsidies and countervailing measures; and anti-dumping. In November 2006, APEC leaders approved measures on cooperation; trade in goods; technical barriers to trade; transparency; government procurement; and dispute settlement; 11 model measures remain under discussion.

42. Trade facilitation is one of the three pillars contained in the 1995 Osaka Action Agenda, a template for future APEC works towards achieving the Bogor goals. Thailand recognizes the significance of trade facilitation in the economy's overall trade strategy, and has implemented agreements, conventions, and recommendations for the development of trade facilitation in the harmonization of standards and conformity, simplification and streamlining of customs procedures, enhanced transparency of customs services to assist traders, improved cooperation and coordination among private-public sectors, use of risk management for trade control, IT and e-commerce for improved trade documentation, and mobility of business people. Thailand's efforts contributed to APEC's aim of reducing transaction costs by 5% from 2001 to 2005. Thailand will continue to improve trade facilitation in order to meet APEC's goal of reducing transaction costs by a further 5% during 2006-10.

³⁴ For more information see WTO (2003).

*Asia-Europe Meetings (ASEM)*³⁵

43. The informal process of dialogue and cooperation among 45 members, (EC States, the EC, the ASEAN Secretariat and 16 Asian countries), including Thailand, addresses political, economic, social, and other issues to strengthen regional relationships. The Trade Facilitation Action Plan (TFAP) aims to reduce non-tariff barriers, increase transparency, and promote trade opportunities between the two regions. It specifies bi-annual "concrete goals" in the priority areas of customs, standards and conformity assessment, public procurement, quarantine and SPS, intellectual property, mobility of business people, and other trade activities, such as market access in distribution. Concrete goals adopted for 2002-04 include new initiatives for enhanced paperless customs procedures. The Investment Promotion Action Plan (IPAP) continues to promote two-way investment by focusing on investment promotion and policy issues. ASEM members negotiating regional and bilateral free-trade arrangements are to ensure that these complement multilateral rules and are WTO consistent.³⁶ The Asia-Europe Business Forum (ABEF) fosters regional cooperation among the private sector. The ASEM Trust Fund also finances technical assistance on financial sector restructuring and addressing poverty.

Asia Cooperation Dialogue (ACD)

44. The ACD, a Thai initiative launched in June 2002, aims to serve as a "missing link" for all Asian sub-regions to create strategic partnerships and cooperation by drawing upon and combining Asia's diverse strengths so as to position it as a viable partner for other regions.³⁷ The 30-country ACD has rapidly enhanced cooperation on dialogue and projects. On the dialogue dimension, ACD Ministers have met annually at the ACD Ministerial Meetings in Cha-Am (2002), Chiang Mai (2003), Qingdao (2004), Islamabad (2005), Doha (2006), and Seoul (2007) to discuss ACD developments, issues of regional cooperation, and ways to enhance and solidify Asian unity.³⁸ On the project dimension, many countries have proposed to be "prime movers" in 19 areas of cooperation, including energy, agriculture, biotechnology, tourism, poverty alleviation, information technology development, e-education, and financial cooperation.

Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation or Bangladesh-India-Myanmar-Sri Lanka-Thailand Economic Cooperation (BIMSTEC)

45. Thailand supports the BIMSTEC forum's objectives of facilitating and promoting trade, investment, and technical cooperation among members by forging links between ASEAN and SAARC, and developing a free-trade area. Currently, there are 13 priority sectors of cooperation with the designated lead countries, involving trade and investment, tourism, energy, technology, fisheries, transport and communications, agriculture, public health, poverty alleviation, counter-terrorism and transnational crime, protection of biodiversity/environment and natural disaster management, culture, and people to people contact. Thailand leads the work on fisheries, public health, and people-to-people contact.

46. A Framework Agreement on the BIMSTEC Free Trade Area, signed on 8 February 2004, provided for the progressive establishment of a free-trade area between July 2006 and June 2012, as

³⁵ Europa online information. Viewed at: http://ec.europa.eu/external_relations/asem/intro/index.htm.

³⁶ Chair's Statement, 8th ASEM Senior Officials Meeting on Trade and Investment, 17 July 2002, Bali.

³⁷ Members are Bahrain, Bangladesh, Bhutan, Brunei Darussalam, Cambodia, China, India, Indonesia, Iran, Japan, Kazakhstan, Republic of Korea, Kuwait, Lao PDR, Malaysia, Mongolia, Myanmar, Oman, Pakistan, the Philippines, Qatar, Russian Federation, Saudi Arabia, Singapore, Sri Lanka, Tajikistan, Thailand, United Arab Emirates, Uzbekistan, and Viet Nam.

³⁸ ACD online information. Viewed at: <http://www.acddialogue.com/web/2.php>.

well as the launch of negotiations on trade in goods, trade in services and investment.³⁹ Trade in goods will be liberalized through progressive elimination of tariffs and non-tariff barriers in two phases. Products will be identified for fast track or normal track liberalization.⁴⁰ For fast-track products, non-LDC parties will eliminate tariffs for LDC parties by 30 June 2007, but among themselves by 30 June 2009; and LDC parties will eliminate tariffs for non-LDCs by 30 June 2011, but among themselves by 30 June 2009. For the normal-track products, non-LDCs will eliminate tariffs for LDCs by 30 June 2010, but among themselves by 30 June 2012; and LDCs will eliminate tariffs for non-LDCs by 2017, but among themselves by 30 June 2015. Negotiations on trade in goods are ongoing (June 2007); members have not yet reached a consensus on product coverage under the normal track. Reportedly, Thailand would like to keep the negative list at 10% of total 6-digit HS code items while other participants preferred to maintain the negative list at 20%.⁴¹ In addition, the rules of origin are in the process of negotiation. Negotiations on trade in services and investment commenced in December 2005 and are scheduled to conclude by end 2007, aiming for liberalization in line with relevant WTO provisions. A draft agreement on trade in services and investment was prepared by India in July 2006.⁴²

Greater Mekong Subregional Economic Cooperation (GMS-EC)

47. Along with other members, Cambodia, China (Yunnan Province and Guang Xi Zhuang Autonomous Region), Myanmar, Lao PDR, and Viet Nam, Thailand believes that mutual benefits from closer trade, investment, and economic cooperation will promote economic and social development. The GMS vision is for sustainable development and poverty reduction, and a competitive sub-region that is more globally integrated. Assisted by the Asian Development Bank, its work programme has centred on linking the sub-region through transport networks, facilitating movement of goods and people by implementing the GMS Cross Border Transport Agreement (CBTA) by 2008, marketing GMS as a single tourism destination, and improving infrastructure, including in energy and telecommunications, for enhanced regional power and communication systems. An action plan on trade and investment facilitation was to be formulated by 2003 as a support for the ASEAN-China Free Trade Area and ASEAN trade liberalization.⁴³ The GMS also agreed on the Phnom Penh Plan for Development Management (PPP), as a capacity building initiative, to improve efficiency and effectiveness in the GMS countries. The 3rd GMS Summit is expected to be held in March 2008 in Vientiane, Lao PDR.

Indonesia-Malaysia-Thailand Growth Triangle (IMT-GT)

48. The Indonesia–Malaysia–Thailand Growth Triangle (IMT–GT) seeks to promote sub-regional economic cooperation to drive growth and development in southern Thailand, northern Malaysia and Indonesia's Sumatra Island. Its focus is on trade and investment, technology transfer, production cooperation, and use of natural resources, as well as development of infrastructure and transportation linkages in the triangle area, with enhanced involvement of the private sector. Of the six areas of cooperation, Thailand is the lead country for halal products and services and tourism.

Ayeyawady - Chao Phraya - Mekong Economic Cooperation Strategy (ACMECS)

49. The aim of ACMECS is to bridge the economic gaps among Cambodia, Lao PDR, Myanmar, Viet Nam, and Thailand, and to promote prosperity in the sub-region in a sustainable manner. ACMECS seeks to build upon existing regional cooperation programmes and complement bilateral

³⁹ BIMST-EC online information. Viewed at: http://www.bimstec.org/free_trade_agreement.asp.

⁴⁰ More online information. Viewed at: http://www.mofa.gov.bd/bimstec/bimstec_back.html.

⁴¹ World Bank (2007); and APEC (2007).

⁴² World Bank (2006c), Box 6.

⁴³ Asian Development Bank (2002).

frameworks wherever possible and appropriate. The key areas of cooperation are trade and investment facilitation, transport linkages, agriculture, industry and energy, public health, tourism, and human resource development. ACMECS supports the goals of ASEAN as well as other regional and sub-regional frameworks, and thus continues to form a major component of Thailand's foreign policy. ACMECS also represents part of Thailand's efforts to provide more assistance to other developing countries.⁴⁴

(c) Bilateral arrangements

50. During the period under review, Thailand has pursued FTAs with major trading partners, viewing trade liberalization under the WTO as being unlikely to produce quick results.⁴⁵ Thailand believes that FTAs can be an effective catalyst for free trade and a building block for the multilateral trading system. In addition, Thailand hopes to use FTA negotiations as a means to maintain and strengthen its shares in traditional export markets such as Japan, the United States, and ASEAN as well as to broaden and deepen its trade and investment access in potential new markets, particularly China, India, Australia, and New Zealand. An FTA with a group of South Asian countries (e.g. BIMSTEC) is viewed as a means to intensify regional linkages, while an FTA with a far-off country, like Peru, is hoped to be the major step towards expanded trade with Latin America.

51. A Framework Agreement on Closer Economic Partnership between Thailand and Bahrain entered into force on 29 December 2002. The two parties exchanged a list of 626 items, on which tariffs of 3% were to be eliminated immediately under an early harvest programme. Other tariffs were expected to be eliminated by 2010. By end-October 2006, the tariff reductions under the early harvest programme were not yet in effect.⁴⁶ This is because of Bahrain's Gulf Cooperation Council obligations concerning commitments undertaken with a third country. Presently, the negotiations on a Thailand-Bahrain FTA are suspended.

52. After eliminating tariffs on 82 items under the early harvest scheme (EHS) in September 2006, Thailand and India have continued to work together to facilitate trade flows by negotiating the Agreement on Cooperation on Sanitary and Phytosanitary Measures and Food Standards.⁴⁷ In April 2007, the Thai Industrial Standards Institute and the Bureau of Indian Standards signed an MOU to facilitate closer cooperation, with the aim of strengthening standardization, certification, measurement and testing activities, and facilitating sharing of expertise. A meeting was planned for June 2007 to discuss the items to be included in the tariff reduction/elimination schedule under a normal-track and sensitive-track list, as well as issues on trade in services and investment.

53. The Thailand-Australia Free Trade Agreement (TAFTA) entered into force on 1 January 2005. It is to lead to the elimination of Thailand's tariffs across all sectors by 2025; around half of Thailand's tariffs were eliminated upon entry into force, while most of the remaining tariffs will be phased down and eliminated by 2010.⁴⁸ Special safeguard measures are allowed during a certain period for 41 agricultural tariff items. For each of these products, imports beyond a predetermined annual trigger level may, for the remainder of a calendar year, be charged with the current MFN tariff rate or the base rate, whichever is lower, in lieu of the preferential rate. Implementation progress is reviewed by a Thailand-Australia FTA Joint Commission. The agreement

⁴⁴ The authorities indicate that the UNDP Global Partnership for Development Report for 2003 cited Thailand as having allocated 0.12% of its GDP to official development assistance (ODA), a level comparable to OECD countries, such as the UK (0.12%), Germany (0.10%), France (0.17%), and the United States (0.04%).

⁴⁵ *The Nation*, "Trade Liberalisation: Thai-NZ talks kick off today", 15 June 2004. Viewed at: http://www.bilaterals.org/article.php3?id_article=215 [16 May 2007].

⁴⁶ World Bank (2006c), Box 6.

⁴⁷ World Bank (2007); and APEC (2007).

⁴⁸ Australian Government, Austrade (undated).

substantially improves the environment for bilateral services, investment, and business mobility. Further negotiations on trade in services are scheduled to take place within three years from the entry into force of the agreement, i.e. on 1 January 2008.

54. The Thailand and New-Zealand Closer Economic Partnership (CEP) Agreement, effective 1 July 2005, aims to establish an FTA by 2025. Initial tariff eliminations took place upon implementation of the CEP and a second round followed on 1 January 2006; subsequent tariff reductions will be applied on 1 January each year with the last tariffs and quotas removed in 2025.⁴⁹ There is scope for negotiations to accelerate tariff reductions in the future. Some agricultural imports to Thailand are subject to a special safeguard measure. As Thailand was not able to consider significant coverage of services when the CEP was negotiated, it was agreed to schedule negotiations on the liberalization of services trade within three years of entry into force (i.e. 2008). A Thailand-New Zealand (CEP) Joint Commission reviews progress on implementation.⁵⁰

55. According to a protocol on the acceleration of liberalization of trade in goods and trade facilitation, signed in November 2005, Thailand and Peru agreed to reduce the tariff rates on items in the early harvest scheme once the technical issues, in particular, the rules of origin are mutually agreed.⁵¹ Although the official agreement on the rules of origin was signed in November 2006, both parties are still proceeding to reduce the tariffs, and the reductions under the EHS are expected to be effective December 2007. No information on product coverage and depth of tariff cuts was available from the authorities.

56. A comprehensive Japan-Thailand Economic Partnership Agreement (JTEPA) covering trade in goods and services as well as investment was signed on 3 April 2007.⁵² Both parties are in the process of completing internal procedures for the entry into force of the agreement, which is expected to be effective 1 October 2007. Once the agreement become effective, tariff rates on about 90% of total tariff lines will be reduced.⁵³ For Thailand, 5,495 products or 99.82% of tariff lines (2006 tariff nomenclature) will be subjected to tariff reduction/elimination and tariff quota within ten years. For Japan, 8,612 products or 98.06% of tariff lines will be subject to tariff reduction/elimination and tariff quota within 15 years. In terms of trade in services, Thai investors will be allowed to expand more businesses such as spas, hotels, and restaurants in Japan. In addition to its GATS commitments, Thailand's commitments under JTEPA cover advertising services, logistics consulting services, computer and related services, maintenance and repair (household electrical appliances only), wholesale trade and retailing (certain products only), luxury hotel services, restaurant services, and management consulting (general management, marketing management, human resources management, product management). Thai investors will be allowed to invest in all industries except medicine, aerospace, oil production, energy, mining, fishery, agriculture, forestry and other related industries. Japanese investors are allowed up to 50% equity in manufacture of automobiles with no requirement to apply for authorization, subject to certain conditions.

57. Other bilateral FTA negotiations are still under way, include with India, Peru, and EFTA.⁵⁴ Negotiations with the United States have been on hold since the 2006 political developments, until a new government is appointed.⁵⁵

⁴⁹ New Zealand Ministry of Foreign Affairs and Trade (2005).

⁵⁰ World Bank (2006c), Box 6.

⁵¹ World Bank (2006c), Box 6; World Bank (2007); and APEC (2007).

⁵² World Bank (2007); and APEC (2007).

⁵³ These include, for example, frozen shrimp and fish, fruit and vegetables, wearing apparel, leather goods, textiles, and jewellery.

⁵⁴ World Bank (2006c), Box 6.

⁵⁵ World Bank (2007); and APEC (2007).

(7) TRADE DISPUTES AND CONSULTATIONS

(i) Dispute settlement under the GATT/WTO

58. Thailand views the WTO Dispute Settlement Mechanism as a workable instrument that provides predictability and stability to the multilateral trading system, even though some cases require outside expertise or legal services to be retained at very high cost.⁵⁶ As a result, disputes may not be pursued through the WTO process because the high costs of legal or other experts exceed the potential benefits. Thailand considers that the increasing use of the system by developing Members, both as complainants and respondents, demonstrates the need for legal expertise to enable them to navigate the system effectively. It therefore views as crucial the role of the Advisory Centre on WTO Law, as accessible legal expertise is critical to encouraging and enabling developing country Members to take on deeper commitments under the WTO.

59. Thailand has been involved directly in six dispute cases (four initiated since 2003) within the WTO since its last Trade Policy Review; three remain at the consultation stage and virtually all relate to agricultural and fisheries exports to the EC or the United States.⁵⁷ During the period under review no case was brought against Thailand (Table II.3).⁵⁸

Table II.3
Involvement in the WTO Dispute Settlement Mechanism, 2000-07

Dispute	Complainant/respondent (WTO document)	Request for consultation	Panel report circulated	Appellate Body Report circulated/ adopted	Arbitration requested/ circulation of reports
Continued Dumping and Subsidy Offset Act of 2000 (Byrd Amendment)	Australia; Brazil; Chile; EC; India; Indonesia; Japan; Korea; Thailand/United States (WT/DS217/1)	21.12.00	16.09.02	16.01.03/27.01.03	Article 21.3(c): 14.03.03/13.06.03 Article 22.6: 23.06.04/31.08.04
Generalized System of Preferences	Thailand/EC (WT/DS242/1)	07.12.01	-	-	-
Export subsidies on sugar	Thailand/EC (WT/DS283/1)	14.03.03	15.10.04	28.04.05/19.05.05	Article 21.3(c): 30.08.05/28.10.05
Customs classification of frozen boneless chicken cuts	Thailand/EC (WT/DS286/1)	25.03.03	30.05.05	12.09.05/27.09.05	Article 21.3(c): 09.12.05/20.02.06
Provisional anti-dumping measures imposed on certain frozen and canned warmwater shrimp	Thailand/United States (WT/DS324/1)	09.12.04	-	-	-
Anti-dumping measures on imports of frozen warmwater shrimp	Thailand/United States (WT/DS343/1)	24.04.06	-	-	-

Note: Excludes disputes in which Thailand participated as a third party.

Source: WTO Secretariat.

⁵⁶ Chapter 12 at APEC (2006b).

⁵⁷ Overall, Thailand has been a complainant in 12 cases and respondent in one case under the WTO Dispute Settlement Mechanism.

⁵⁸ Only one case has been brought against Thailand, in 1998 by Poland, on anti-dumping duties imposed on angles, shapes and sections of iron or non-alloy steel and H-beams in 1996.

(ii) Other

60. ASEAN's dispute settlement mechanism is similar to that of the WTO. The authorities state that Thailand's trade and economic disputes with other ASEAN members have been reduced amicably through bilateral consultation/discussion. Thailand has never used the formal ASEAN dispute settlement mechanism.

(8) FOREIGN INVESTMENT REGIME

(i) Recent developments

61. Thailand maintains a relatively open foreign investment regime. It views foreign direct investment (FDI) as vital to the economy's growth, and encourages investors from all sources; FDI inflows have remained robust during the period under review (Chapter I). According to a recent World Bank study, Thailand's investment climate is favourable by international standards, although firms' operations still seem to be hindered by heavy regulatory burden, shortages of skills, and infrastructure deficiencies especially outside Bangkok.⁵⁹ However, the authorities consider that Thailand has adequate infrastructure, as indicated by the JBIC, IMD, and BOI.⁶⁰ The authorities' statistics show that distribution utilities' power outage have progressively improved; nevertheless, although in general both the average interruption frequency and duration indicators were reduced between 2000 and 2006, the provincial electricity indicators remain up to 18 times worse than those of metropolitan electricity indicators. Further improvements to the investment climate would allow Thai businesses to compete more effectively in the region and the world.

(ii) Basic framework

62. During the period under review no major changes were made to the regulatory and institutional framework governing foreign investment in Thailand. The legislation (Foreign Business Act B.E. 2542) dates back to November 1999. The Foreign Business Act (FBA) maintains negative lists of restricted activities.⁶¹ Other activities, except for those governed by other laws, for example, banking, insurance, aviation, transportation, commodity export, mining, are fully open to foreign participation. Foreigners or foreign companies are prohibited from holding 50% or more equity in List 1 businesses (e.g. media, farming, forestry, and fishing).⁶² Foreigners investing 50% or more equity in List 2 businesses (e.g. domestic aviation, sugar refining and salt mining), and List 3 activities (rice milling, fisheries, plywood manufacture, and certain professional services (e.g. legal)),

⁵⁹ Specific issues of regulatory burden identified by firms participating in the 2006 World Bank study include tax regulations and/or rates, bureaucratic burden, labour regulations, import and customs regulations, and ownership regulations. Firms also experience a large degree of uncertainty associated with the time needed to obtain licences, permits, and authorizations. Reportedly, Thailand's performance in infrastructure is particularly weak in respect of electricity and telephone-related indicators. Firms appear to face more frequent power outages and a longer delay to obtain electricity connections than firms in comparator countries. Also, firms in Thailand suffer more interruptions and longer delays in obtaining a fixed telephone connection than firms in neighbouring countries (World Bank, 2006c).

⁶⁰ JBIC 2004 Survey report on Overseas Business Operations by Japanese Manufacturing Companies; the 2007 Institute for Management Development World Competitiveness Scoreboard; and BOI Foreign Investor Confidence Survey 2005.

⁶¹ WTO (2003), Table II.4. These included mainly manufacturing activities, like drugs, matches, cement and cement products, as well as livestock farming (except silkworms), extraction of vegetable oils, trade in ores, and certain services, such as hairdressing. Some services were also partially opened to foreigners by being shifted from List 1 to List 3, such as certain construction activities (Max, 1999).

⁶² 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.

require authorization, unless specifically promoted by the BOI, permitted by the Industrial Estate of Thailand, or allowed under some other law. With such approval, foreign equity participation of 50% or more in a List 2 activity requires cabinet approval through the Minister of Commerce. Foreign equity participation is allowed up to 60% and, on a case-by case basis, up to 75%. At least two fifths of the board of directors must be Thai nationals. For List 3 businesses, foreigners need permission from the Ministry of Commerce (Director-General of Department of Business Development) in order to hold 50% or more equity. Initial foreign investment is subject to minimum capital requirements of B 2 million and, in the case of restricted businesses, 25% of the total three-year average expected annual expenditure, but not less than B 3 million. As most projects substantially exceed these limits their practical significance is reduced. Local businesses (up to 49% foreign equity) can generally participate in restricted sectors since they are deemed Thai.

63. Thailand continues to operate a generally liberal foreign investment regime. In June 2007, the Ministry of Commerce indicated that various provisions in the Act clearly set time-periods for the Foreign Business Committee to consider and process all applications and that these time lines have been strictly observed. Several key elements, such as the business lists, can be changed by ministerial regulation. The Foreign Business Committee reviews these lists at least annually and, based on these recommendations, the Minister of Commerce can make changes by issuing a ministerial regulation.

64. The FBA does not apply where an international treaty including the WTO requires Thailand to provide national treatment to foreign investors. The 1966 Treaty of Amity and Economic Relations Between the United States and Thailand extends national treatment to U.S. investors, thereby exempting them from most FDI restrictions. Under the Treaty, Thailand can restrict U.S. investors only in communications, transport, banking, exploitation of land or other natural resources, and domestic trade in agricultural products.

65. In early January 2007, despite widespread opposition from foreign investors, the Government approved plans to amend the FBA to include voting rights as another criteria for determining which juridical persons are foreign in restricted sectors.⁶³ The proposed amendments cover the definition of "foreigners", punishment/penalties, and the List 3 businesses in which Thais are not competitive.⁶⁴ Although the changes are not as far-reaching as initially expected, the move seems to have compounded investor concerns over the unpredictability of policy. Companies that seek or have already received BOI investment promotion will not be subject to the proposed ownership rule revision, except those activities specified in List 1 whereby BOI has already required Thai majority ownership, and in activities that fall under specific laws such as telecommunications, and marine, air and land transport.⁶⁵ Currently, seven categories covering over 273 activities in both manufacturing and services are eligible for BOI promotion (Chapter III).

Land and labour restrictions

66. Under the Industrial Estate Authority of Thailand Act 1979, industrial operators are allowed to own land in an industrial estate or an industrial zone for carrying out their business activity to the

⁶³ EIU (2007b).

⁶⁴ The proposed amendments may be consulted online at: <http://www.dbd.go.th/eng/FBA-explanation%20sheet%2019%20Jan%2007%20Rev4.pdf> [16 May 2007]. Regarding List 3 it is proposed that businesses that are under jurisdiction of other authorities would be removed. These cover: tour operating business; futures trading of commodities and related businesses; securities, derivatives, and related businesses; finance, banking, and credit foncier; and retail/wholesale (i.e. all foreign retailing/wholesaling companies will have to seek permission). Ministry of Commerce Press Release, Ministry of Industry Press Release Issue 6/2007.

⁶⁵ Ministry of Commerce Press Release, Ministry of Industry Press Release Issue 6/2007.

extent that the Board of the Industrial Estate Authority of Thailand may deem appropriate. The foreign investment must be a minimum of B 40 million, for at least three years, in a business that benefits the economy, promotes social welfare or is BOI promoted. While non-Thai businesses and individuals can still own land only on government-approved industrial estates, the Land Act as amended in 1999 allows foreign investors to own up to 1,600 square metres of land for residential purposes in certain areas, including the Bangkok Metropolis. Under the Condominium Act as amended in 1999, foreigners can also own up to 49% of the total space of all units in a condominium, subject to certain conditions.⁶⁶ For five years from the date of legislative change, up to 100% foreign ownership was allowed in the Bangkok Metropolis and other areas specified in Ministerial Regulations where a condominium is situated on land not exceeding 8,000 square metres (Condominium Act). Under the Investment Promotion Act 1977, a person may be permitted to own land for carrying on a promoted activity to the extent that the BOI deems appropriate. The BOI may grant permission for foreigners to own land within specified limits for offices and residences of executives and employees (BOI Announcement No. 2/2546, 2003). Foreigners may also construct buildings on leased land. The Act on the Lease of Immovable Property for Industrial and Commercial Purposes 1999 allows a foreigner to lease property for commercial or industrial purposes for a period of not more than 50 years, renewable. Leases can also now be used for loan collateral.

67. Foreign workers in Thailand generally require in advance a work permit from the Ministry of Labour (Alien Employment Act, 1978). A number of occupations and professions are closed to foreigners (1979 Royal Decree). A one stop service has been set up by the BOI to facilitate the issuance of work permits. Foreign nationals working in Thailand must also meet immigration requirements.

(iii) International agreements

68. Thailand has been a member of the World Bank Multilateral Investment Guarantee Agency (MIGA) since 29 April 2000. In 2005, MIGA provided political risk insurance involving the guarantee of currency convertibility in Thailand for a hydropower project in Lao PDR worth US\$1.25 billion (the Nam Theun 2 Project), the largest investment to date in Lao PDR. Thailand also has bilateral investment treaties (BITs) with 38 economies, is a party to the Agreement on the Promotion and Protection of Investments concluded amongst the ASEAN countries⁶⁷, and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), and is a signatory to the International Convention on the Settlement of Investment Disputes between States and Nationals of other States (the ICSID Convention).⁶⁸ Although it has modernized its own arbitration and conciliation rules (Arbitration Act B.E. 2545 (2002) and Regulations on Compliance with Arbitration Awards, 2001) in line with the UNCITRAL Model Law on International Commercial Arbitration, since its previous TPR, Thailand has been in the lengthy process of ratifying the ICSID Convention; the authorities indicate that, in any case, foreign investors have access to other reliable dispute settlement procedures under applicable BITs and FTAs that include *ad hoc* arbitration under the UNCITRAL rules. Other avenues being used by foreign investors to resolve disputes are the 1990 arbitration and conciliation rules of the private Arbitration Institute under the supervision of the Court of Justice, and the Thai Commercial Arbitration Rules administered by the Thailand Board of Trade. The Department of Intellectual Property, Department of Insurance, and the Security and Exchange Commission also provide arbitration services.

⁶⁶ Foreigners may also use funds from local bank accounts to make such purchases instead of having to bring in foreign funds.

⁶⁷ This agreement allows disputes to be brought to the International Centre for Settlement of Investment Disputes or centers for arbitration in the ASEAN region as the parties may agree.

⁶⁸ APEC (2006b).

69. Apart from the non-MFN Treaty with the United States (section (8)(ii)), Thailand has signed 39 investment promotion and protection agreements with other economies; 33 have entered into force.⁶⁹ These include the ASEAN Agreement on the Promotion and Protection of Investments. The FTAs concluded with Australia, New Zealand and Japan also include a chapter on investment (section (6)(ii)(c)). These agreements cover obligations on national and MFN treatment, expropriation, transfers, fair and equitable treatment, and investor-state dispute settlement mechanisms.

70. Thailand is pursuing further agreements with developed and developing countries, especially agreements that promote FDI and encourage technology transfer. Up until June 2007, Thailand has signed 61 treaties for the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income with other economies; 54 are in effect (Chapter III).⁷⁰ Several of these agreements contain "tax sparing" provisions, including those concluded with Japan, Australia, Cyprus, Denmark, Israel, Luxembourg, New Zealand, Norway, Spain, and Switzerland.

⁶⁹ APEC (2006b).

⁷⁰ APEC (2006b).