

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) INTRODUCTION

1. Since its previous Trade Policy Review, the general thrust of Thailand's trade policy has remained liberal, and steps have been taken to facilitate trade and improve market access.

2. The tariff remains one of the main trade policy instruments and a significant, albeit declining, source of tax revenue. The introduction of the 8-digit ASEAN Harmonized Tariff Nomenclature (AHTN) 2007, in January 2007, increased the number of tariff lines by 50.8%; the lack of a workable version in an official WTO language confined the tariff analysis in this report to the 2006 tariff. The 2006 tariff remained relatively complex, involving a multiplicity of rates (31 *ad valorem*, 19 specific, and 158 alternative rates). Tariff cuts involving more than a third of the lines, reduced the overall simple applied MFN tariff average rate from 13% in 2003 to 11% in 2006. Although the number of duty-free tariff lines has increased considerably, peak *ad valorem* rates have remained unchanged and are concentrated in a few sensitive items. Thailand has slightly relaxed its tariff-rate quota regime, affecting 23 agricultural products, by, *inter alia*, allowing unlimited imports of soya bean and soya bean cake for certain producer groups at lower in-quota rates. Thailand has bound 73.7% of its tariff lines; it concluded the process of binding its tariffs on specific information technology products at zero at end 2005. When an applied MFN rate is higher than the bound rate, observance of the binding commitment depends on the implementation by Customs (upon the claim of the importer) of the "whichever is lower" principle; for a few tariff lines the bound rate is not the same type of duty as the applied rate (e.g. applied rate specific, bound rate *ad valorem*). The gap of 16.5 percentage points between the average bound and applied MFN tariff rates, due to unilateral and ASEAN-related tariff restructuring, still imparts a considerable degree of unpredictability to the tariff regime and provides a great deal of scope for the authorities to raise applied rates within the bindings; for instance, between 2003 and 2006 duties on eight tariff lines (e.g. cuts and edible offal, fused magnesia, cocaine, raw hides and skins, flat rolled products of iron and steel) were increased considerably. Nonetheless, the overall trend in applied tariff rates is downward. The transposition of WTO binding commitments to HS2007 is another pressing task. Furthermore, Thailand continues to impose certain product-specific import surcharges; these currently affect two items.

3. 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.

4. Import licensing and prohibitions on various items for, *inter alia*, economic reasons (infant industry protection) have remained generally unchanged during the review period; import fees for meat products are levied at specific rates. During the period under review, Thailand initiated several anti-dumping cases; anti-dumping duties on hot-rolled steel, which caused market supply problems, were temporarily relaxed. The number of Thai industrial standards based on international standards has continued to rise; various amendments were made to laws related to quarantine requirements.

5. Institutional efforts have been made to clamp down on re-exporting aimed at circumventing or benefiting from origin-related treatment in third markets. The persistence of relatively high statutory export taxes on a few commodities (wood and articles thereof, and hides) and the possibility of re-instating others, constitutes assistance to the downstream processing of such commodities and an element of uncertainty. The scope of export licensing and prohibitions has been reduced since 2003;

voluntary licence and quota restrictions on exports of automobiles to Chinese Taipei have not been used since 2004. Exports of items that are in short supply domestically or that might unduly affect prices are subject to quotas (e.g. sugar). The state-owned Export-Import Bank of Thailand (EXIM Bank), which provides financial services not adequately provided by the Thai banking system, has launched a new credit facility for small and medium enterprise (SME) exporters. Exports remain eligible for "tax and duty compensation", which is set as a fixed percentage of the f.o.b. value for each product, thus providing the possibility of over- and under-compensation despite regular adjustments.

6. In order to encourage investment in priority sectors and remote areas Thailand continues to use tax and non-tax incentives, whose cost-effectiveness is questionable. Various subsidies tied to exports and local content have been removed. State involvement in the economy persists and privatization efforts are stalled; regulatory changes were made to prevent abuse of monopoly power of corporatized entities. Government procurement remains an important instrument of economic policy, with 3% price preferences being accorded to domestic suppliers; reportedly, language used in procurement tenders may exclude foreign products from the process although relevant regulations require that wording does not obstruct competition or benefit specific suppliers. In early 2007, countertrade for public procurement was repealed. Price controls and/or monitoring continue to affect more than 200 products and 20 services possibly accounting for as much as 20% of the CPI basket of goods and services.

7. Thailand has strengthened its legal framework for the protection of intellectual property rights (IPRs) by enacting legislation on geographical indications and optical disc production; action was also taken to promote, coordinate, and enforce protection of IPRs through a Memorandum of Understanding with a number of private-sector representatives and law-enforcement groups, as well as by strengthening the institutional framework for enforcement. To cope with persisting competition-policy weaknesses, Thailand enacted a definition of the dominant player in the market; state-owned enterprises and farmers cooperatives are not covered by the competition legislation.

8. Considerable efforts to increase the level of transparency and disclosure appear to have reduced allegations of corruption in certain areas; these allegations refer to Thailand's customs procedures, customs valuation, tariff-rate-quota licensing, government procurement, and the granting of tax incentives.¹

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Customs procedures

(a) Recent developments

9. Thailand considers improvements to its customs procedures as one of the crucial elements of trade facilitation. Various measures have been adopted to increase the transparency and simplicity of procedures. Efforts have been undertaken to, *inter alia*: implement the WTO Customs Valuation Agreement and the last version of Harmonized Systems for tariff classification, implement an on-line system between Customs and banks (revolving bank guarantees); promptly publish and make available on the Internet information on customs laws, regulations, procedures and administrative

¹ The authorities indicate that the implementation of international, simplified, and standard practices in assessing duty and physical inspection, together with the use of computerization reduces the time for goods to be released. Meanwhile, it deters customs officers from using their discretion. Additionally, many allegations relate to dishonest and unprofessional customs brokers who overcharged by claiming extra-money collected for customs.

rulings; and establish a Customs Transparency Center (CTC) in 2004 to fight corruption and support the understanding between customs and the private sector.²

10. Concerning paperless trading, the authorities indicate that by 2006 about 92% (85% in 2002) of declaration forms were processed through the EDI (electronic data interchange) system, which uses both electronic and hard data to complete the custom procedure.³ Furthermore, in order to minimize the use of documents and expedite the customs clearance, the authorities indicated that an entirely paperless customs procedure was to be implemented in the course of 2007. This new procedure is expected to facilitate international trade by shortening the customs procedure and thus improving country's competitiveness.

11. An e-payment system was implemented in 2003 to allow traders to pay duties and taxes electronically 24 hours a day 7 days a week. An internet-based declaration system implemented in November 2002 is mainly used by small and medium-sized enterprises (SMEs). In addition, companies that belong to the Board of Investment Investor Club Association are eligible to use the raw materials tracking system; customs clearance for raw materials can be done in three hours or less for users of the system.⁴

12. The time required by Customs for duty and tax collection, as well as physical inspection averages less than an hour, compared with three to four hours through non-EDI (manual document) processing.⁵ Other sources report that for all traders, customs clearance at airports and seaports was reduced from five days to one by January 2005; as from September 2004, the Customs Department cut the time needed to process goods before delivering them to airlines from three hours to two.⁶ Corruption seems to persist, thus increasing import costs. According to a June 2006 study by the University for International Trade Studies of the Thai Chamber of Commerce, export and import companies seem to have paid B 404 million in bribes in 2005 for faster service at trade checkpoints; the authorities expressed their reservations over the methodology and estimated values of this study.⁷ In an attempt to reduce illegal payments, which some observers blame on low salaries, as from August 2004 customs officials have received an extra B 5,000-B 6,000 per month in salary. Other preventive measures taken to deal with allegations of corruption are: the introduction of e-Customs i.e. e-import, e-export, e-container, and paperless trading, aiming at reducing physical contact between officers and importers; the launch of a Customs hot-line; the operation of a joint committee with the private sector to develop customs services; and the improvement of fringe benefits for customs officers, such as accommodation, health care services, bonuses, etc.

² APEC (2006b), Chapter 6.

³ EDI documents include declarations, vessel/flight schedules, and response messages according to UN/EDIFACT processing system.

⁴ Board of Investment online information. Viewed at: <http://www.boi.go.th/english/how/taxation.asp> [22 January 2007].

⁵ According to the Customs Administration, in 2006 the time taken for release of goods (excluding queuing time) as per the World Customs Organization Guideline was: for import clearance the green line average was 33 minutes, and the red line average 1 hour 4 minutes; for export clearance, the green line average was 19 minutes, the red line average 42 minutes, and manual average 33 minutes.

⁶ According to the authorities, the differences in time required for clearance might be due to the different methods of estimation, as many agencies are engaged in the cargo clearance procedure. Apart from Customs, these other agencies include warehouse operators, intermediaries, customs brokers, owners of goods, transporters, and other related government authorities. All interventions in the supply chain may slow down the process (EIU, 2006b).

⁷ The authorities indicate that the study by the Centre for International Trade Studies involved an opinion survey not research. The study did not take into account money leaked into the hands of customs brokers or intermediaries between the owners of the goods and Customs. Although corruption exists, it is being reduced and its estimated costs are much lower than those indicated in the study (EIU, 2006b).

13. Thailand is not yet a contracting party to the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention) and the International Convention on the Harmonization of Frontier Controls on Goods; however, it has expressed its intention of acceding to the Revised Kyoto Convention. Since its previous TPR, Thailand has been amending its legislation to comply with the Revised Kyoto Convention; in June 2007, it was at the parliamentary stage for final consideration. According to the authorities, the current customs procedures applied to cargo clearance are, by and large, consistent with the General Annex of the revised Kyoto Convention.

(b) Registration

14. All importers, except natural persons and government agencies, are required to register and receive a customs card. Preferential treatment is provided for companies that meet certain criteria specified under a "gold card" system. Gold Card holders are major exporters and importers qualified as: being juristic person; having registered paid-up capital of not less than B 5 million; being engaged in the import/export business for not less than three years; being a member of the Federation of Thai Industries or the Thai Chamber of Commerce; having never violated Customs Laws and regulations for three years; and pledging a bank guarantee (a member of the Customs Transparency Program is exempted). Gold Card holders' benefits include exemption from regular inspection, immediate approval of tax reimbursement, etc. Government agencies, state enterprises, and companies granted duty exemptions by the BOI may also be granted gold card holder status. About 250 major importers/exporters are currently Gold Card holders, representing more than 70% of the volume of total trade.

(c) Customs inspection and valuation procedures

15. The authorities further amended legislation in October 2003 and 2004 in order to enhance the implementation of the WTO Agreement, increase transparency, raise standards of customs valuation practices, and serve as the basis for bilateral and multilateral trade negotiations. The amendments include provisions allowing importers to request consultation and reasons for, and written notification of, the method for determining customs value when the transaction value method is inapplicable; revising the definition of "price actually paid or payable"; and, adopting the interpretative notes in Annex I and Annex III of the Agreement on Implementation of Article VII of the GATT 1994.

16. Under the current procedures, details on invoices and other related documents (including country of origin, quantity, composition of value, and description of goods) are taken into consideration for valuation purposes. Thailand uses the c.i.f. (cost, insurance, and freight) price of imports as the basis for customs valuation. The Customs Department accepts the declared value shown in the invoice as transaction value unless they have reason to believe that this is inappropriate; in the event that transaction value cannot be applied, the Department uses other methods in the WTO sequential order; i.e. transaction value of identical goods, similar goods, deductive value, computed value, and fallback value method.⁸ Under the last method, the value is determined by Customs using reasonable means in accordance with the principles and general provisions of the Customs Valuation Agreement and Article VII of the GATT, based on the flexible interpretation of all the previous valuation methods.⁹

⁸ The Valuation and Standard Formality Group, established in the Customs Department, deals with valuation issues, and the Tax Examination Unit, established in 2002, is in charge of the post-clearance verification process.

⁹ Under this method no customs value is determined on the basis of: price of similar goods produced in Thailand; a system which accepts the higher of two alternative values; price of same goods on the domestic market of the country of exportation; the cost of production other than computed value; minimum customs

17. Thailand notified its national legislation to the WTO on 17 July 2003; in October 2003 it supplied information on the implementation and administration of the relevant WTO Agreement.¹⁰ On 6 October 2006 and 8 May 2007¹¹, the WTO Committee on Customs Valuation examined Thai legislation relating to customs valuation, and Thailand replied to Members' questions in certain areas including the use of reference pricing.¹² In Thailand's written replies to the written questions by the United States in October 2006, the authorities indicated that the proposal for the repeal of Section 11 bis of the Customs Act B.E. 2469 (1926), stipulating that the Director General may determine the customs value if the declared value does not accurately reflect true value, had been approved by the Cabinet and Council of State, but given the changing political situation, the process of repealing the Section in question would be continued when the new Parliament is installed.¹³ The authorities indicate that Section 11 bis has never been invoked. In March 2007, the Philippines submitted a communication to the WTO Council on Trade in Goods, stating that certain Thai measures on customs valuation and excise tax discriminated against imports of Philippine cigarettes and protected the Thailand Tobacco Monopoly. Thailand denied this allegation, indicating that it determined customs values of Philippine cigarette imports under Article 5 of the WTO Customs Valuation Agreement, and on 30 March 2007 adjusted the minimum retail price accordingly.

18. Rules and regulations, in force as from 1 January 2000, stipulate that where a dispute arises regarding the value of a product or article, the importer may file an appeal to the Appeal Committee within 30 days of receiving valuation notification from customs officers. The Appeal Committee is responsible for decisions concerning any valuation discrepancy between Customs and the importer. The decision of the Committee is deemed final, except where the appellant raises his/her concern in Tax Court. Since 2003, 94 importers have filed about 2,000 appeals to the Committee; 50% relate to royalties included in the dutiable values, the others include engineering fee, installation and maintenance, etc.

19. The Customs Department collects fees for customs services; they include documentation, and charges for attendance at Customs House on holidays or after office hours. The import declaration fee is B 200 per transaction.

20. Thailand does not require preshipment inspection for imports.

21. A series of training activities for Customs officers and the private sector have been carried out to cope with difficulties due to lack of skill and experience in implementing the WTO Customs Valuation Agreement.¹⁴ A Valuation manual has been published and distributed to customs officers. Other publications, such as articles, brochures were also published, with assistance from the World Customs Organization and the WTO, to help concerned parties understand valuation methodology and how valuation is determined. With regard to suspected invoices, the lack of an adequate valuation database causes some difficulties in valuation assessment or determination.

values; and arbitrary or fictitious values. Customs Department online information. Viewed at: <http://www.customs.go.th/Customs-Eng/Valuation/Valuation.jsp?menuNme=Valuation> [30 January 2007].

¹⁰ WTO documents G/VAL/N/1/THA/1, 23 July 2003; and G/VAL/N/2/THA/1, 6 October 2003.

¹¹ WTO document G/VAL/M/43, 25 May 2007.

¹² According to the United States, Thailand's customs reference price system often disregards the declared transaction price of certain products (USTR, 2006). At the time of the previous TPR in 2003, the authorities indicated that the Customs Department no longer applied minimum import prices for customs valuation purposes (WTO document G/VAL/M/42, 14 December 2006).

¹³ WTO document G/VAL/W/158, 9 October 2006. Pending legislation is expected to limit the discretion of the Customs Director General to arbitrarily increase the customs value of imports (in practice, the Director General has not made use of that discretion) (USTR, 2006).

¹⁴ APEC (2006b), Chapter 6.

(d) Rules of origin

22. Thailand does not have specific laws, judicial decisions or administrative rulings of general application relating to non-preferential rules of origin. Preferential rules of origin regarding the Global System of Trade Preferences (GSTP) are specified in Annex II of the GSTP Agreement (Chapter II). Imports from ASEAN countries are subject to the rules of origin for the ASEAN CEPT Scheme (Chapter II). A certificate of origin is required for GSTP or ASEAN preferential imports.¹⁵

23. Preferential rules of origin differ amongst FTAs agreements: for bilateral agreements, i.e. TAFTA and TNZFTA, are specified in Chapter IV of these agreements (Chapter II). A certificate of origin is required for TAFTA, while the declaration of origin specified on the invoice or any other document issued in respect of the good is required for TNZFTA.

24. The Rules of Origin Division, under the Tariff Classification Directorate of the Customs Department, reviews the progress of harmonization, improvement, and simplification of non-preferential and the preferential rules of origin. Thailand considers that it has implemented all WTO obligations in this area.

(ii) Tariffs

(a) Main features

25. Thailand's 2006 tariff schedule consisted of 5,505 tariff lines (same as in 2003) at the HS 7-digit level.¹⁶ As an ASEAN member, Thailand adopted the eight-digit ASEAN Harmonized Tariff Nomenclature (AHTN) 2007 for intra- and extra-ASEAN trade as of 1 January 2007.¹⁷ Changing the national tariff lines to eight digits to be in line with the AHTN increased the total number of tariff lines to 8,301. Ministry of Finance notifications granting duty exemption and reduction under Section 12 of the Custom Tariff Decree B.E. 2530 (1987) (Adjusted MFN applied rates) and under the Section 14 (WTO bound rates and preferential rates) were amended to reflect the change in the commodity classification code, effective 1 January 2007. According to the authorities, the transposition of commitments under the WTO (section (b)) and preferential agreements has also been made at the national level (as Section 14 was amended). The Ministry of Finance notifications are published and are also available in the Thai language online.¹⁸ Nevertheless, the new tariff is still

¹⁵ For a product to be eligible for ASEAN preferential duties, at least 40% of its content must originate in an ASEAN member state (APEC, 2003, Chapter 11).

¹⁶ Thailand's 2006 tariff schedule is based on HS 2002 Nomenclature. It has four distinct sets of rates: (i) statutory rates, (ii) applied adjusted/temporary MFN rates, (iii) WTO bound rates, and (iv) concession rates (these include CEPT (AFTA) rates, AISP (ASEAN Integrated System of Preferences) rates, and GSTP rates). Adjusted/temporary MFN rates, which are those in force for all WTO and non-WTO trading partners, may exceed WTO bound levels (section (b) below); the authorities indicate that in these cases the lower rate, i.e. WTO bound rate, applies for imports originating in WTO Members. Applied adjusted/temporary MFN rates and/or bound rates, whichever were lower, and AVEs supplied by the authorities were used for calculations in this report. If a product is eligible for more than one concession rate, the importer can choose the lowest by submitting the corresponding certificate of origin. If the concession rate for a tariff line is higher than the applied rate, the latter applies.

¹⁷ At end 2006, Thailand applied two types of commodity classification code: the six/seven-digit commodity classification code for general imports, and the eight-digit commodity classification code for intra-ASEAN trade (International Customs Tariff Division/Customs Tariff Classification Directorate of the Royal Thai Customs online information. "Harmonized System Nomenclature - 2007 Amendment (The Fourth Edition of HS 2007)", 31 August 2006. Viewed at: <http://www.customs.go.th/UploadFile/EngAnnounce/A0906003.doc> [30 January 2007]).

¹⁸ Customs online information. Available at: <http://www.customs.go.th/Anouce/Anno.html>.

not available in English and not submitted to the WTO Secretariat. Therefore, estimates contained in this report are based on the 2006 tariff.

26. During the period under review, there was no fundamental change in Thailand's tariff legislation. Whereas changes to statutory rates require legislative approval¹⁹, applied rates (or temporary/adjusted rates) may be modified by the Minister of Finance without Parliament's approval, subject to Cabinet consent; the Minister, with the approval of the Cabinet, may also charge "special duty" for any goods at a rate not exceeding 50% of the relevant rate in the Tariff Schedule (section (e) below).

27. The tariff remains relatively complex, involving a multiplicity of rates. In 2006, it contained 31 *ad valorem* rates (43 in 2003) ranging from zero to 80%, 19 specific duty rates (same as 2003), and 158 alternative duty rates (172 in 2003). Peak *ad valorem* rates remain unchanged and on a few sensitive items at: 60% (12 lines, tea, dried onions, motorcycles), 65% (1 line, certain sugars in solid form), and 80% (15 lines, motor vehicles only). A study based on 2001 data, found that Thailand's high import tariffs are equivalent to a substantial export tax and thus a major impediment to its exports.²⁰ According to the authorities, the 2007 tariff structure consists of no more than ten rates. The main features of the 2006 tariff, with respect to MFN duty rates and the full implementation of the Uruguay Round (and the ITA) commitments, are captured by the summary indicators for 2003 and 2006 in Table III.1.

28. Conflicts between upstream and downstream industries seem to have delayed tariff restructuring.²¹ Nonetheless, Thailand has continued to lower selected import duties in line with WTO and AFTA commitments (Chapter II), mostly on raw materials and inputs not produced locally. According to WTO Secretariat estimates, between 2003 and 2006 duties on 1,981 (35.7% of all lines, involving mostly textiles and clothing, chemicals, base metals and articles thereof, and machinery) were reduced, while those on eight tariff lines (cuts and edible offal, fused magnesia, cocaine, raw hides and skins, flat rolled products of iron and steel, machines and other machine tools and parts and accessories thereof, and containers for the transport of fluid) were increased considerably (e.g. from zero to 5%, and 1% to 27%). According to the authorities, Thailand completed its tariff restructuring on 1 January 2007 with the adoption of the AHTN. Tariffs on products in Chapters 39 and 72, the final two to be restructured were completely restructured on 1 January 2007. There are no further plans for tariff reductions.

29. Although by June 2007 Thailand was behind its schedule²² for implementing its AFTA (Chapter II) tariff reduction commitments and rationalizing its complicated tariff regime, upon completion of relevant legal enactments these changes will have retroactive effect from 1 January 2007. This restructuring, which is still pending, involves the reduction of duty rates to zero for products under the Framework Agreement for the Integration of Priority Sectors and for 80% of products in Thailand's Inclusion List.

¹⁹ There has been no change to statutory rates since the previous Review of Thailand.

²⁰ Based on 2001 data, Thailand's import tariffs were equivalent to an export tax of 16.5%, one of the highest among the 26 developing countries covered by the study (Tokarick, 2006).

²¹ Upstream industries (petrochemicals and steel) have objected strongly to cuts since they expect to suffer greatly from the increase in imports. But downstream industries (car manufacturing, electronics, electrical consumer goods, and garments) want lower taxes on raw materials (EIU, 2006b); and USTR (2006).

²² The authorities were to complete the tariff restructuring by the end of 2006.

Table III.1
Tariff structure (including *ad valorem* equivalents (AVEs)), 2003 and 2006
(Per cent)

	2003	2006	Final bound ^a
1. Bound tariff lines (% of all tariff lines)	73.7	73.7	73.7
2. Simple average applied rate	13.0	11.0	27.5
Agricultural products (HS01-24)	25.3	25.2	32.3
Industrial products (HS25-97)	11.0	8.7	26.3
WTO agricultural products	25.0	25.0	34.9
WTO non-agricultural products	11.2	8.8	25.8
Textiles and clothing	18.6	14.7	28.9
3. Tariff quotas (% of all tariff lines)	1.0	1.0	1.0
4. Domestic tariff "peaks" (% of all tariff lines) ^b	3.9	3.9	0.5
5. International tariff "peaks" (% of all tariff lines) ^c	30.3	25.2	65.4
6. Overall standard deviation of tariff rates	14.3	14.0	14.1
7. Coefficient of variation of tariff rates	1.1	1.3	0.5
8. Duty free tariff lines (% of all tariff lines)	4.1	18.5	2.2
9. Non- <i>ad valorem</i> tariffs (% of all tariff lines)	23.1	22.5	18.9
10. Non- <i>ad valorem</i> tariffs with no AVEs (% of all tariff lines)	20.3	19.9	18.8
11. Nuisance applied rates (% of all tariff lines) ^d	21.4	12.2	0.1

a Implementation of the U.R. was achieved in 2005. Calculations on bound averages are based on 4,059 bound tariff lines (representing 73.7% of total lines).

b Domestic tariff peaks are defined as those exceeding three times the overall simple average applied rate.

c International tariff peaks are defined as those exceeding 15%.

d Nuisance rates are those greater than zero, but less than or equal to 2%.

Note: Calculations include AVEs for non-*ad valorem* rates provided by the authorities to the WTO, as available. In case of non-availability, the *ad valorem* part of alternate rates is taken into account. Calculations do not include in-quota rates.

Source: WTO calculations, based on data provided by the authorities of Thailand.

30. The Customs Department is responsible for application of the Harmonized System; the details of tariff classification are decided by the Customs Tariff Classification Directorate within the Department.

(b) MFN tariff bindings

31. Thailand has bound 73.7% of its tariff lines (Table III.1); all of its agricultural lines (WTO definition) and 69.5% of its non-agricultural lines are bound in the form of *ad valorem*, specific or alternative duties depending on the item. As a party to the 1996 Ministerial Declaration on Trade in Information Technology Products (the Information Technology Agreement, Thailand finalized the process of binding its tariffs on specific information technology products at zero on 1 January 2005.²³

32. Unbound tariff lines cover, *inter alia*, salt, mineral fuels, chemicals, fertilizers, pulp of wood, transport equipment, rubber products, and iron and steel. Where an applied temporary/adjusted MFN *ad valorem* or AVE rate is higher than the bound rate or where the applied MFN rate is a specific rate and the bound rate an *ad valorem* rate²⁴, observance of the binding commitments depends on the

²³ In this process, Thailand committed itself to eliminating duties on an MFN basis in two equal annual rate reductions ending in January 2000 on approximately three quarters of products covered by the ITA; tariffs for the remainder were brought down to zero in eight equal rate reductions ending in 2005.

²⁴ In 2006, there were: 39 tariff lines with the applied MFN rate set in the form of specific duty and an *ad valorem* bound rate; 12 lines where the temporary/adjusted MFN applied rate was an alternative duty and the

implementation of the "whichever is lower" principle. No complaints on breaches of binding commitments have been made so far. With about a quarter of all tariff lines unbound, tariffs can be changed at any time, up to the statutory/bound rates, with the consent of only the Cabinet; this imparts a high degree of unpredictability to the tariff.

33. Pending incorporation of Harmonized System nomenclature (HS96, HS2002) changes into its Schedule of Concessions LXXIX and completion of consultations and/or possible Article XXVIII negotiations, since its previous TPR Thailand has benefited from waivers suspending the application of the provisions of Article II of GATT 1994; the last such waiver extends the period for implementing the HS2002 changes until 31 December 2007. By August 2006, Thailand had submitted a schedule in loose-leaf format including HS96 changes and corrections, and a list of tariff items affected by HS2002 changes.²⁵ By October 2006, Thailand hoped that its revised schedule, including all the modifications, would be accepted and certified to complete HS96 work. In October 2006, the transposition of Thailand's schedule to HS96 was verified by Members. The certified true copy of the Certification of Modifications and Rectifications to Schedule LXXIX of Thailand following the HS96 transposition process was released in June 2007 and effective 10 November 2006. The authorities were to continue work to start the transposition to HS2007.²⁶ The considerable tariff line increase resulting from the introduction of the AHTN in January 2007 makes the transposition of Thailand's existing binding commitments to the new nomenclature an urgent task.

(c) Duty-free items

34. Since Thailand's previous Review, the number of duty-free tariff lines for MFN rates has increased considerably, from 4.1% to 18.5% (Table III.1), due to the elimination of tariff protection on certain items (previously subject to rates of mainly 1%) and the full implementation of ITA-related commitments (section (b)).²⁷ Major product categories benefiting from this liberalization have been chemicals, base metals, machinery and mechanical appliances. This change led to a decrease in nuisance rates from 21.4% in 2003 to 12.2% in 2006 (Table III.1). The proportion of duty-free lines is now more than eight times higher than that at Uruguay Round full implementation.

(d) Non-*ad valorem* duties

35. Non-*ad valorem* (specific and alternative) duties²⁸ account for 22.5% (1,236 lines) of all Thai tariff lines (23% or 1,268 lines in 2003), at the HS seven-digit level (Chart III.1). They apply mainly to agricultural and food products, plastic and rubber, pulp and paper, textiles, leather products, and

bound rate in *ad valorem* form; and 1 line with an *ad valorem* applied rate and a specific bound rate. Where temporary/adjusted MFN applied rates and bound rates were both *ad valorem*, in 2006 there were 45 tariff lines for which the applied rate was higher than the bound rate. In cases where the applied MFN and bound rates were both alternative duties, there were seven tariff lines where the applied specific rate exceeded bound rate (the *ad valorem* part being the same for both); there were four tariff lines where the applied specific part exceeded its bound level and the applied *ad valorem* part was lower than the bound level; and there were six lines with both the specific and the *ad valorem* parts exceeding the bound level. Where the applied MFN rate and the bound rate were both specific duties, there was one line where the applied rate exceeded the bound rate. According to the authorities, in all these cases bindings are observed by applying the lower rate; *ad valorem* rates are compared with the *ad valorem* equivalent (AVE) of the specific rate.

²⁵ WTO documents G/MA/W/23/Rev.3, 16 May 2006; and G/SECRET/HS96/17/Rev.2/Add.2, 10 August 2006.

²⁶ WTO document G/MA/M/42, 14 November 2006.

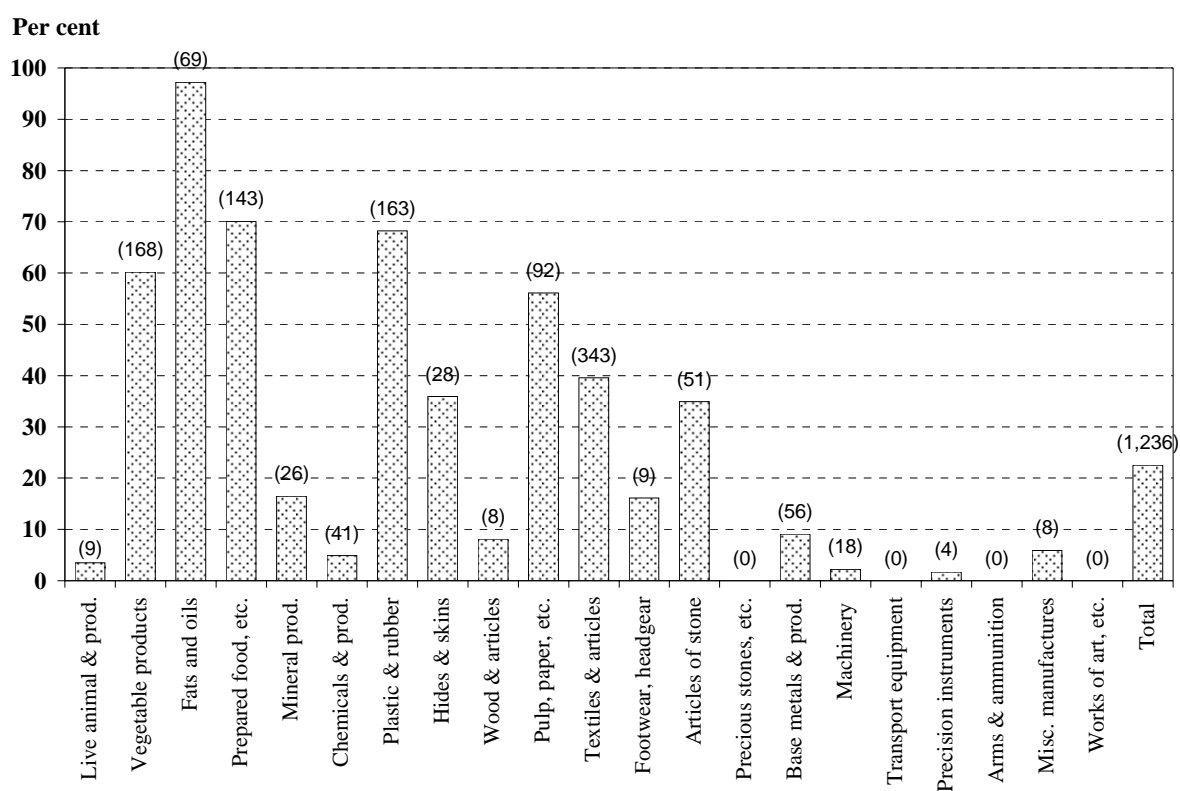
²⁷ According to the authorities, 20% of tariff lines for MFN rates were duty free in 2006.

²⁸ An alternative duty involves the choice between an *ad valorem* and a specific rate; the higher of the two is applied provided the WTO tariff binding commitments are met (section (2)(ii)(b)).

articles of stone (Chart III.1). Non-*ad valorem* duties are indicated clearly in Thailand's tariff schedule; in 2006 the authorities ensured some transparency by providing estimates of 143 AVEs²⁹, but these amount to only 11.6% of all non-*ad valorem* lines.³⁰ These official AVE estimates show that three of the 20 tariff lines with the highest rates entailed non-*ad valorem* duties with AVEs ranging from 87.7% (prepared or preserved fish, minced) to 340.2% (certain ethyl alcohol), indicating that specific duties can conceal high *ad valorem* equivalents. The simple average of all non-*ad valorem* rates with available AVEs fell from 20.5% in 2003 to 16.5% in 2006; over the same period, the simple average of the purely *ad valorem* rates in the tariff schedule (excluding those of alternative duties) dropped from 10.8% to 9.3%. It should be noted that every method of calculating AVEs is subject to bias and that AVEs can vary widely depending on the import price of the product involved; this tends to be partly determined by exchange rate changes.

Chart III.1

Share of non-*ad valorem* duties, by HS section, 2006



Note: Each bar depicts the percentage of tariff lines within each HS section in which duties are non-*ad valorem*. Figures in parentheses show the number of non-*ad valorem* lines. Excluding in-quota rates.

Source: WTO Secretariat estimates, based on data provided by the Thai authorities.

²⁹ AVEs are computed on the basis of unit values from imports of the items concerned over the period 1999-01.

³⁰ The authorities indicate that AVEs other than those submitted to the WTO Secretariat were not calculated because of absence of imports of the items concerned; this suggests that the specific rates in question may be prohibitive.

(e) Special duties (or import surcharges)

36. Thailand continues to impose product-specific surcharges (section (a)). Currently, they are levied on out-of-quota imports of maize for feedstuff at a rate of B 180 per tonne as well as on flour, meal, and pellets of fish or of crustaceans, molluscs or other aquatic invertebrates (HS 2301.20), at a rate of 5% (Table III.4). Import surcharges seem to take the form of *ad valorem* or specific duties (e.g. US\$10 or 20%). The valuation basis for the *ad valorem* surcharge is the rate of special duty times the rate of the import duty divided by 100 (Table III.9).³¹ Further details of import surcharges currently imposed by Thailand remain unavailable to the Secretariat; therefore no estimate could be made of their impact on tariff binding commitments.

(f) Tariff quotas

37. In 2006, tariff quotas covered 1.0% of all tariff lines (at HS seven-digit level), all of which related to 23 agricultural product groups (Table III.2). The authorities indicate that for tariff-rate quota (TRQ) products the WTO bound rates are the only applicable rates, and the rates used are only *ad valorem* (i.e. the MFN applied/adjusted rates do not apply).

38. About 38% of the out-of-quota rates are *ad valorem*, compared with about 66% of the in-quota rates. The estimated simple average in-quota MFN tariff rate remains at 23%; the corresponding average out-of-quota MFN tariff is 43.7% (43.8% in 2003). In 2006, Thailand increased the in-quota volume of potatoes (from 302 tonnes to 37,978 tonnes) and provided for unlimited allocations for soya beans and soya bean cake; however, the unlimited allocations were restricted to certain producer groups.³² In 2005/06, the in-quota and out-of quota applied MFN rates were the same for various products; for some other products, a specific rate was applied instead of an *ad valorem* bound rate (Table III.2).

39. Tariff quotas were underfilled for most products while imports of four items (milk and cream, potatoes, soya beans, soya bean cake) largely exceeded quota levels. Reportedly, there is concern that access to tariff-rate quotas is often managed in an arbitrary and non-transparent manner³³; at the time of Thailand's previous TPR, it was also noted that import licences were seemingly issued only to selected animal and poultry producers. The authorities maintain that access to tariff rate quotas is regulated by the committees in charge and based on fair and equitable criteria.

40. Tariff quotas do not apply to imports from ASEAN countries, which may, in principle, upon legal enactment by the Ministry of Finance, supply unlimited quantities of items benefiting from preferential AFTA duty rates; this is the case, for example, with palm oil imports undertaken by the Public Warehouse Organization only. As of 1 January 2000, all products were, in principle, to be included into the AFTA scheme, with maximum duties of 20%.

³¹ Customs Department online information. Viewed at: <http://www.customs.go.th/Customs-Eng/Sample/Sample.jsp?menuNme=Sample> [30 January 2007].

³² APEC (2006b), Chapter 2. Due to high domestic demand for soybean, Thailand unilaterally reduced its in-quota tariff rate from 20% to zero, with no restriction on quota volume. Subsequently, imports of soybean reached approximately 1.4 million tonnes, which exceeded the bound quota volume (10,092 tonnes). Under an internal agreement between private sector importers and farmers aimed at ensuring the stability of domestic production, the quantity of the imported soybean should be proportionate to the quantity purchased from domestic producers. No further information was available from the authorities.

³³ USTR (2006).

Table III.2

Tariff quota commitments, actual imports under tariff quotas, and MFN/bound tariffs, 2005 and 2006

Description (HS Code)	Tariff quota 2005 (tonnes)		In-quota tariff (2006)		Out of quota rate (2006)	
	Quota level	Actual imports	WTO bound	MFN applied	WTO bound	MFN applied
Milk and cream, not concentrated, not containing added sugar or other matters (including flavoured milk) (0401, 2202.90)	2,372.74; 27.26	0.00	20%	20%	41%; 84%	40%; B 3/kg or 60% w.i.h.
Milk and cream, concentrated or containing added sugar or other sweetening matter, in powder, granules or other solid forms, or a fat content, by weight not exceeding 1.5% (0402.10.0007)	55,000	59,095.56	20%	5%	216%	5%
Potatoes, fresh or chilled (0701)	302	11,991.96	27%	Zero	125%	B 6.25/kg or 60% w.i.h.
Onions, fresh, chilled, dried, whole, cut, sliced, broken or in powder, but not further prepared, mixed (0703.10.0119, 0712.20.0104, 0712.20.0200, 0712.40.0304)	365	31,738.38	27%	27%	142%	B 6.25/kg or 60% w.i.h.; 60%
Garlic, fresh or chilled, whether or not in powder (0703.20.0007, 0712.90.0115, 0712.90.0128)	65	50,057.73	27%, 40%	27%	57%	57%, 40%
Coconut, fresh or dried, whether or not chilled or peeled including desiccated (0801.19.0007, 0801.11.000)	2,427	109.98	20%	20%	54%	54%
Longans, dried (0813.40)	8	0.00	30%	30%	53%	B 50/kg or 60% w.i.h.
Copra (1203.00.0005)	1,157	0.00	20%	B 0.65/kg	36%	B 0.65/kg
Coffee, whether or not roasted or decaffeinated; coffee husks and skins: coffee substitutes containing any portion of coffee (0901)	5.25	3.17	30%	30%	90%	B 4/kg or 40% w.i.h.
Tea (0902)	625	557.04	30%	30%	90%	60%
Pepper, dried, whether or not crushed or ground (0904.11.0003, 0904.12.0004)	45	124.98	27%	27%	51%	B 4.2/kg or 30% w.i.h.
Maize, for feedstuff (Ex. 1005.90)	54,700	0.00	20%	B 2.75/kg	73%	B 2.75/kg
Rice (including paddy, broken) (1006)	249,757	1,413.7	30%	B 2.75/kg	52%	B 2.75/kg
Soya beans, edible and inedible whether or not broken (1201.00.1000, 1201.00.9001)	10,922	1,606,887.92	20%	Zero	80%	B 0.3/kg or 6% w.i.h.; 35%
Onion seeds (1209.91.0106)	3.15	1,536.30	30%	Zero	218%	1%
Soya bean oil and its fractions, whether or not refined, but not chemically modified (1507.10.0001, 1507.90.0006)	2,281	0.00	20%	B 1.32/l; B 2.5/l	146%	B 1.32/l; B 2.5/l
Palm oil and its fractions, whether or not refined, but not chemically modified (1511, 1513.21.0004, 1513.29.0007)	4,860	0.00	20%	B 2.5/l; B 1.32/l	143%	B 2.5/l; B 1.32/l
Coconut oil and its fractions, whether or not refined, but not chemically modified (1513.11.0008, 1513.19.0005)	401	0.00	20%	B 2.5/l; B 1.32/l	52%	B 2.5/l; B 1.32/l
Cane or beet sugar and chemically pure sucrose in solid form (1701)	13,760	4,524.39	65%	B 3.5/l; 65%	94%	B 3.5/l; 65%
Instant coffee and other extracts, essences and concentrates, of coffee, and preparations with a basis of these extracts, essences or concentrates or with a basis of coffee (2101.1)	134	54.77	40%	40%	49%	49%
Soya bean cake (2304.00.0008)	230,559	1,569,058.52	20%	4%	133%	6%
Unmanufactured tobacco; tobacco leaves (2401)	6,435	4,692.538	60%	30%	72%	B 35/kg or 60% w.i.h.
Raw silk (5002.00.0003)	483	125.02	30%	10%	226%	10%

w.i.h. Whichever is higher.

Source: WTO document G/AG/N/THA/63; and data provided by the Thai authorities.

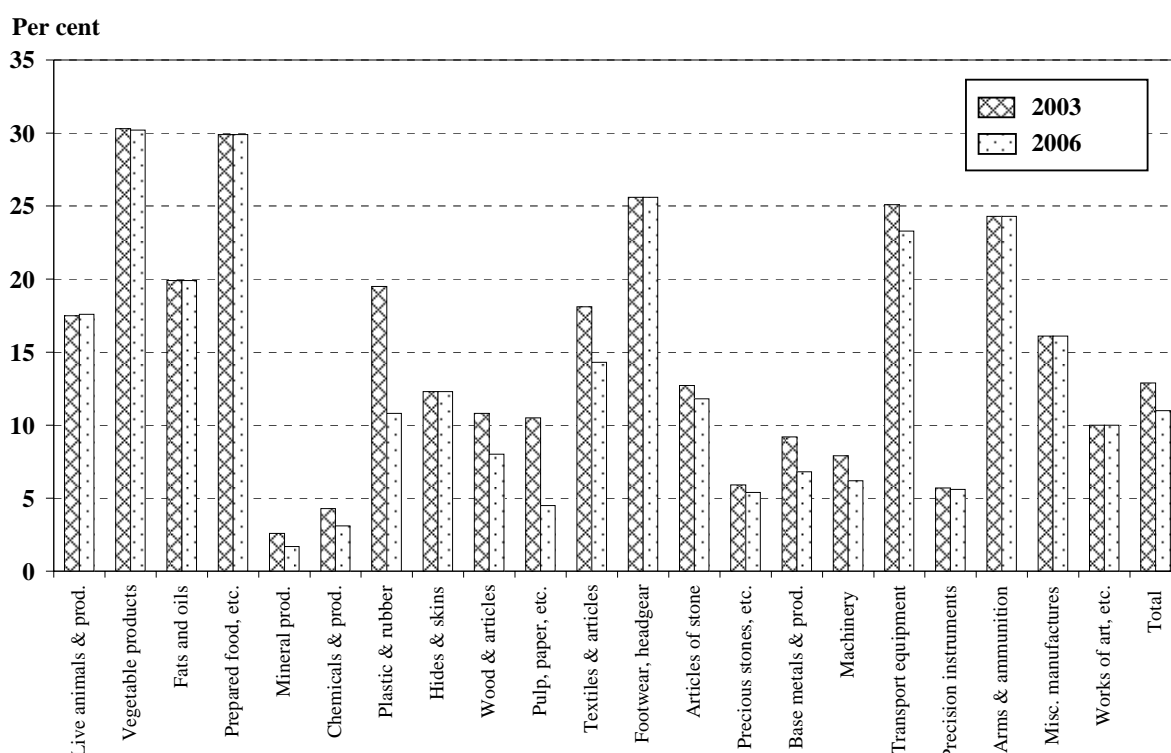
41. Import licences (section (iii)(a)) are required in order to apply for most tariff quotas and are generally valid for only 30 days; with the exception of tariff quotas for coffee, tea, pepper and longans, most allocations may be transferred.³⁴

(g) Tariff averages

42. The overall simple applied MFN tariff average rate was 11% in 2006, down from 13% in 2003.³⁵ The highest simple tariff averages by HS categories remain vegetable products, prepared food, footwear and headgear, transport equipment, and arms and ammunition (Chart III.2).

Chart III.2

Simple average applied MFN tariff rates, by HS section, 2003 and 2006



Note: Including AVEs for *non-ad valorem* rates, as available. Where AVEs are not available, the *ad valorem* part of alternate rates is used. Excluding in-quota rates.

Source: WTO Secretariat calculations, based on data provided by the Thai authorities.

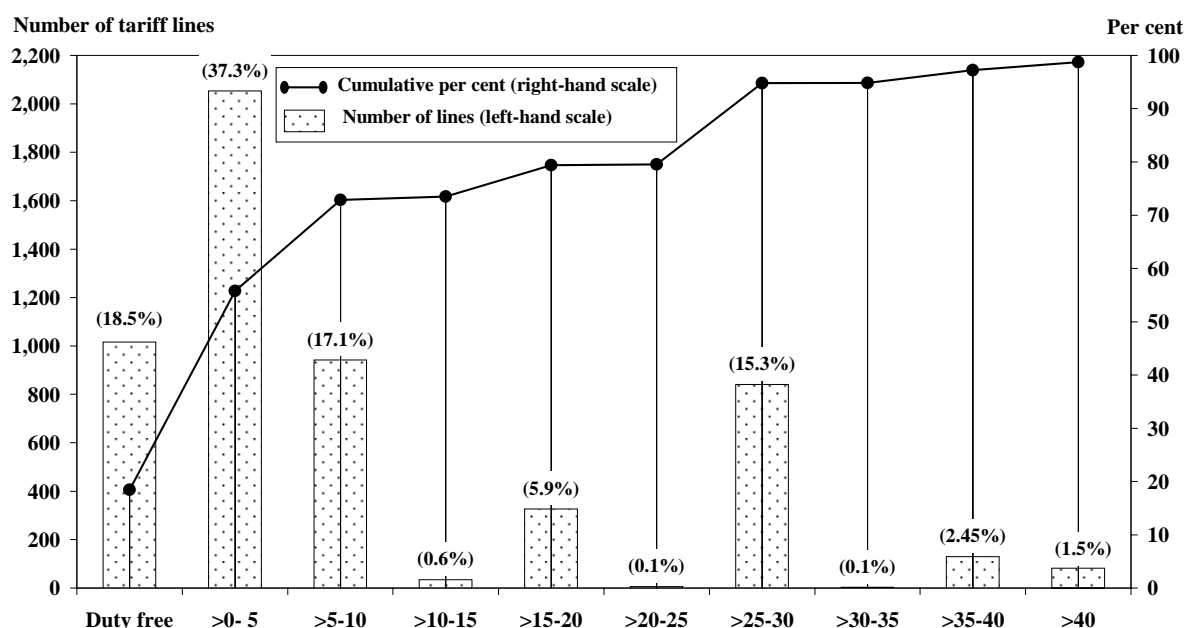
³⁴ Procedures for the allocation of quotas are described in WTO document G/AG/N/THA/62, 22 January 2007.

³⁵ This rate differs from the rate of 14.7%, calculated for the 2003 TPR of Thailand. The difference for this and other 2003 tariff indicators used in this report are due to a revised 2003 customs tariff containing the latest AVEs and a single applied temporary/adjusted rate for each tariff line. The revised 2003 tariff was submitted to the WTO IDB by the Thai authorities in the context of the NAMA negotiations.

(h) Tariff dispersion

43. In addition to the 18.5% of tariff lines that are duty free, 37.3% of lines are subject to applied tariff rates of 5% or less (Chart III.3).³⁶ During the review period domestic tariff peaks (rates exceeding three times the simple applied MFN average) remained unchanged at 3.9% of all tariff lines, while international tariff peaks (rates exceeding 15%), dropped from 30.3% (2003) to 25.2% (Table III.1).

Chart III.3
Frequency distribution of MFN tariff rates, 2006



Note: Figures in parentheses denote the share of total lines. Including AVEs for non-*ad valorem* rates, as available. Where AVEs are not available, the *ad valorem* part of alternate rates is used. Excluding in-quota rates. Total does not add to 100% as for 1.3% (representing 70 lines) no tariff rate is available.

Source: WTO Secretariat calculations, based on data provided by the Thai authorities.

(i) Tariff escalation

44. Tariff escalation remains pronounced, particularly for finished items, in a number of sub-sectors, most notably food products, textiles and leather products, and wood products (Chart III.4).

(j) Tariff reduction and exemptions

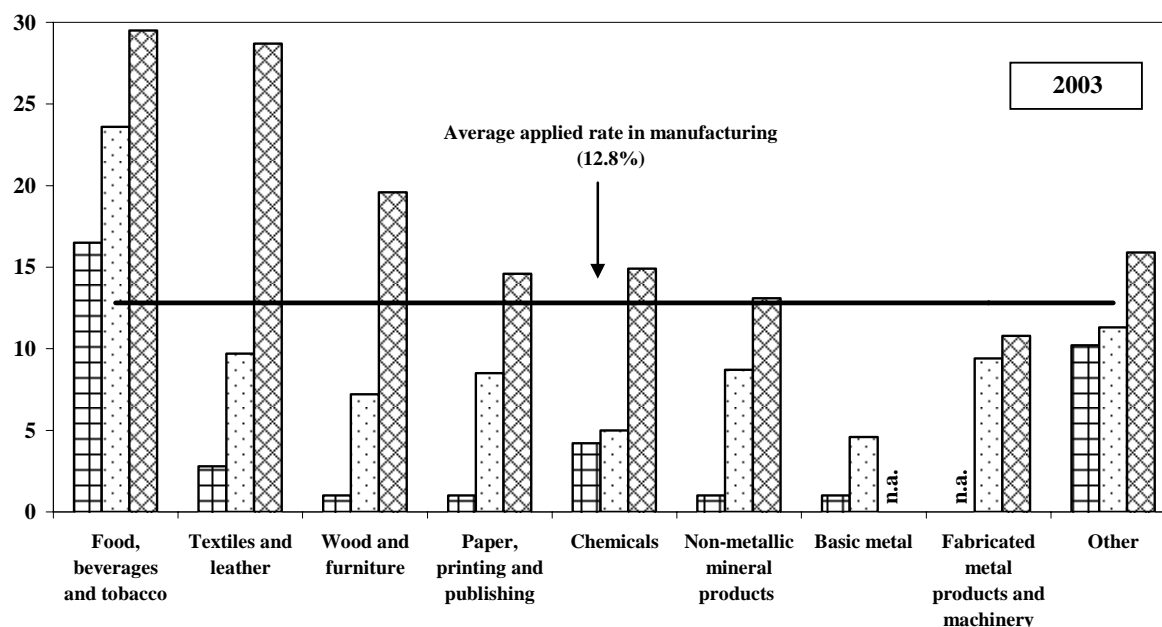
45. Thailand continues to use border tax exemptions to encourage investment in remote areas; the authorities indicate that Thailand no longer uses such exemptions to encourage production for export. The granting of these concessions is generally the responsibility of the Board of Investment (BOI). Data on the amount of customs duty reductions and exemptions as well as forgone tax revenue resulting from these measures were not available to the Secretariat.

³⁶ According to the Thai authorities calculations, 20% of tariff lines were duty free in 2006, and 45% of tariff lines were subject to MFN tariff rates of 5% or less.

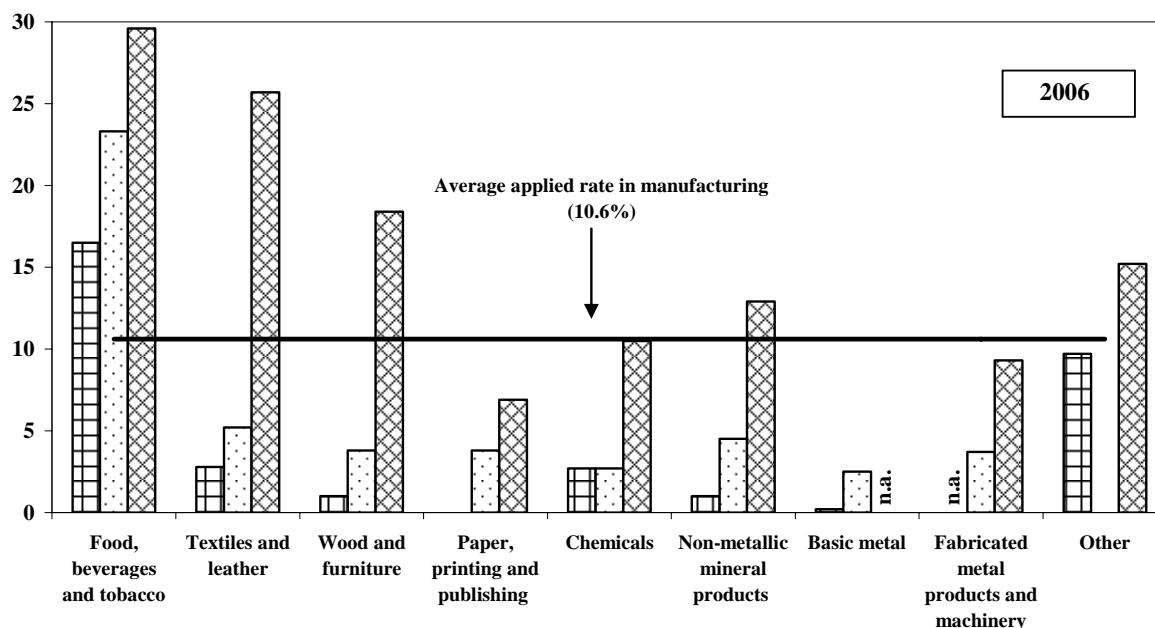
Chart III.4

Tariff escalation by 2-digit ISIC industry, 2003 and 2006

Per cent



Per cent



First stage of processing
 Semi-processed
 Fully processed

n.a. Not applicable.

Note: Calculations include AVEs, as available. In case of non-availability the *ad valorem* part of alternate rates is taken into account. Excluding in-quota rates.

Source: WTO Secretariat calculations, based on data provided by the authorities of Thailand.

Board of Investment and other location-related provisions

46. The BOI abolished local-content requirements and export requirements in August 2000; furthermore, a BOI decision of 31 August 2004 eliminated the export requirement on pre-existing projects.³⁷

47. Projects located in the most remote (zone 3) areas are entitled to duty-free imports of machinery; nevertheless, BOI announcements allow several projects in priority activities (e.g. manufacture of vehicle and electronic parts, electrical appliances, natural gas vehicles)³⁸, to benefit temporarily from this entitlement regardless zone.³⁹ These exemptions resulted in tax revenue losses of US\$1,775 million in 2002; no estimates of forgone tax revenue since 2003 were available from the authorities. Imports of machinery, equipment, and materials for use by oil and gas concessionaires and their contractors in oil refineries and gas separation plants are exempted from import duties.⁴⁰

Duty exemptions for production in export processing zones and other special zones

48. The export processing zones (EPZs) provide exemptions from import duty and VAT for all imported factory construction material, machinery, and raw materials, and from export taxes.⁴¹ As of 1 January 2003, no export performance requirements are in place as approval criteria (previously at least 40% of their producers' annual sales had to be exported)⁴²; firms located in EPZs may supply the local market, provided import duty, excise tax, and VAT are paid in full.

49. Non-tax incentives include: special permission for foreign investors to own land for carrying out promoted activities⁴³; special permission to bring in foreign technicians and experts to work on promoted projects; and special permission to remit foreign currencies.⁴⁴ Currently, the main exports from Thailand's ten EPZs are parts and accessories; automatic data processing machines and units thereof; air conditioning machines; electrical transformers; electronic integrated circuits and microassemblies; prepared unrecorded media for sound recording; motor vehicles for the transport of goods; and lenses, prisms, mirrors, and other optical elements. Exports from EPZs accounted for approximately 7.79 % of total merchandise exports in 2006 (7% in 2002), down from a peak of more than 12% in 2004; they employ around 129,150 persons.

³⁷ According to Thailand's replies to questions raised by Members at the WTO Committee on Subsidies and Countervailing Measures in 2003, most projects under the BOI programme should export at least 80% of their production; these export performance requirements were to be phased out at different dates depending on the project, the final date being April 2014 (yarn) (WTO document G/SCM/Q3/THA/23, 11 June 2003).

³⁸ These announcements are available in BOI online information. Viewed at: http://www.boi.go.th/english/about/law_and_regulations.asp [2 February 2007].

³⁹ For projects located in either zone 1 or zone 2, 50% reduction of import duties on machinery are accorded.

⁴⁰ BOI online information. Viewed at: <http://www.boi.go.th/english/how/taxation.asp> [30 January 2007].

⁴¹ Goods sold or services provided among industrial operators, whether in the same or a different EPZ, are treated as exports and thus are subject to neither VAT nor export taxes. EPZs currently in operation are industrial estates at Ladkrabang, Laemchabang, Northern region, Southern region, Bangpoo, Chonburi (Bo-win), Ban-wa, Bangpa-in, Plangyaol, and Pichit (BOI online information. Available at: <http://www.boi.go.th/english/how/taxation.asp>).

⁴² WTO document G/SCM/101/Suppl.1, 2 April 2003.

⁴³ According to the authorities, the term "promoted" refers to projects or companies that are granted investment incentives.

⁴⁴ These measures, while generally granted in practice, are guaranteed under the legislation covering EPZs, but not otherwise.

50. The Customs Department introduced a free zone (FZ) programme in 2000, in accordance with Article 97 of the Customs Act 1926, to promote investment in and exports from these zones.⁴⁵ The establishment of an FZ is allowed if the zone is used for industrial or commercial operations or other operations deemed beneficial to the national economy. Goods imported and moved into an FZ for industrial or commercial operations qualify for exemption from import duties, VAT, and excise tax as well as export duty on re-exports, duty on waste, scrap, and yield loss and standard/quality control requirements; they may also be eligible for export tax refund/exemption schemes.⁴⁶ To date, one free zone has been established, consisting of ten industrial plants (electronics, machines, tools and jewellery). No further information, including latest statistical data on performance (employment, output, exports, share of output exported abroad, forgone tax revenue as a result of tax incentives to FZs) was available from the authorities.

Bonded warehouse and other provisions for tariff refunds

51. Goods may be imported into a bonded warehouse without payment of import duties if they are to be used as inputs in products for export or are themselves re-exported; these imports must be stored and used in a production process for export within two years from the date of import (manufacturing-type bonded warehouse).⁴⁷ In FY2006, exports benefiting from this measure amounted to B 175.9 billion and forgone customs duty was B 18.2 billion (B 21.5 billion in FY2002).

52. Exporters can also choose to use the duty drawback scheme administered by the Royal Thai Customs to obtain a refund of import duties paid on imported raw materials if they are used for production and exported within one year; claims for drawback must be made within six months after export.⁴⁸ In FY2006, customs revenue forgone as a result of this measure amounted to B 9.11 billion (B 13.8 billion in FY2002).

End-use provisions

53. No end-use provisions, whereby the tariff on an item varies according to its use, seem to be in place; the authorities indicate that no changes had been made in this area since 2003.⁴⁹

(k) Regional and bilateral tariff preferences

54. Since its previous TPR, Thailand has expanded its preferential trading commitments, both at regional and bilateral levels (Chapter II); product coverage and preferential tariffs or margins vary from one agreement to another (Table III.3). Tariff preferences are accorded to members of ASEAN, China, Australia, India, and New Zealand as well as to participants in the GSTP.

⁴⁵ More information on the FZ regime is available in Customs online information. Viewed at: <http://www.customs.go.th/Customs-Eng/FreeZone/FreeZone.jsp?menuNme=FreeZone> [31 January 2007].

⁴⁶ More information on the FZ regime is available in Customs online information. Viewed at: <http://www.customs.go.th/Customs-Eng/FreeZone/FreeZone.jsp?menuNme=FreeZone> [31 January 2007].

⁴⁷ The materials, parts, and accessories can be stored in a vessel repair or construction type bonded warehouse for a three-year period after import; and in a general type for (petroleum) oil storage, for a period not exceeding six months from import. In duty-free shop type bonded warehouse goods can be stored for one year. More information on the bonded warehouse regime is available in Customs online information. Viewed at: <http://www.customs.go.th/Customs-Eng/Bonded/Bonded.jsp?menuNme=FreeZone> [31 January 2007].

⁴⁸ More information on this scheme is available at: <http://www.customs.go.th/Customs-Eng/DutyDrawback/DutyDrawback.jsp?menuNme=FreeZone> [31 January 2007].

⁴⁹ In 2003 (tariff version used for the previous TPR), there were some end-use provisions in Thailand's tariff; detailed information regarding end-use provisions was not available to the Secretariat.

Table III.3
Preferential trading agreements, 2007

Agreement	Coverage	Applied preferential tariff
ASEAN FTA (AFTA) (in force since 2002)	All products, except for those in 10 tariff lines considered sensitive products; 80% of tariff lines covered; Tariff rates on remaining items will be reduced to zero in 2010 (except for sensitive products)	Zero (as from 2007) Zero (as from 2010)
ASEAN-China FTA Trade in Goods Agreement (into force on 1 July 2005)	4,775 tariff lines (normal track) 252 tariff lines (sensitive products)	Zero (by 2010, been reduced since 1 July 2005) 20% in year 2012 and 5% as from year 2018
ASEAN-China FTA Early Harvest Programme	All vegetable and fruit products under HS Chapters 7 and 8 Products in HS Chapter 1 to 8	Zero (as from 1 October 2003) Zero (as from 1 January 2006)
Framework Agreement between Thailand and Bahrain ^a	419 items 207 items	Zero 3%
Thailand - Australia FTA (TAFTA)	2,724 tariff lines Remaining items	Zero (as from 1 January 2005) Zero (by 2010)
Thailand - New Zealand FTA (in force on 1 July 2005)	Most products Sensitive items Upon full implementation, approximately 50% of imports from New Zealand should be duty free	Zero (by 2010) Zero (by 2015)
Thailand - India FTA Early Harvest programme	82 products Remaining products in the process of negotiations	Zero (as from 1 September 2006, tariff reduction started on 1 September 2004)
Global System of Trade Preferences (GSTP)	1,600 items to the 48 members of the GSTP Agreement (Thailand's commitment on 11 items)	Preferential margins of 2.5% to 100% of MFN rates (Thailand's commitment: 10% tariff cut)

a According to the authorities, the tariff preference for Bahrain has never been used due to difficulties in Bahrain.

Source: WTO Secretariat, based on APEC (2006), *Individual Action Plan – Thailand 2006*, Chapter 1. Viewed at: <http://www.apec-iap.org/default.asp?pid=/peerReview/default> [22 January 2007].

(iii) Non-tariff border measures

(a) Import licensing and prohibition

55. Thailand's system of import restrictions involving licensing and prohibitions has remained generally unchanged since its previous Review. Conditions attached to import licensing on various items tend to be complex and opaque, and in some cases appear equivalent to quantitative restrictions (Table III.4). A number of import restrictions are in force for economic purposes, including on several additional products made subject to import licensing or prohibition. Infant industry protection has been the main objective behind import restrictions since the 1970s.

56. Legislative authority for regulating imports is provided by the Export and Import Act B.E. 2522 (1979). The Act empowers the Minister of Commerce, with the approval of the Cabinet, to restrict imports for reasons of economic stability, public interest, public health, national security, peace and order, morals, or for any other reason in the national interest. Imports may be "absolutely" or "conditionally" prohibited; in the latter case (e.g. those requiring non-automatic licensing), they are allowed if specified conditions are satisfied. Various other laws stipulate import restrictions. Under the Investment Promotion Act, the Board of Investment may request the Ministry of Commerce

to ban imports of goods competing with those produced by a domestic industry, if the Board is of the view that other forms of protection are not sufficient to assist the industry. Imports may also be prohibited under the various laws in place for health and safety reasons (see below).

Table III.4
Products subject to import licensing and prohibition, 2007

Commodity	HS code	Rationale	Measures and condition
Yellowfin tuna	0302.32	Environmental protection	Import certificate from the Department of Fishery is required
Milk and cream	04.01, 2202.90	Comply with market access commitment under the AOA	Tariff quota
Milk and cream in powder	0402.10.0007	Comply with market access commitment under the AOA	Tariff quota
Potatoes	0701	Comply with market access commitment under the AOA	Tariff quota
Onion	0703.10.0119, 0712.20.0104, 0712.20.0200	Comply with market access commitment under the AOA	Tariff quota
Garlic	0703.20.0007, 0712.90.0115, 0712.90.0128	Comply with market access commitment under the AOA	Tariff quota
Coconut	0801.11.0000, 0801.19.0007	Comply with market access commitment under the AOA	Tariff quota
Dry longan	0813.4	Comply with market access commitment under the AOA	Tariff quota
Coffee	0901, 2101.10	Comply with market access commitment under the AOA	Tariff quota
Tea	09.02	Comply with market access commitment under the AOA	Tariff quota
Pepper	0904.11.0003, 0904.12.0004	Comply with market access commitment under the AOA	Tariff quota
Maize (corn)	1005.90	Comply with market access commitment under the AOA	Tariff quota, import surcharge for non-WTO members
Rice	1006.10, 1006.20, 1006.30, 1006.40	Comply with market access commitment under the AOA	Tariff quota
Soyabeans	1201.001.000, 1201.009.001	Comply with market access commitment under the AOA	Tariff quota
Copra	1203.00.0005	Comply with market access commitment under the AOA	Tariff quota
Onion seeds	1209.91.0106	Comply with market access commitment under the AOA	Tariff quota
Soyabean oil and its fractions	1507.10.0001, 1507.90.0006	Comply with market access commitment under the AOA	Tariff quota
Palm oil and its fractions	1511, 1513.210004, 1513.29.0007	Comply with market access commitment under the AOA	Tariff quota
Coconut oil	1513.11.0008, 1513.19.0005	Comply with market access commitment under the AOA	Tariff quota
Cane or beet sugar	1701	Comply with market access commitment under the AOA	Tariff quota
Fish-meal with protein content less than 60%	2301.200.106	Stabilize price of raw material used for animal food	NAL: import not generally allowed
Fish-meal with protein content more than 60%	2301.200.106	Stabilize price of raw material used for animal food	Import surcharge
Oil cake residues, from the extraction of soyabean oil	2304.00.0008	Stabilize price of raw material used as animal food	Tariff quota, import surcharge for non-WTO members
Marble (except marble block of 50x50x50 cm)	2515	Encourage and protect domestic industry	NAL: import not generally allowed
Gasoline	2710.001	Monitoring current fuel price	Automatic licensing, only for authorized importers

Table III.4 (cont'd)

Commodity	HS code	Rationale	Measures and condition
Kerosene	2710.002	Monitoring current fuel price	Automatic licensing, only for authorized importers
High speed diesel oil	2710.003	Monitoring current fuel price	Automatic licensing, only for authorized importers
Naphtha	2710.005, 2710.009	Monitoring current fuel price	Automatic licensing, only for authorized importers
LPG Gas	2711.120, 2711.130, 2711.140, 2711.190	Monitoring domestic consumption	Automatic licensing, only for authorized importers
Potassium permanganate	2841.61	Public morals, drug suppression	Automatic licensing, only for registered importers
Clenbuterol	2922.199	Public health	NAL: import is permitted with approval of the Food and Drug Administration
Albuterol or Salbutamol	2922.509	Public health	NAL: import permitted with approval of the Food and Drug Administration
Caffeine	2939.30, 3003.40	Public health, social security	Restriction, allowed only with certificate from the FDA, or other authority concerned
Waste and scrap of plastics	3915	Environmental and public health	NAL: with approval of the Department of Industrial Works
Wood sawn or chipped	4403, 4407 – 4421	To facilitate international trade transaction	Automatic licensing, certificate of origin, export certificate from exporting country
Raw silk	5002	Accommodate to current situation, industry protection	Tariff quota
Silk yarn	5004	Accommodate to current situation, industry protection	Automatic licensing, with conditions set by Department of Foreign Trade
Jute	5303.10, 5303.90, 5305.91, 5305.99	To secure farmers' income	NAL: imports permitted for use as raw material in manufacturing
Garments	61.01 to 61.14 61.17.90, 62.01-62.11, 62.17.90	Compliance with ATC commitment until its expiry in 2004	Automatic licensing
Sacks and bags of jute or other textile	6305.10, 6305.90	To secure farmers' income	Import not generally allowed, permitted only as raw material in manufacturing
Worked monumental or building stone	6802	Industry protection	NAL: import not generally allowed
Used motorcycle engines	8407.31, 8714.19, 72.04, 76.02	Public health and safety	Absolutely prohibited
Used diesel engines with displacement of 331-1,110cc.	8408.90	Public health and safety	NAL: import not generally allowed
Intaglio printing machinery	8443.500	To prevent making of counterfeit money	Automatic licensing
Chain saws	8467.81, 8467.91, 8508.20, 8508.90	To prevent smuggling of logging, forest conservation	Department of Foreign Trade authorizes the Department of Forestry to grant import permits
Passenger cars (prototype)	8702.101, 8702.901	Industry protection, foreign currency reservation	Import not generally allowed, except as prototype for assembly or production
Used motor vehicles	8703.21, 8703.229, 8703.239, 8703.249, 8703.319, 8703.329, 8703.339	Public health, environmental protection	NAL: import not generally allowed, except for imports for re-export or import by individual
Motor vehicles for the transport of 30 or more persons	8702.101, 8702.901	Industry protection, foreign currency reservation	NAL: import not generally allowed, except as prototype for assembly or production

Table III.4 (cont'd)

Commodity	HS code	Rationale	Measures and condition
Used motorcycles	8711	Public health	Import not generally allowed
Colour photo-copying apparatus	9009.110, 9009.120	To prevent making of counterfeit money	Automatic licensing
Game machines, coin or disc operated	9504.30, 9504.901, 9504.909	Public moral	Prohibited
Original sculptures and statuary, in any materials	9703.009	To prevent smuggling of historical objects or antiques	NAL: Department of Foreign Trade authorizes the Department of Fine Art to grant licences
Used machines for multimedia production		To prevent the violation of intellectual property	NAL
CFC refrigerators		Public health and environmental protection	Import prohibited
Glazed ceramic wares		Public health	NAL: import allowed on case-by-case basis
Gold		Economic security and stability	NAL: Department of Foreign Trade authorizes the Department of Finance to grant licences
Counterfeit products		To prevent import of imitation and counterfeit products	Absolutely prohibited
Medals, coins		To prevent making of counterfeit medals and coins	NAL: import is allowed only by the Minister of Finance and other authorized entity
Goods duplicating registered products		To prevent imports that violate registered product rights	Absolutely prohibited
Drug and pharmaceutical chemicals in 16 items, 154 categories (Aristolochia spp., Chloramphenicol, Chloroform, Chlorpromazine, Colchicin, Dapsone, Nitrofurans, Diethylstilbestrol, Sulfonamides, Fluoroquinolones, Glycopeptides, Dimetridazole, Metronidazole, Ronidazole, Iprnidazole, Nitroimidazoles)		Economic security, public health, accommodate to domestic production	Automatic licensing, with import certificate from authorities concerned

Note: NAL = Non-automatic licensing.
AOA = Agreement on Agriculture.

Source: Department of Foreign Trade online information. Available at: http://www.dft.moc.go.th/import_index.htm (in Thai only); and information provided by the authorities.

Import prohibitions

57. According to the authorities, in general, import prohibitions are used only to protect public morals, national security, human, animal, or plant life, health, and intellectual property rights (IPRs), in accordance with Article XX on General Exceptions of the General Agreement on Tariffs and Trade 1947 (GATT 1947).⁵⁰ Products that are absolutely prohibited include counterfeit goods and the equipment for their manufacture, used motorcycle engines, game machines (coin or disc operated), and household refrigerators using CFC in the production process (Table III.4). Imports of a wide range of endangered fish, molluscs, amphibians, and coral are banned under the Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES).

⁵⁰ APEC (2006b), Chapter 2.

58. To prevent illegal logging, as from 29 November 2005, the Department of Foreign Trade (DFT) has prohibited import of logs and sawn wood made of teak trees, rubber trees or forbidden trees from the border of Targ and Kanchanaburi provinces.⁵¹ Bans (based on UN Resolutions) on imports of diamonds, logs and wooden products originating in or from Liberia as well as diamonds originating in or from Sierra Leone were lifted in 2007 and 2003, respectively; Thailand accepts the Kimberly Certification Process. To prevent the outbreak of BSE in Thailand and for food and feed safety purposes, animal carcasses and products thereof from countries where the disease exists are not admitted into Thailand, except for animal products enlisted in the OIE Terrestrial Animal Health Code as commodities that can be traded safely regardless of the BSE status of the exporting countries.⁵²

Import licensing

59. Products subject to non-automatic licensing currently include the 23 agricultural items under tariff quota (section (ii)(f)) and processed goods (including certain fish-meal, raw silk and silk yarn, jute and kenaf, gunny bags woven of jute or kenaf, used diesel engines, certain buses, chainsaws, used cars and tractors, used motorcycles, marble, plastic wastes, building stones and coins in size and weight similar to official coins, glazed ceramic ware, and certain antiques or objects of art) (Table III.4). An automatic import licensing system currently applies to certain garments (i.e. unfinished garments, parts or components except collars, cuffs, waist bands, pockets, and cuffs for trousers), intaglio printing machines, and colour photocopying machines. Product coverage can be changed through Ministry of Commerce notifications.

60. In January 2007, Thailand provided its first replies to the WTO Import Licensing Questionnaire under Article 7.3 of the relevant Agreement.⁵³ Thailand has never notified its licensing legislation to the WTO Committee on Import Licensing as required under Articles 1.4(a) and 8.2(b) of the Agreement.

(b) Import quotas

61. According to the authorities, Thailand maintains no import quotas.

(iv) Contingency measures

(a) Safeguards

62. Thailand's legal basis for safeguard measures remains the Ministry of Commerce Notification on Safeguard Measures B.E. 2542 (1999).⁵⁴ It appears that no such measures were adopted during the period under review.

(b) Anti-dumping and countervailing measures

63. There has been no change in Thailand's Anti-Dumping and Countervailing Act, which provides the legal basis for anti-dumping and countervailing measures.⁵⁵ Under the Act, formal

⁵¹ APEC (2006b), Chapter 2.

⁵² Department of Livestock Development Notification, 28 December 2000.

⁵³ Article 7.3 of the Agreement on Import Licensing Procedures requires all Members to provide replies to the Questionnaire on Import Licensing Procedures by 30 September each year (WTO documents G/LIC/16, 13 November 2006; and G/LIC/N/3/THA/1, 22 March 2007).

⁵⁴ WTO document G/SG/N/1/THA/2, 17 December 1999.

⁵⁵ An unofficial translation of the Anti-Dumping and Countervailing Act is contained in WTO document G/ADP/N/1/THA/4 (G/SCM/N/1/THA/4), 20 December 1999.

procedures for anti-dumping and countervailing investigations are initiated by petition filed with the Department of Foreign Trade (DFT). The DFT conducts an investigation and submits its findings to the Committee on Dumping and Subsidy. The Committee then makes a preliminary determination, which may involve duty rates calculated on the basis of a preliminary analysis of responses to a questionnaire, submitted by the foreign government and the foreign producers/exporters. The Committee may apply provisional measures after affirming that the investigated products are dumped and cause injury to domestic producers; these may take the form of a provisional duty or a security involving a cash deposit or bond equal to the amount of the determined margin of dumping. Provisional measures are generally limited to four months, with a possible extension to six months at the request of exporters. The preliminary determination and measures are announced to the public by the Committee. If the Committee makes an affirmative determination of dumping, injury, and causal link with regard to the product concerned, it will announce the imposition of final measures.

64. According to data supplied by the authorities⁵⁶, since 2002 (a peak year) there has been a drop in initiated anti-dumping cases (Chart III.5); no case was initiated in 2005. Between 2002 and 2006, the initiated cases involved mainly base metals and products thereof, and chemicals, from mainly China, Korea, India, Japan, and Indonesia. As of December 2006, Thailand maintained definitive anti-dumping duties on seven products from 13 WTO Members and four non-members; one was levied on a product imported from two non-members (Table III.5).⁵⁷ During the period under review, Thailand's anti-dumping duties (including provisional measures) ranged from 3.22% to 128.11% of the c.i.f. value of imports. Reportedly, anti-dumping duties on hot-rolled steel caused supply problems and many local producers protested because they lacked the raw materials to make up the shortfall; as a result, the Committee cut and temporarily suspended (from 20 March to 19 September 2004) the anti-dumping duties in force and reduced import tariffs. Thailand has used no countervailing measures since its previous Review.

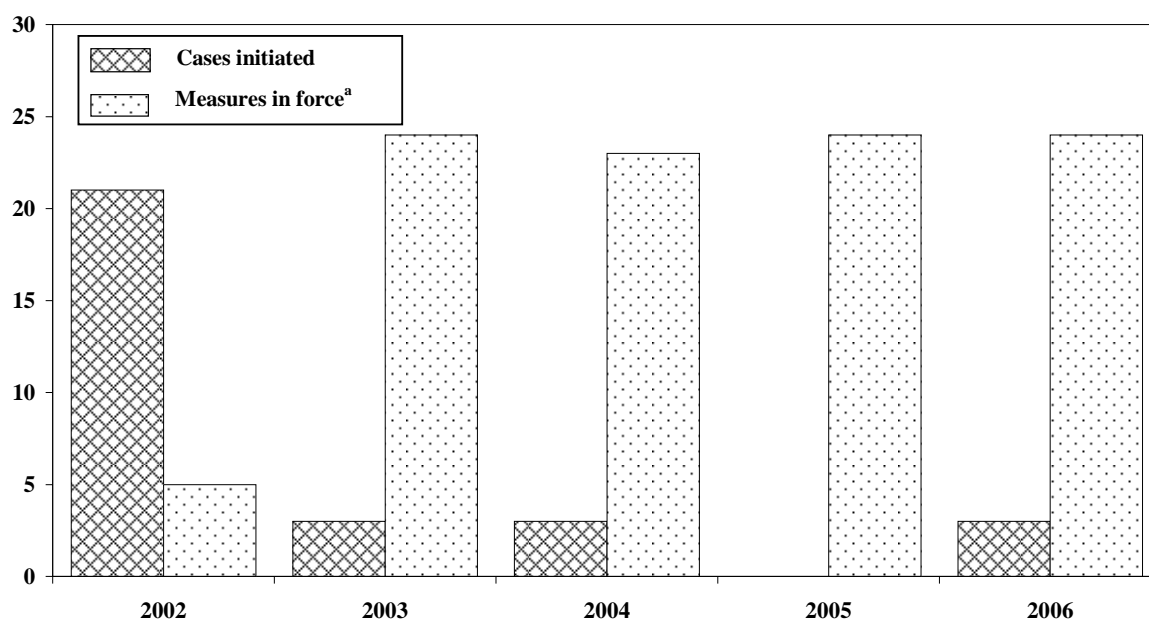
65. The authorities maintain that Thailand has continuously complied with its obligations under the GATT 1994 and the Agreement on Implementation of Article VI of the GATT 1994 (ADA). Politics do not direct the outcome of anti-dumping proceedings because non-governmental agencies also take part in the anti-dumping decision-making process. Moreover, although Thailand considers public interest in deciding whether to adopt anti-dumping measures, the authorities in charge take into account interests of all parties concerned and Thailand does not have a policy to protect any particular industry more than the others. For example, in the hot-rolled steel case discussed above, the Committee considered the interests of all parties in deciding to suspend AD duties. Thailand also takes the lesser duty approach when imposing AD duties. Thailand has been persistent in supporting the ban of zeroing in all methods of comparison in the Negotiating Group on Rules and in many AD proceedings. One of Thailand's major policies, however, is to improve the capacity of government officials by way of internal training and participation in training courses monitored by both private and public organization such as the WTO. In addition, in conducting AD investigations and making any determination, the provisions of the Act and its regulations are applied strictly. Since the Act entered into force in 1999, no dispute has been initiated against Thailand under the Agreement in the WTO dispute settlement system.

⁵⁶ These data do not coincide exactly with WTO Secretariat data. Thai figures show more initiations (i.e. three more in 2003 and two more in 2006).

⁵⁷ WTO document G/ADP/N/98/THA, 29 April 2003.

Chart III.5
Anti-dumping measures, 2002-06

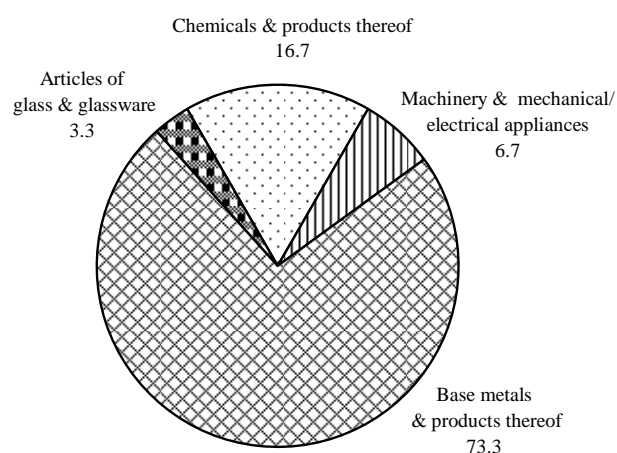
(a) Number of cases initiated and measures in force



^a Anti-dumping measures in force on 31 December.

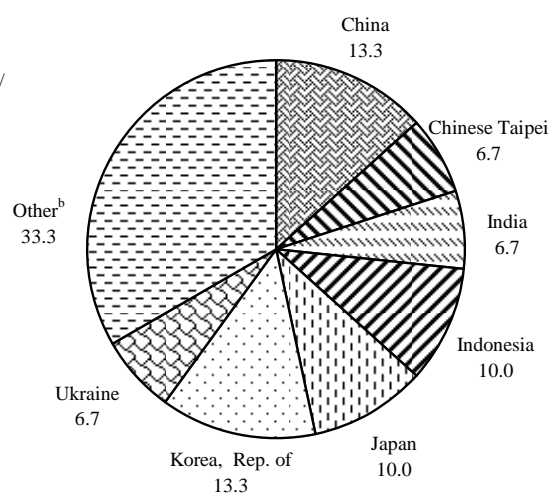
(b) Initiations by product

Per cent



(c) Initiations by origin

Per cent



^b Algeria, Argentina, the European Communities, Kazakhstan, Malaysia, Romania, Russian Federation, Slovak Republic, South Africa, and Venezuela, with one initiation each (3.3% of total initiations).

Source : Data provided by the Thai authorities.

Table III.5
Anti-dumping measures, 31 December 2006

Product	Country/customs territory	Date of imposition	Definitive duty in force (c.i.f.)
H-section	China	10/10/02	27.81%
Glass block	Indonesia	05/08/05	14.27-50.59%
Cold-rolled carbon steel, sheet and strip in coils and cut-to length	Kazakhstan	25/01/03	26.36%
	Russian Federation	25/01/03	35.80-64.70%
Flat-rolled products of stainless steel	Chinese Taipei	13/03/03	0.00-33.99%
	EC	13/03/03	10.02-25.57%
	Japan	13/03/03	0.00-50.92%
	Republic of Korea	13/03/03	50.99%
Flat hot-rolled steel in coils and not in coils	Algeria	27/05/03	33.26%
	Argentina	27/05/03	37.94-53.09%
	Chinese Taipei	27/05/03	3.45-25.15%
	India	27/05/03	26.81-31.92%
	Indonesia	27/05/03	24.48%
	Japan	27/05/03	3.22-36.25%
	Kazakhstan	27/05/03	109.25%
	Republic of Korea	27/05/03	13.96%
	Romania	27/05/03	27.95%
	Russian Federation	27/05/03	24.20-35.17%
	Slovak Republic	27/05/03	51.95%
	South Africa	27/05/03	128.11%
	Ukraine	27/05/03	30.45-67.69%
	Venezuela	27/05/03	78.44%
Citric acid	China	09/01/04	28.70-38.10%
Cathode ray tubes	Malaysia	22/10/05	7.00%

Source: WTO document G/ADP/N/153/THA, 24 January 2007; and information provided by the authorities.

(v) Government procurement and countertrade

(a) Government procurement

66. Thailand participates in the WTO Working Group on Transparency in Government Procurement; it is not a member of the Government Procurement Agreement.

67. The core procurement rules for the Central Government are the Regulations of the Office of the Prime Minister on Procurement (ROPMP) B.E. 2535 (1992), as amended in 2002. The 2002 amendment, *inter alia*, changed the membership of the Procurement Committees and implemented electronic auction (e-Auction). According to the authorities, all government agencies (central and provincial administration) must comply strictly with the regulations; local administration and state enterprises are not subject to these regulations. The Government has transformed the implementation of e-Auction into the Regulation of the Office of the Prime Minister on e-Procurement B.E.2549 (2006), which has allowed all government agencies except local authorities to use e-Auction (below) as an alternative procurement method. Thailand is considering overhauling its procurement framework and is in the process of drafting the new procurement regulation for the executive level consideration.

68. According to the authorities, the core principles in this area are openness, transparency, fairness, efficiency, accountability, value for money, private sector participation and local industry

development.⁵⁸ Procurement regulations are to, *inter alia*, prevent corruption, and respond to the Government's social and economic policies; competitive bidding in the form of open tendering is regarded as the best way to achieve these objectives and must be used for higher value contracts. However, in practice, preference is given to Thai products, contractors, and consultants, as described in previous Secretariat Reports.⁵⁹ Thailand officially denies that a 2001 "Buy Thai" policy directive discriminates against foreign producers and emphasizes that specific language used in government procurement tenders does not constitute an obstacle to competition or benefit specific suppliers.⁶⁰ Nor does it explicitly exclude foreign products from the bidding process.

69. The method of procurement depends on several factors, including the value of the contract, the nature of the goods or services, and the urgency of the procurement. Competitive bidding is used for goods or services contracts that exceed B 2 million⁶¹; for procurement valued between B 100,000 and B 2 million, selective tendering is used; and price agreement through negotiation is used for procurement valued at no more than B 100,000. Special methods are used for repeat procurements or when a delay in procurement may be detrimental to the procuring agency and when the amount of procurement exceeds B 100,000. According to the Foreign Business Act (Chapter II), domestic and foreign contractors with capital of more than B 500 million are considered on an equal basis in bidding for highly technological infrastructure projects.

70. Public procurement in Thailand is decentralized and involves a range of government bodies. The Office of Procurement Management, under the Comptroller General's Department in the Ministry of Finance, serves as the Secretariat of the Public Procurement Management Committee⁶², issues, amends, and advises on procurement regulations and practices, and negotiates international

⁵⁸ APEC (2006b), Chapter 9.

⁵⁹ Determination of the local preference margin is based on the level of industrial standards met by the product concerned. Where no product meets industrial standards, the suppliers are asked to indicate the origin of the product. If the price proposed for domestic products is no more than 5% higher than that of foreign products, the Government will negotiate with domestic suppliers, but may purchase the domestic products only if the price is no more than 3% higher than that of foreign products.

⁶⁰ The authorities clarified that the "Buy Thai" policy was established in 2001 to cure the economic crisis; government and state-owned enterprises were not allowed or had to delay the import of expensive products from foreign suppliers, with the exception of items that could not be manufactured in Thailand or those considered by the Minister to be economically beneficial. Under certain circumstances, consideration could be given on a case by case basis with Cabinet approval.

⁶¹ Tenders are advertised through a bid notice posted at the office of the government agency, radio broadcasts, and newspapers; notices are also sent to the Public Relations Department, the Mass Communication Organization of Thailand for public information, and the Office of the Auditor-General. All tender announcements are also posted electronically on the government agency's website and the government procurement website (www.gprocurement.go.th for dissemination).

⁶² The Procurement Committee comprises the Permanent Secretary of the Finance Ministry as chairman, the Comptroller-General from Comptroller General's Department, and representatives from the Defence Ministry, the Office of the Auditor General, the Office of the Attorney General, the Bureau of the Budget, the Office of the Council of State, the Office of the National Counter-Corruption Commission, the Office of the Permanent Secretary to the Prime Minister, the Office of Public Debt Management, Thai Industrial Standards Institute, and other appointed qualified persons. The Committee's responsibilities include: interpreting and making rules concerning compliance with the regulations; considering exemption from, or relaxation of compliance with the regulations; considering complaints concerning failure to comply with the regulations; proposing revisions of the regulations to the Council of Ministers; and designating categories or types of supplies that must be purchased from abroad. The Government does not collect data on supplies purchased from abroad. Procurement of products that cannot be produced in Thailand is subject to ministerial approval, more complex cases will be considered by the Cabinet on a case-by-case basis.

agreements on procurement issues.⁶³ Other agencies responsible for the administration of government procurement include: the Bureau of the Budget (responsible for the budget planning, allocation, and evaluation); the Comptroller General's Department (budget disbursement); the Department of Special Investigation (inspection of the procurement process); the Thai Industrial Standards Institute (registration of products subject to industrial standards requirements in order to be eligible for preference margins); Office of the Auditor General (procurement audit); Office of the National Counter-Corruption Commission (inspection of the procurement process); the Administrative Court (the jurisdiction of administrative cases involving such matters as a dispute in relation to unilateral administrative acts); and the Office of Ombudsman (an alternative for complaint and bid protest).

71. Thailand's laws, regulations, and policy guidelines on public procurement are published in the *Royal Gazette*. They are also posted on the websites of the Ministry of Finance, the State Legal Council, and the Ministry of Interior.⁶⁴ A Cabinet resolution of 1 October 2002 required that all government agencies maintain a website containing procurement information, and implement the electronic auction (e-auction) for at least one item of simple merchandise purchasing by 14 February 2003. To this end, the Regulations of the Office of the Prime Minister on Procurement 1992 were amended to allow e-auction procedures. A regulation of the Office of the Prime Minister on e-Procurement B.E.2549 (2006) has allowed all government agencies (except local authorities) to use e-Auction as an alternative procurement method. Moreover, e-auction has been implemented throughout Thailand since 2005 for the procurement of goods or services exceeding B 2 million. The Government Products and Services Code (GPSC) website (www.gprocurement.go.th, in Thai language only) publishes procurement opportunities; cancellation and changes of procurement activities; contract awards; and blacklists of suppliers.⁶⁵ The name of the winning bidder is announced on the website of the procuring agency.

72. Reportedly, a procuring government agency or state enterprise may accept or reject any or all bids at any time and, in special circumstances⁶⁶, may also modify the technical requirements during the bidding process.⁶⁷ The latter provision allegedly allows considerable leeway in managing tenders. Private-sector representatives have expressed concern regarding a Thai government decision to remove arbitration clauses from concessions and government contracts; the authorities indicate that all dispute settlements should be made through the administrative or judiciary courts governed by Thai laws.

73. Corruption and related costs remain a concern. Allegations frequently surface that changes are made for special considerations, including charges of bias on major procurements.⁶⁸ Despite the commitment to transparency, foreign companies regularly report irregularities. In 2006, the National Institute of Development Administration found that corruption involving 95 mega-projects over the five and a half years of the previous administration may have cost state coffers B 400 billion; it was

⁶³ The functions and responsibilities of the Office were transferred from the Office of the Permanent Secretary, the Prime Minister's Office in October 2002.

⁶⁴ Asian Development Bank (2006b).

⁶⁵ APEC (2006b), Chapter 9.

⁶⁶ The authorities indicate that "special circumstances" involve wrongdoing during the bidding process. The procuring agency can reject a bid/bidder that has benefited from links with interested parties, which may obstruct fair and free competition; appeals may be initiated by the rejected bidder. If the winning bid exceeds the set budget, the procuring agency will offer the winning bidder the opportunity to accept the set budget; or it has the right to negotiate with all bidders or adjust the scope of works. If the bidding specifications are found to discriminate towards a specific bidder or interested party, the procuring agency may revoke or amend the specifications.

⁶⁷ USTR (2006).

⁶⁸ USTR (2006).

claimed that corruption added 5.3% to the cost of government projects.⁶⁹ Furthermore, a study by the Office of the Auditor-General, found that in 2004/05 not one of the 2,096 contracts examined (worth an aggregate B 13.5 billion) was transparent.

74. Several offences are punishable by a fine and imprisonment of five years to life. Similar sanctions apply against corrupt bidders. If a complaint is proven before a contract is completed, the bidding is reopened. Otherwise, the bidder will be liable for the economic damage suffered by the procuring entity. The procuring agency must keep a register of all bids for each procurement operation, and a record of the decisions for at least ten years.

75. Government agencies are required to keep records of the value of procurement and of the procurement process.⁷⁰ The introduction of the Government Fiscal Management Information System (GFMIS) in October 2004 and its development helped the Comptroller General's Department (CGD) to establish the database for the entire record keeping of annual procurement value. According to CGD data, the value of annual procurement by government agencies rose from B 114.9 billion to B 204 billion, or by about 79% between 2005 and 2006. In 2006, most purchases were by the Ministries of Information and Communication (28% of total value), Agriculture and Cooperatives (13%), Education (8.7%) and Defence (6%). The most used procurement methods were: competitive bidding (25% of total value), e-auction (23.4%), price inquiry (15%) and price agreeing (13.8%). No information on the origin and type of supplies (goods and services) was available from the authorities.

76. In 2005, the Thai Government with collaboration from the World Bank assessed the public procurement system in Thailand using the OECD/DAC Baseline Indicator System (BIS).⁷¹ The main areas to improve are: (i) the existing legislative and regulatory framework to align it with international best practice; (ii) standardization of procurement practices; and (iii) the monitoring system to enhance agency procurement performance in both central and provincial government as well as municipality. In December, 2006, a committee was set up to expand the 2005 BIS assessment and to draft a strategic plan to be submitted in April 2007. The CGD, in partnership with the World Bank, were also planning to conduct two studies: the first to develop the strategic action plan for improving the public procurement system; and the second, to improve the monitoring and evaluation of performance and outcomes of the public procurement system. The CGD is in the process of drafting a strategic plan and is expected to submit it to the Cabinet in 2007.

(b) Countertrade

77. Countertrade and barter are no longer a top priority for procurement; relevant policy regulations were repealed in March and April 2007.⁷² The countertrade policy stipulated that all procurement contracts by government agencies and state enterprises that involved imports above B 300 million should have a related countertrade transaction of at least half of the procurement value

⁶⁹ EIU (2006b).

⁷⁰ Thailand has four categories of government agency: central and provincial administration, local administration, state enterprises, and independent public bodies. The expenditures of the central and provincial administration rely mainly on budget allocation; the other three categories rely partially on budget allocation and are able to manage their own budget and revenues.

⁷¹ World Bank (2007).

⁷² The notification of the Ministry of Commerce B.E. 2547 (2004) concerning countertrade was repealed on 15 March 2007 and the regulation of the Office of the Prime Minister B.E. 2549 (2006) concerning barter trade was repealed on 9 April 2007. *Barter News*, "Thai Countertrade Deal: Wings for Wings!". Viewed at: http://www.barternews.com/Thai_Countertrade_Deal_Wings_For_Wings.htm [6 February 2007]; and USTR (2006).

or 20% to 50% of the imported price.⁷³ Reportedly, from 1994 to end 2006, 310 countertrade agreements were signed, resulting in exports valued at B 75 billion. A recent deal was aimed at trading Thailand's abundant farm goods for costly hi-tech military products.

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Registration and documentation procedures

78. A few export items (e.g. orchids, langans, durian) require registration with the Department of Agriculture, apparently for quality, price monitoring, and food security purposes. Registration has also been used to meet quantitative restrictions in the case of textiles and clothing. In order to expedite customs clearance for exports, an EDI (electronic data interchange) system has been in use since 2000; a paperless customs procedure was implemented, in parallel, on 1 September 2006 (relevant section (2)(i)(a)).

79. Thailand monitors all products imported from other countries in order to prevent circumvention, which would jeopardize the interest of Thai exporters. Specifically, some companies from countries that do not enjoy GSP benefits, or that face anti-dumping charges in third markets, have tried to circumvent these obstacles by re-exporting their products from Thailand.⁷⁴ Following the liberalization of textiles trade upon expiry of the Agreement on Textiles and Clothing on 1 January 2005, and the conclusion of various bilateral trade agreements (Chapter II), Thailand established the Bureau of Anti-circumvention in September 2006 to prevent misleading declarations of origin in both preferential arrangements and trade remedy measures in the Thai and foreign markets, and to verify origin of products in accordance with rules and regulations of trading partners.

(ii) Export taxes, charges, and levies

80. There has been no change in Thailand's export duties since 2003 (Table III.6). Export taxes consist of statutory rates and applied rates; applied rates involve specific (hides of bovine animals) and *ad valorem* (wood sawn and articles thereof, from zero to 40%) duties. The contribution of export taxes to government revenue remains negligible (section (4)(i)(a)). The persistence of relatively high statutory export taxes, nevertheless, leaves an element of uncertainty in Thailand's trade regime, as export taxes on important products, such as rice or rubber, could in principle be reintroduced up to the level of the statutory rates without legislative approval. According to the authorities, the collection of export taxes is primarily for the purpose of conserving the environment, although it also constitutes a form of assistance to downstream processing. The authorities pointed out that export duties are allowed under WTO provisions and are applied in a non-discriminatory manner; these duties are not intended to be protection for domestic industries nor trade barriers.

⁷³ Office of the Prime Minister Regulation on Countertrade B.E. 2543 (2000). Asia Trade Hub online information, *Counter trade Policy in Thailand*. Viewed at: <http://www.asiatraderhub.com/thailand/exportpolicy.asp> [6 February 2007].

⁷⁴ EIU (2006b).

Table III.6
Export duties, 2007
(Baht and per cent)

Commodity	Applied rate	Statutory rate
Hides of bovine animals		
Raw hides	B 5 per kg	B 5 per kg
Parings, waste, and dust for use in the production of leather	B 0.4 per kg	B 4 per kg
Wood, sawn wood, and articles made of wood		
Wood and sawn wood	Zero to 40%	40%
Articles of wood		
Unsuitable for other conversion	10%	10%
Other	20%	20%
Rice	Zero	10%
Metal scraps	Zero	50%
Rubber	Zero	40%
Raw silk and silk yarn	Zero	B 100 per kg
Certain fish	Zero	75%

Source: Information provided by the Thai authorities.

(iii) Export prohibitions, restrictions, and licensing

81. Export licensing is used to administer quotas, conditional prohibitions, and absolute prohibitions. These measures have been in place for economic, quality, health, and safety purposes, as well as to implement voluntary restraint agreements with trading partners, mainly on textiles and clothing destined for the EC and certain agricultural products (Table III.7). Membership of the Board of Trade and respective trade association may be required to obtain an export licence.

Table III.7
Products subject to export licensing, 2007

Commodity	HS	Rationale	Measures and condition
Agriculture products			
Elephants	0106	Animal preservation	NAL, with approval from Department of National Parks, Wildlife, and Plants
Ornamental fish (in 317 species)	0301.10	Animal preservation	NAL, with approval from Department of Fisheries
Live black tiger shrimp	0306	Prevent domestic shortages	Automatic licensing, with certificate from Department of Fisheries
Crustaceans (shrimp and octopus) frozen or chilled	0306, 0307, 1605, 1902	Requirement of importing nation (only exports to the U.S. and EU)	Exporter must be member of Thai Frozen Food Association
Pearl shell and its products	0307	Encourage local farming industries	NAL, with export certificate from Department of Fisheries
Fresh orchids for export to the EC	0603.10	According to bilateral agreement	Exporter must be registered with Department of Agriculture; and phytosanitary certificate required
Cassava	0714.10	Regulate the export system and comply with the Agreement between Thailand and the EU	Automatic licensing, with certificate from Department of Foreign Trade
Durian	0810.90	Regulate the export system	Automatic licensing, exporters must be registered with Department of Agriculture

Table III.7 (cont'd)

Commodity	HS	Rationale	Measures and condition
Longans	0810.90	Regulate the export system	Exporter must be registered with Department of Agriculture, Ministry of Agriculture
Coffee	0901, 2101.10	Compliance with International Coffee Agreement	Automatic licensing
Rice	1006.10, 1006.20 1006.30, 1006.40	Prevention of domestic shortages, export control	Automatic licensing, with certificate from Department of Foreign Trade
Rice exporting to the EU under tariff quota	1006.20, 1006.30, 1006.40	Comply with the Agreement between Thailand and the EU	Automatic licensing, export quota (EU)
Cassava starches	1108.14	Regulate the export system and comply with the Agreement between Thailand and the EU	Automatic licensing, with certificate from Department of Foreign Trade
Tuna in airtight containers	1604.14	Regulate the export system	Exporter must be member of Thai Food Processors Association
Sugar	1701	Protection of local industries	Automatic licensing, exporters must be registered with Ministry of Industry
Canned pineapple and concentrated pineapple juice	2008.20, 2009.40	Regulate the export system	Exporter must be a member of Thai Food Processors Association, or Thai Pineapple Industry
Oil cake and other solid residue, resulting from extraction of ground-nut oil	2304, 2305	Prevent domestic shortages	Export is generally not allowed
Oil cake and other solid residue, resulting from extraction of soyabean oil	2304.00.0008	Prevent domestic shortages	Export is generally not allowed
Non-agriculture products			
Potassium permanganate	2841.61	Public moral, prevention of narcotics	Automatic licensing: only with approval from Office of the Narcotic Control Board
Caffeine and its salt	2939.30, 3003.40	Public health	Automatic licensing: only with approval from FDA or Department of Industrial Works
Wood, sawn or chipped	4401, 4403, 4404, 4406, 4407	Forest conservation and prevention of domestic shortages	Export is generally not allowed, except pines and eucalyptus with approval from Director-General of Royal Forest Department
Wood charcoal	4402	Forest conservation	NAL: with approval from Royal Forest Department
Rubber woods	4403, 4404, 4406, 4407	Prevent domestic shortage	Automatic licensing
Rough diamonds	7102.10, 7102.21, 7102.31	Comply with the UN resolution (subject to the export certification issued by the DFT under the Kimberly Process Scheme)	Automatic licensing, with export certificate from the Department of Foreign Trade
Non-categorized HS numbers			
All types of arms, military vehicles, hardware and spare parts to Sierra Leone, Ethiopia, Eritrea, Liberia, Somalia, and Congo		Comply with the UN Resolution	Prohibited
Antique idols, graven images		Protect national treasures of artistic, historic or archaeological value	Automatic licensing, with export certificate from Department of Fine Arts
Buddha images		To protect national treasures of artistic, historic, and archaeological value	Automatic licensing, with export certificate from Department of Fine Arts

Table III.7 (cont'd)

Commodity	HS	Rationale	Measures and condition
Coal		Conserve exhaustible natural resources	NAL, allowed only for re-export, or coal imported to produce for exports; export certificate from the Department of Alternative Energy Development and Efficiency, Ministry of Energy
Counterfeit products		Prevent production of counterfeit products	Prohibited
Gold		Economy security and stability	Automatic licensing, with conditions set by Ministry of Finance
Goods duplicated from copyright products		Prevent exports of imitation products	Prohibited
Natural sand		Conserve exhaustible national resources	Prohibited
Re-export products		According to agreement commitments	Thailand has no agreements
Silica sand or quartz sand		Conserve exhaustible national resources	Department of Foreign Trade authorizes the Department of Mineral Resources to grant licences
Textiles		Export items to the EC as from 2005	Bilateral agreement provisions

Note: NAL = Non-automatic licensing.

Source: Department of Foreign Trade, Thailand. Viewed at: http://www.dft.moc.go.th/export_index.htm.

82. Changes in Thailand's export licensing and prohibitions since 2003 include the elimination of prohibitive export licensing requirements on jute and kenaf seed, rattan, live bovine animals, tree-shrew, 277 kinds of wild animal, 291 kinds of wild animal carcass, corals, spiny terrapin, fuel oil and products thereof, and fertilizer.⁷⁵ The textile licensing arrangements were terminated in 2005, except for items destined for the EC. The DFT has 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.

83. Thailand has not exported automobiles under its bilateral arrangement with Chinese Taipei since 2004; under the agreement, which precedes Chinese Taipei's accession to the WTO, exports of automobiles to Chinese Taipei are subject to export licence and quota allocation. Since 16 May 2003, Thailand has issued export certificates for rough diamonds under the Kimberley Process Scheme before export.

84. The Export-Import Control Law regulates the export of items that are in short supply domestically or that might unduly affect prices.⁷⁶ The quota system is ostensibly applied to help improve the livelihood of farmers and food security in the country. For example, a portion of sugar production is reserved for domestic consumption; the remainder may be exported to the world market. Successive governments have tried unsuccessfully to relax the quota system for sugar.⁷⁷ The sugar industry made several appeals in 2005-06 for the removal of the quota system, in order to benefit from higher world market prices; nevertheless, in October 2006 the interim Government intended to leave that decision to the next Government.

85. Export proceeds in foreign currency to a value of US\$20,000 or above must be received in Thailand immediately upon payment, unless otherwise specified; payment must be received no later

⁷⁵ APEC (2006b), Chapter 2.

⁷⁶ EIU (2006b).

⁷⁷ The authorities indicated that Thailand no longer has a quota system for tapioca, while the EC and other importing countries set quotas for Thailand, which limits Thai exports.

than 120 days from the date of exportation. Exporters must sell this foreign currency to an authorized financial institution or deposit it in a foreign currency account with an authorized financial institution within 15 days of receipt.

(iv) Export assistance

86. Since 2003, the state-owned Export-Import Bank of Thailand (EXIM Bank), which provides financial services not adequately provided by the Thai banking system, has maintained its numerous export-promoting facilities in various forms: working capital loans⁷⁸, term loans⁷⁹, financing for overseas projects⁸⁰, export credit insurance⁸¹ and medium- and long-term export insurance.⁸² According to the authorities, these facilities are offered at market rates. Losses incurred from export credit insurance or business transactions are compensated by the Ministry of Finance through the allocation of funds from the Government's annual budget in compliance with government policies or cabinet resolutions⁸³; however, since the operation of the EXIM Bank, such losses have never arisen. In June 2006, the EXIM Bank launched the Small Exporters Financing Facilities (SEFF) for small and medium enterprise (SMEs).⁸⁴ The main objective of the SEFF credit is to provide working capital both before and after exportation; however, these credits are restricted to exporters with sales revenues of less than B 100 million and are free from NPLs (non-performing loans). Only one of the EXIM schemes, the Merchant Marine Financing scheme (to be terminated in 2008)⁸⁵, has been notified to the WTO Committee on Subsidies and Countervailing Measures (section (4)(ii)(c)).

87. Thailand maintains that it does not provide any export subsidies to its producers.⁸⁶ Following the elimination of export subsidies under the Export Market Diversification Promotion Programme (on 31 December 2003) and the Industrial Estate Authority of Thailand (IEAT) (in accordance with Article 27.4 of the WTO SCM Agreement), only one of the three programmes for which Thailand had requested an extension of the transition period for the elimination of export subsidies was still in place

⁷⁸ This facility includes schemes such as: Pre-Shipment Financing, Small Exporters Financing facility, Express Export Credit, Export Supplier's Finance and Packing Credit Plus.

⁷⁹ This facility includes term loans for business expansion, long-term credit for export for exports of capital goods; merchant marine financing; and trade fair financing. New or existing businesses eligible for support under term loans for business expansion are export-oriented manufacturing, those earning foreign currencies, or import substitution enterprises. Export Import Bank of Thailand (EXIM) online information. Viewed at: <http://www.exim.go.th/eng/services/term-loan-for-business-expansion.asp>.

⁸⁰ This facility includes the financial facilities for overseas construction contracts; the financial facilities for investment; financial facilities for Thai restaurants overseas; and investment insurance.

⁸¹ This facility includes an export credit insurance policy and small export bill insurance.

⁸² Terms and eligibility criteria concerning these schemes, discussed in the 2000 TPR, may be found at EXIM's online information. Viewed at: <http://www.exim.go.th/eng/>.

⁸³ The authorities indicate that in the event that the EXIM Bank suffers losses from its insurance business operation, which may affect business operations of the EXIM Bank and/or result in the EXIM Bank's inability to maintain the capital fund, the Ministry of Finance will appropriate the annual budget or other fund to compensate for such burden or to increase the capital (EXIM Bank online information. Viewed at: http://www.exim.go.th/eng/about_exim/business-policy.asp).

⁸⁴ World Bank (2006c).

⁸⁵ The Merchant Marine Financing is a special scheme supported by the Bank of Thailand. Loans under this scheme are divided in two parts: half of the loan amount is denominated in baht and funded by the Bank of Thailand with an annual interest rate of up to 5% (current rate is 7.5%-8.0% (Table I.1)) and a repayment period not exceeding five years; and half is provided by the EXIM Bank in U.S. dollars at a market interest rate. The last drawdown of funds from the Bank of Thailand was in 1999. The loan repayment of the Bank of Thailand's fund will be completed in the first quarter of 2008, and the special scheme will be terminated automatically.

⁸⁶ APEC (2006b), Chapter 2.

in 2004⁸⁷; 90 projects had been eliminated and 4 remained in place. The authorities indicate that the BOI has eliminated all export subsidies.

88. Domestic products that are exported are eligible for tax cards as defined in the Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act B.E. 2524 (1981). Tax cards can be used for payment of taxes and duties. According to the authorities, the refund on exports under this scheme is intended to cover some hidden tax and duty costs incurred by upstream industries. Foreign companies producing in Thailand are eligible for tax cards provided they present the commercial bank credit note or credit advice showing receipt of payment for imported goods (specifying the amount received). Certain export items, including minerals and goods subject to export duty or fees, are not eligible for tax cards.

89. Tax and duty compensation for exports is set as a fixed percentage of the f.o.b. value and is calculated on both the proportion of raw materials/inputs used for production (according to the NESDB Input/Output Table (I/O table)), and their average tariff rate. The compensation rate is regularly adjusted in line with changes in the I/O table and tariff rates on inputs, in order to minimize the possibility of over- or under-compensation. Compensation rates for exports are in the notification of the Committee Considering the Compensation of Tax and Duty on the Exported Goods Produced in the Kingdom 1/2004. According to the authorities, exports in 5,224 tariff lines are eligible for duty compensation, with average compensation rates ranging from 0.74% to 3.86% of the f.o.b. export value.

(4) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Taxation

90. Tax revenues in Thailand were estimated at B 1.3 trillion in FY2006 (B 777.2 billion in FY2002), which was about 16.9% of GDP (14.3% in FY2002) (Table I.1); in FY2006 personal and corporate income tax, VAT, and excise tax accounted for about 87.6% of the tax revenues, while customs duties (import and export) accounted for 7.4%, virtually all collected on imports (down from 12.3% in FY2002).

(a) Indirect taxes

91. In addition to the customs tariff and import surcharge, three indirect taxes are levied on imports: the excise tax, interior tax (10% of amount of excise tax), and VAT. All three are levied on imports at the same rates as on domestic production; the valuation basis depends on the type of tax (Table III.9). These indirect taxes represent about 46.3% of tax revenue, compared with 7.4% in FY2001) for customs duties (Table III.8). As indicated in Table III.9, the imposition of all indirect taxes may increase considerably the domestic price of an imported item compared to its c.i.f. value.

Excise taxes

92. The share of excise taxes in total tax revenue fell to 22.6% between FY2003 and FY2006, though the amount collected rose by 18%; in FY2006, imports accounted for 10.3% of total excise tax revenue. Excise taxes are levied on 15 product groups and 2 groups of services (including certain telephone services), although 87.39% (FY2006) of revenue is derived from four product groups: petroleum products, liquors/alcohol, tobacco, and motor vehicles. Excise taxes involve *ad valorem*,

⁸⁷ The Board of Investment (BOI) Programme, Investment Promotion Incentives, sections (2)(ii)(j) and (4)(ii)(a)) (WTO document G/SCM/N/123/THA G/SCM/N/128/THA, 23 June 2005).

specific, or alternative rates (an *ad valorem* or specific rate; the higher of the two is applied).⁸⁸ *Ad valorem* rates are as high as 79% (for cigarettes). In July 2004, the authorities reduced the excise tax on small passenger cars to 30% (from 35%) and raised slightly the rate on larger vehicles to 35%-50%, depending on engine size; the rate on cars running on natural gas was cut temporarily from 30%-50% to 20% in July 2006, depending on engine size, for 30 months (Chapter IV).⁸⁹ Furthermore, in September 2005 the excise tax was increased on distilled liquor with a high alcohol content; excise tax on brandy was raised from 35% to 40%.

Table III.8
Central government tax revenue by source, 2002-06
(Baht billion and per cent)

	2002/03	2003/04	2004/05	2005/06 ^a
Total tax revenue	914.80	1,032.90	1,174.10	1,317.30
	<i>(Per cent of total)</i>			
Taxes on income and profit	36.4	39.5	39.5	43.8
Payable by individuals	12.2	12.5	11.8	12.1
Payable by corporations and other enterprises	24.2	27.0	27.7	31.7
Taxes on property	0.0	0.0	0.0	0.0
Taxes on goods and services	50.7	49.5	50.6	48.1
General taxes on goods and services	21.4	22.2	25.5	23.5
Value-added taxes	20.0	20.3	23.8	21.2
Sales taxes	1.4	1.9	1.8	2.3
Excise tax	27.5	25.7	22.7	22.6
Profits of fiscal monopolies	0.6	-0.1	0.9	0.4
Taxes on specific services	0.8	1.3	1.2	1.2
Taxes on use of goods, permission to use goods	0.5	0.5	0.3	0.2
Taxes on international trade	12.3	10.4	9.2	7.4
Import duties	12.0	10.0	8.9	7.1
Export duties	0.3	0.4	0.3	0.3
Other taxes	0.6	0.7	0.7	0.7

a Preliminary.

Source: Ministry of Finance online information. Viewed at: http://dw.mof.go.th/foc/gfs/database/C1_CentralGovernments.html [12 April 2007].

93. All export goods are exempt from excise tax. The valuation basis for domestic production is the manufacturer's selling price (i.e. the ex-factory price) and in the case of services the total gross receipts. Following a complaint against discriminatory practices in customs valuation and excise tax on imports of Philippine cigarettes (section (2)(i)(c)), in April 2007 the Excise Department was seemingly reviewing cigarette import prices used to calculate excise taxes.⁹⁰ The authorities confirm that the same excise tax rate is levied on domestically produced and imported cigarettes (79% *ad valorem*); the valuation basis for imports is indicated in Table III.9.

⁸⁸ For further information on excise tax rates, see the Excise Department online information. Viewed at: <http://www.excise.go.th/tax/eng-totaltax1.html> [9 February 2007].

⁸⁹ EIU (2006b).

⁹⁰ *Thailand Outlook*, "Excise Department is reviewing cigarette import prices used to calculate excise tax charges: Cigarette import prices under attack", 2 April 2007. Viewed at: <http://www.thailandoutlook.com/thailandoutlook1/top+menu/investor+news/2007/Cigarette+import+prices+under+attack.htm> [23 April 2007].

Table III.9
Sample of duty assessment, 2007

Sample 1	
CIF value of imports	= US\$200
Import duty	= 60%
Surcharge/special duty	= US\$10
Fee	= US\$50
Interior tax	= 10% of excise tax
Excise tax	= 30%
VAT	= 7%
Calculation method	
1. Import duty	$= (\text{CIF value} * \text{rate of import duty}) + \text{surcharge}$ $= (200 * 0.6) + 10$ $= 120 + 10$ $= 130$
Note: the amount 130 is to be used for calculation of excise tax and VAT	
2. Fee	= 50
3. Excise tax	$= \{(\text{CIF value} + \text{import duty} + \text{fee}) * \text{rate of excise tax}\} / \{1 - (1.1 * \text{rate of excise tax})\}$ $= \{(200 + 130 + 50) * 0.3\} / \{1 - (1.1 * 0.3)\}$ $= (380 * 0.3) / 0.67$ $= 170.15$
4. Interior tax	$= \text{Excise tax} * \text{rate of interior tax}$ $= 170.15 * 0.1$ $= 17.02$
5. Base VAT	$= \text{CIF value} * \text{import duty} + \text{fee} + \text{excise tax} + \text{interior tax}$ $= 200 + 130 + 50 + 170.15 + 17.02$ $= 567.17$
6. VAT	$= \text{Base VAT} * \text{rate of VAT}$ $= 567.17 * 0.07$ $= 39.70$
Total taxes and duties = 1 + 2 + 3 + 4 + 6 = US\$406.87	
Sample 2	
CIF value of imports	= B 100
Import duty	= 60%
Special duty	= 20% of import duty
Interior tax	= 10% of excise tax
Excise tax	= 3%
VAT	= 7%
Calculation method	
1. Import duty	$= (\text{CIF value} * \text{rate of import duty})$ $= (100 * 0.6)$ $= \text{B } 60$
2. Special duty	$= \text{Rate of special duty} * \text{import duty}$ $= 0.2 * 60$ $= \text{B } 12$
3. Excise tax	$= \{(\text{CIF value} + \text{import duty} + \text{fee}) * \text{rate of excise tax}\} / \{1 - (1.1 * \text{rate of excise tax})\}$ $= \{(100 + 60 + 12) * 0.03\} / \{1 - (1.1 * 0.03)\}$ $= 172 * 0.03 / 0.97$ $= \text{B } 5.34$
4. Interior tax	$= \text{Excise tax} * \text{rate of interior tax}$ $= 5.34 * 0.1$ $= \text{B } 0.54$
5. Base VAT	$= (\text{CIF value} + \text{import duty} + \text{special duty} + \text{excise tax} + \text{interior tax}) * \text{rate of VAT}$ $= (100 + 60 + 12 + 5.34 + 0.54) * 0.07$ $= \text{B } 12.46$
Total taxes and duties = 1 + 2 + 3 + 4 + 5 = B 90.34	

Source: Customs Department online information. Viewed at: <http://www.customs.go.th/Customs-Eng/Sample/Sample.jsp?menuNme=Sample> [9 February 2007]; and information provided by the authorities.

Value-added tax

94. The VAT, which accounts for more than a fifth of total tax revenue, is set at 7% on goods and services, with exemptions only for books, education, hospitals, unprocessed agricultural products, fertilizers, animal feeds, pesticides, and certain other social goods and services. Reportedly, the authorities have delayed several times their decision to restore the VAT to 10%; the latest date, which was set on 1 October 2005, was rescheduled for 30 September 2007 and subsequently 30 September 2008.⁹¹ For products subject to excise tax and interior tax, VAT is levied on the tax-inclusive value; in the case of imports, the tax base comprises the c.i.f. price plus the amount of all other duties, taxes and fees (Table III.9). Exports are zero rated for VAT purposes.

(b) Direct taxes

95. The share of income and profit taxes in total tax revenues rose from 36.4% in FY2003 to 43.8% in FY2006; corporate and personal income taxes accounted for 31.7% and 12.1%, respectively (Table III.8).

96. Corporate income tax in Thailand is levied on the net profits of domestic and foreign companies alike.⁹² The tax rates vary from 2% to 30% depending on the type of taxpayer (Table III.10); the tax rate for the first bracket for small companies was reduced from 20% to 15% on 1 January 2004.

97. As in many other countries, the corporate tax is used by the Thai Government not just to generate revenue, but also as an instrument of economic policy by means of tax incentives. Among the main types of incentive are corporate tax holidays (total exemption from tax) for specified periods; these incentives are, in most cases, still granted by the Board of Investment (sections (2)(ii)(j) and (4)(ii)(a)).⁹³ One noteworthy tax incentive outside the purview of the BOI involves the low tax rate of 10% granted to International Banking Facilities (IBFs) in an attempt to develop Thailand's financial sector. This incentive, by implicitly subsidizing foreign exchange borrowing by Thai enterprises, was probably one of the factors that exacerbated the financial crisis in 1997. In 2006, the Thai Government adjusted the incentive scheme for IBFs by repealing the incentive for out-in facilities, but continuing the incentive for out-out facilities⁹⁴, which are operated in the Domestic Banking Unit. The Government also continues to allow businesses to choose the "double declining balance" method of accelerated depreciation, by which assets can be depreciated at twice the rate of the straight line method.⁹⁵ This measure is intended to increase the after-tax cash flow of businesses and encourage them to reinvest their profits in new assets. The inevitable outcome of these tax incentives is that marginal effective tax rates can vary substantially across sectors.

⁹¹ USTR (2006).

⁹² Revenue Department online information. Viewed at: <http://www.rd.go.th/publish/6044.0.html>. [9 February 2007]. Profits are defined for tax purposes as income minus business expenses, including depreciation allowances (ranging from 5% to 100% per annum, depending on the type of asset), wages, and salaries. Initial allowances are aimed at encouraging R&D and SMEs activities.

⁹³ See, for example, WTO document G/SCM/N/123/THA, G/SCM/N/128/THA, 23 June 2005.

⁹⁴ The authorities indicate that "out-out banking facility" means: accepting deposits or borrowing in foreign currencies from sources outside Thailand for the purpose of lending in foreign currencies outside the country; and accepting deposits or borrowing in Thai baht from foreign banks or overseas branches of commercial banks for the purpose of lending in Thai baht to foreign banks or overseas branches of commercial banks.

⁹⁵ The double declining balance is a depreciation method acceptable by accounting standards. Consequently, the authorities consider that it should not be regarded as an incentive.

Table III.10
Corporate income tax, June 2007

Taxpayer	Tax base	Rate (%)
Small company ^a	Net profit not exceeding B 1 million	15 ^b
	Net profit over B 1 million but not exceeding B 3 million	25
	Net profit exceeding B 3 million	30
Companies listed on the Stock Exchange of Thailand	Net profit (first B 300 million)	25 ^c
	Net profit (the amount exceeding B 300 million)	30
Companies listed on or after 6 September 2001	Net profit	25 ^d
Company newly listed in Market for Alternative Investment (MAI)	Net profit for the first five accounting periods after listing	20
	Net profit after the first five accounting periods after listing	30
International Banking Facilities (IBF) for Out-Out facilities in Domestic Banking Unit	Net profit	10
Foreign company engaging in international transportation	Gross receipts	3
Foreign company not carrying on business in Thailand receiving dividends from Thailand	Gross receipts	10
Foreign company not carrying on business in Thailand receiving certain types of income apart from dividend from Thailand	Gross receipts	15
Foreign company disposing profit outside of Thailand	Amount disposed	10
Profitable association and foundation	Gross receipts	2 or 10
Regional Operating Headquarters (ROH)	Net profit	10

a Small company refers to companies with paid-up capital less than B 5 million at the end of each accounting period.

b Rate of 15% applies for accounting periods beginning on or after 1 January 2004.

c The reduced rate applies for currently listed companies, for five accounting periods beginning on or after 6 September 2001.

d The reduced rate applies for newly listed companies, registered between 6 September 2001 and 5 September 2005, for five accounting periods beginning on or after 6 September 2001.

Source: Revenue Department online information. Viewed at: <http://www.rd.go.th/publish/6044.0.html> [9 February 2007]; and information provided by the authorities.

98. No changes other than the increase in the tax exempt threshold (up to B 100,000 of net income as from 2004) resulting in the elimination of the first tax bracket (5%) have taken place in Thailand's personal income tax since 2003.⁹⁶ Personal income tax rates now range from 10% (5% in 2003) to 37%.

(c) Transparency

99. All tax measures must be approved by the Cabinet and be published; they are shown on the Government's websites after the approval. Nevertheless, there appears to be a lack of transparency in Thailand's tax incentives, which undermines public accountability and thus governance. In particular, the tax authorities do not publish detailed information on revenue forgone as a consequence of these measures. Nor do they rigorously and systematically evaluate their impact and effectiveness. Experience in other countries suggests that tax incentives are seldom cost-effective.⁹⁷ Clearly, publication of estimates of tax revenues forgone, along the lines of practices in many OECD countries, as well as studies evaluating their cost-effectiveness, would greatly enhance fiscal transparency in Thailand and contribute to more effective tax policy. Elimination of incentives that are found to be ineffective would permit a broadening of the tax base, which could be accompanied

⁹⁶ Revenue Department online information. Viewed at: <http://www.rd.go.th/publish/6045.0.html> [9 February 2007].

⁹⁷ Most econometric studies show that forgone tax revenues exceed the increase in desired investment. Tax holidays are regarded as a particularly ineffective type of tax incentive compared with tax credits (WTO, 2003).

by reductions in statutory tax rates without necessarily involving any loss in total tax revenues; the outcome would be a more neutral tax system.

(ii) Investment incentives

(a) Incentives provided by the Board of Investment

100. Domestic investment in Thailand remains sluggish (Chapter I). The BOI recognizes the need to remove impediments to investment rather than relying on widely used tax incentives; the authorities indicate that this is the BOI's long-term goal.⁹⁸ The latest regulatory changes brought to the BOI investment incentive scheme date back to 1 August 2000 and, *inter alia*, involve a more "proactive" approach to industrial policy and the pursuit of improved competitiveness. Maximum tax and duty privileges are given to regions or areas with low income and inadequate investment facilities. SMEs with minimum investment capital of B 1 million (excluding cost of land and working capital) are eligible for promotion incentives.

101. Under the Investment Promotion Act B.E. 2520 (1977), Amendment No. 2 (1991) and Amendment No. 3 (2001), the BOI continues to have a wide-ranging influence on the formulation and implementation of investment promotion policies. The BOI, *inter alia*, authorizes the granting of tax and non-tax measures; main tax incentives include exemptions from import duties for machinery or raw materials, and corporate tax exemptions, and main non-tax measures include special permission for approved investments to be majority foreign-owned and to own land. Between 2004 and 2006, approved projects declined progressively due to the economic downturn and political instability. In 2006, 33% of BOI-approved projects were 100% foreign-owned investments and 42.3% were joint ventures⁹⁹; 28.5% of these projects were export-oriented and involved the production of electronics and electrical appliances; metals, machinery, and transport equipment; chemicals, paper, and plastics; light industry, mining, ceramics, and basic metals; services and infrastructure; and agricultural items.

102. According to BOI announcement No. 1/2543 (2000) and BOI Promotion Procedure, the BOI investment incentive scheme is as follows¹⁰⁰:

- approval criteria are the same for all projects; for projects investing B 500 million or more a feasibility study must be submitted with the application. The application must be processed for approval within 60 working days (projects less than B 750 million) or 90 working days (projects over B 750 million);
- maximum debt-to-equity ratio must be three-to-one;
- BOI-approved projects are granted either exemptions (projects in zone 3) or a 50% reduction (zones 1 or 2) of import duties on certain machinery, without any requirement to export or locate factories in industrial estates or promoted industrial

⁹⁸ BOI (2002); and BOI online information. Viewed at: http://www.boi.go.th/english/about/boi_policies.asp [14 February 2007].

⁹⁹ BOI online statistics. Viewed at: http://www.boi.go.th/english/download/boi_statistics/28/0612_app_en.pdf [14 February 2007].

¹⁰⁰ According to Board of Investment Announcement No. 1/2543 (1/2000). BOI online information. Viewed at: http://www.boi.go.th/english/about/investment_policies_criteria.asp [14 February 2007].

zones.¹⁰¹ Import duty exemptions on raw or essential materials used in manufacturing are for one year (zone 1 or 2) or five years (zone 3)¹⁰²;

- corporate tax exemptions depend on the zone in which an enterprise is located.¹⁰³ A three-year corporate tax holiday (exemption) is granted for projects in industrial estates or promoted industrial zones in zone 1. In zone 2, the exemption is for three years for outside industrial estates or five years for inside the industrial estates (seven years for applications submitted prior to 31 December 2009). In zone 3, an eight-year corporate tax holiday is granted.¹⁰⁴ The corporate tax exemption is capped at 100% of investment capital (excluding the costs of land and working capital)¹⁰⁵;
- as of October 2006, agriculture and agricultural products; mining, ceramics, and basic metals, light industry, metal products, machinery and transport equipment; electronic industry, and electrical appliances; chemicals, paper, and plastics; and services and public utilities are BOI eligible activities.¹⁰⁶ The BOI's priority industries include agriculture and agricultural products; technological and human resources development; public utilities and infrastructure; and environmental protection.¹⁰⁷ BOI targeted industries¹⁰⁸, cover manufacture of steel casting using induction furnace, manufacture of forged steel parts, manufacture of machinery and equipment, manufacture of sintered products, manufacture or repair of aircraft and aircraft parts, manufacture of vehicle parts, heat treatment, manufacture of material for microelectronics, electronic design, software, software parks and international distribution centres.¹⁰⁹ These industries are eligible for exemptions of import duties on certain machinery and a corporate tax holiday for eight years, irrespective of location. In 2002, the BOI selected five targeted industries, agri-business, automobiles, fashion, electronics, and high-valued services for proactive marketing campaign¹¹⁰; alternative and renewable energy was added in 2006. For the period

¹⁰¹ The measure applies to machinery with an import tariff of 10% or above.

¹⁰² Extra incentives apply in certain zone 3 provinces, such as a 50% tax holiday for an additional five years.

¹⁰³ Zone 1 includes Bangkok and five provinces; zone 2, 12 provinces; and zone 3 (all 58 remaining provinces). The 58 provinces in zone 3 are divided into two areas based on development level of each province; incentives for the 40 more developed provinces are more limited in scope than for other 18.

¹⁰⁴ Extra incentives apply in 22 provinces in zone 3; a 50% tax holiday is available for five years after the eight-year exemption period; double the amount of water, electricity, and transportation are deductible from taxable income for ten years from the date of first sales; and 25% of the installation and construction costs of infrastructure facilities can be deducted in the calculation of net profit. Since August 2001, projects with capital exceeding B 10 million must obtain ISO or similar international standard certification within two years; otherwise the tax holiday is reduced by one year.

¹⁰⁵ According to an amendment to the Investment Promotion Act.

¹⁰⁶ According to the authorities, the term "eligible" refers to the list of seven industrial sectors entitled to investment promotion; however the list of eligible activities is wide ranging. BOI online information. Viewed at: http://www.boi.go.th/english/about/eligible_activities.asp [14 February 2007]; and EIU (2006b).

¹⁰⁷ According to the authorities, the term "priority" refers to industries that contribute significantly to economic development. The priority industries differ from time to time depending on the economic situation and the development plan of the economy.

¹⁰⁸ According to the authorities, the term "targeted industries" refers to activities the BOI wishes to promote in trade fairs abroad.

¹⁰⁹ BOI Announcement No. 2/2543, 1 August 2000.

¹¹⁰ BOI Bulletin No. 68/45, 10 April 2002, "BOI Targets Five Industries For Proactive Marketing Campaign". Viewed at: http://www.boi.go.th/english/focus/boi_pr_target_industries02.html.

from December 2005-2007, the BOI grants import-duty exemptions for raw materials to companies previously not promoted by the Board¹¹¹;

- the BOI also allows foreign investors up to 100% equity in promoted projects (except for List 1 businesses, as defined in the Foreign Business Act (Chapter II)), and investment incentives are available equally to foreign and domestic investors. Since 2000, the BOI has allowed total foreign ownership in manufacturing activities, irrespective of location;
- projects of state enterprises should not benefit from these incentives; for privatized enterprises, only expansions after the privatization are considered for promotion.

103. Reportedly, the BOI introduced a new promotion package for manufacturers of hard-disk drives (HDDs) (end-January 2004), pharmaceutical firms (December 2005), electronics (March 2006) and other chemicals sectors (May 2006) as well as the film and software industries in June 2004.¹¹² Between February 2005 and end 2006, the BOI granted an eight-year corporate income tax holiday to hotel operators in the six southern provinces whose properties were damaged by the tsunami in December 2004.

104. Thailand requested and was granted by WTO Members extension until 31 December 2003 of the transition period to eliminate export subsidies in the form of corporate tax exemptions (tax holidays) associated with pre-existing BOI-approved investments.¹¹³ The authorities indicate that the BOI has eliminated all export subsidies, including those under pre-existing projects (i.e. prior to 2000) (section (3)(iv)).

(b) Other incentives

105. The Ministry of Finance has applied a tax incentive scheme since December 2001 for firms locating regional operating headquarters (ROH) in Thailand.¹¹⁴ The scheme includes a reduced company tax rate of 10% (instead of 30%), and accelerated depreciation. Expatriate employees of ROH can also opt to be taxed at a flat rate of 15% (instead of progressive scales ranging from 10% to 37%), for a maximum of four years. Eligibility criteria apply; for example, ROHs must provide services to affiliated entities in at least three foreign countries, and have minimum paid-up capital of B 10 million.

106. Zoning requirements for various promoted activities were relaxed from 19 September 2002: e.g. projects previously required to locate in zones 2 or 3 may relocate to zone 1¹¹⁵; and projects in some eligible activities that were previously required to be in certain zones may be located anywhere. The zoning requirement was to encourage industrial clusters and foster development in the least developed areas.

107. On 19 December 2006, the Cabinet approved the establishment of a Special Development Zone covering Thailand's five southernmost provinces: Yala, Pattani, Narathiwat, Songkhla, and Satun. The proposed measures aim, *inter alia*, at alleviating business operating costs (i.e. reduction of

¹¹¹ EIU (2006b).

¹¹² EIU (2006b).

¹¹³ WTO document G/SCM/102, 14 January 2003.

¹¹⁴ BOI online information, "News from the Ministry of Finance Number 86/2544". Viewed at: http://www.boi.go.th/english/download/law_regulations/60/roh.pdf. Similar information is available at: <http://www.lexuniversal.com/en/articles/1030>.

¹¹⁵ Board of Investment Announcement No. 2/2545, 26 December 2002.

corporate income tax), motivating entrepreneurs to invest in these areas, and ensuring a social security net for workers. By June 2007, the relevant regulations had been considered by the Office of the Council of State and were to be presented to the Cabinet for final approval.

108. Since early 2007, all SMEs have been able to source low-interest funds from eight commercial banks and the Small and Medium Enterprise Bank (SME Bank) to upgrade their machinery.¹¹⁶ A total of B 2 billion is to be available under a programme that will allow the Office of SME Promotion of the Ministry of Industry to spend around B 150 million to absorb some of the interest costs.

109. As from November 2005 companies engaging in research and development may deduct up to twice the amount spent on R&D from their corporate tax liabilities; reportedly, there has been a very poor response to this facility.¹¹⁷ Since January 2007, biotechnology businesses have been exempt from import duties on machinery and have benefited from an eight-year corporate-tax holiday; they are eligible for a 50% reduction in corporate tax for an additional five years if they are in a science park.

(c) Notifications to the WTO

110. Since 2003, Thailand has made two subsidy notifications pursuant to Article XVI:1 of GATT 1994 and Article 25 of the WTO Agreement on Subsidies and Countervailing Measures.¹¹⁸ The notifications cover some of the investment promotion incentives described above, the benefits provided by the Industrial Estate Authority of Thailand, and the refinancing schemes operated by the Bank of Thailand at subsidized interest rates. Thailand replied to questions raised by certain WTO Members (Australia, the EC, Turkey, the United States) regarding these notifications.¹¹⁹

(iii) Trade-related investment measures

111. Reportedly, local-content requirements for dairy products (ready-to-drink milk) were terminated on 31 December 2003 in accordance with relevant WTO obligations¹²⁰; according to the authorities, this requirement was not tied to any incentives granted by the BOI. Thailand abolished local-content requirements in the automotive sector in January 2000. Certain export requirements tied to incentives granted to firms located in EPZs were also eliminated on 1 January 2003.¹²¹

(iv) Other forms of production assistance

112. Thailand's agriculture sector benefits from product-specific and general support programmes, which include a pledging scheme, soft loans, and price interventions (Chapter IV).

113. Retail price subsidies (i.e. cross-subsidization, Chapter IV) on biofuels seem to be in place temporarily.¹²² Thailand eliminated consumption subsidies for petroleum products in 2005

¹¹⁶ EIU (2006b).

¹¹⁷ EIU (2006b).

¹¹⁸ WTO documents G/SCM/N/95/THA, G/SCM/N/99/THA, 23 July 2003; G/SCM/N/123/THA, G/SCM/N/128/THA, 23 June 2005.

¹¹⁹ For example, WTO documents G/SCM/Q2/THA/15, 9 May 2003; G/SCM/Q3/THA/23, 11 June 2003; G/SCM/Q3/THA/25, 7 October 2004; G/SCM/Q2/THA/17, 9 October 2006; G/SCM/Q2/THA/18, 13 November 2006.

¹²⁰ APEC (2006b), Chapter 2.

¹²¹ WTO document G/SCM/101/Suppl.1, 2 April 2003.

¹²² World Bank (2006c).

(Chapter IV)¹²³; no information on this subsidy was made available for Thailand's previous TPR. Under its 2005 electricity tariff restructuring, Thailand aimed to reduce cross-subsidization of one consumer group by another; nevertheless, subsidization for residential consumers remains, particularly for low-consumption residential consumers, as well as for agricultural pumping services (Chapter IV).¹²⁴ The retail electricity tariff structure distinguishes among the following power consumer categories: residential; small general services; medium general services, large general services (LGS), and specific business services; government institutions and non-profit organizations; agricultural pumping service (involving subsidization from other power consumers); temporary power customers; and interruptible rate.

(v) **Standards and other technical requirements**

(a) **Products regulated by the Thai Industrial Standards Institute (TISI)**

114. Thailand is a member of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC). Between 2002 and 2007 (February), the TISI established 374 Thai industrial standards (TISs); at end October 2006 out of a total of 2,654 TISs 3.3% were mandatory.¹²⁵ Out of 88 compulsory standards 30.7% related to electrical/electronic engineering and about 23% to civil and construction material (Table AIII.1); other items subject to compulsory TISs include mechanical engineering, vehicles, and consumer's products.¹²⁶ The number of TISs that are identical to international standards has increased since 2002 (Table III.11); their share to total published TISs rose from 23.9% (2002) to 24.4% (2006).¹²⁷

Table III.11
Thai industrial standards (TISs), 2002-06

Year	Cumulative total of published TISs	Cumulative total of published TISs identical to international standards		
		ISO	IEC/CISPR	CODEX
2002	2,280	320	217	7
2003	2,347	329	225	7
2004	2,470	354	248	7
2005	2,690	376	252	7
2006	2,725	396	261	7

Source: Thai Industrial Standards Institute.

115. Between 2003 and 2007 (July), Thailand made some 142 notifications under the WTO Agreement on Technical Barriers to Trade. In line with the TBT Agreement Code of Good Practice

¹²³ Thailand through its Oil Fund, subsidized retail petrol and diesel prices from early January 2004 to July 2005 by capping retail prices. Petrol prices were allowed to float in October 2004, and diesel price caps were fully removed in July 2005. By then the Energy Fund Administration Institute (EFAI), which administers the Oil Fund, was B 92 billion in the red. The EFAI sold B 26.4 billion in Oil Fund bonds in October 2005 and issued another B 20 billion worth of bonds in February 2006. The remainder of the fund is financed through commercial-bank lending. To repay the borrowings, the Government levies a contribution on petrol; the ceiling amount was raised on 10 October 2006 to B 4 per litre, up from B 2.5 (Canadian Energy Information Administration, 2006).

¹²⁴ Ministry of Energy (2005).

¹²⁵ List of TISs as of 19 February 2007. Viewed at: http://www.tisi.go.th/standard/cat_eng.html [21 February 2007].

¹²⁶ List of TISs as of 10 October 2006. Viewed at: http://www.tisi.go.th/standard/comp_eng.html [21 February 2007].

¹²⁷ TISs are defined by the Industrial Product Standard Act B.E. 2511 (1968) and its amendments, as well as relevant ministerial regulations.

for the Preparation, Adoption and Application of Standards, a TISI Work Programme is published biannually; it contains a list of the draft TISs according to their stage of progress (i.e. priority list, draft proposal, committee draft, draft standards to be approved by the Industrial Product Standards Council).¹²⁸

116. The TISI and the Federal Office of Road Safety of Australia have maintained a bilateral Mutual Recognition Arrangement on automotive products since 1999. Thailand currently participates in various APEC mutual recognition arrangements¹²⁹; it is considering participating in the APEC Electrical MRA, the APEC MRA on Conformity Assessment of Telecommunications Equipment phases I and II. It has also signed: the Pacific Accreditation Cooperation Multilateral Recognition Arrangement and IAF Multilateral Recognition Arrangement, the Asia Pacific Laboratory Accreditation Cooperation Multilateral Recognition Arrangement, the International Laboratory Accreditation Cooperation Multilateral Recognition Arrangement, and the Asia Pacific Legal Metrology Forum Memorandum of Understanding.

117. Manufacturers that have been awarded ISO 9000 certification are exempted from assessment of their quality control system; a quality management system certificate for a product or product group is generally accepted provided it is issued by either the ISO 9000 certification body accredited by the Office of the National Accreditation Council of Thailand, or by the ISO 9000 certification body approved by the Industrial Product Standards Council. The TISI may, however, conduct additional assessments on items if the certified quality management system differs from the particular requirements for product certification and the general requirements for product quality control.¹³⁰

(b) Products regulated by the Food and Drug Administration and the Ministry of Agriculture and Cooperatives

118. Thailand's Food and Drug Administration (FDA), under the Ministry of Public Health, monitors and regulates the production, sale, and import of food products, cosmetics, drugs and narcotics, medical devices, and psychotropic substance, and monitors and regulates the usage of volatile substances, as empowered by the relevant legislation (Food Act B.E. 2522 (1979), Cosmetics Act B.E. 2535 (1992), Drug Act B.E. 2510 (1967) and its revision, Medical Devices Act B.E. 2531 (1988), Psychotropic Substances Act B.E. 2518 (1975) and Hazardous Act B.E. 2535 (1992) (for household use), Narcotics Act B.E. 2522 (1979), the Emergency Decree on Protection against Abuse of Volatile Substances B.E. 2533 (1990)). Imports and exports of feedstuffs, fertilizers, hazardous substances, live animals, plants, and seeds are administered by the Ministry of Agriculture and Cooperatives. Between 2003 and July 2007, 68 notifications (87 including revisions and addenda) were submitted under the WTO Agreement on Sanitary and Phytosanitary Measures (the SPS Agreement). Thailand is an active participant in the FAO/WHO Joint Codex Alimentarius Commission, the FAO International Plant Protection Convention, the World Animal Health Organization, and the WTO SPS Committee.

¹²⁸ This programme, which is regularly updated, is available in TISI's online information. Viewed at: http://www.tisi.go.th/work_prg/work_prg.html.

¹²⁹ Including the APEC Mutual Recognition Arrangement on Conformity Assessment of Electrical and Electronic Equipment (APEC Electrical MRA - Part I); the APEC MRA on Conformity Assessment of Foods and Food products (APEC Food MRA); the APEC MRA on Conformity Assessment of Telecommunications Equipment (APEC Tel MRA); and the APEC Arrangement for the Exchange of Information on Toy Safety (APEC, 2006b, Chapter 5).

¹³⁰ Criteria for product certification are available at: http://www.tisi.go.th/license/r_pc_01_e.html; information on Thai Laboratory Accreditation Scheme (TLAS) and the directory of accredited laboratories is available at: <http://www.tisi.go.th>.

119. In 2005, concerns were raised with respect to some of Thailand's SPS measures in the context of the WTO SPS Committee. Concerns relate to Public Health Regulation No. 11 on requirements for food health certificates and emergency measures temporarily suspending the import of live poultry carcasses from the Mexican State of Durango; they were raised by the United States and Mexico, respectively. In June 2007, the authorities indicated that the measure under Public Health Regulation No. 11 had been withdrawn by means of a Thai FDA Notification issued on 25 November 2005. The Thai FDA is in the process of reviewing and reassessing the actual health risks of this food item so as to ensure that it is consistent with current scientific information based on risk analysis.

120. The National Bureau of Agricultural Commodity and Food Standards (ACFS) under the Ministry of Agriculture and Cooperatives is responsible for consolidating work in various agencies on agricultural commodity and food standards; it is mandated as a single national body to formulate and implement policy for SPS regulations.¹³¹

121. Importers of regulated products must apply to the FDA for an import licence, and manufacturers require a manufacturing licence. Additional registration requirements are imposed on various "specific-controlled" processed and packaged food items, these cost B 5,000 per item, excluding expenses for analysis. The Food Committee may recommend to the Minister of Public Health that an individual food be specified as a specific controlled food; currently, 14 kinds of food (18 in 2002) are listed as specific-controlled food (Table III.12). In addition, there are a number of "standardized" food products, whose prescribed specification and labelling must comply with the Ministry of Public Health Notification.¹³²

Table III.12
"Specific-controlled" food products administered by the Ministry of Public Health, as of June 2007

Type of food	Notification No. (year)
1. Cow's milk	265 (2002) and 282 (2004)
2. Ice cream	222 (2001) and 257 (2002)
3. Flavoured milk	266 (2002)
4. Other milk products	267 (2002)
5. Cultured milk	289 (2005)
6. Non-alcoholic beverages in sealed containers	214 (2000), 230 (2001) and 290 (2005)
7. Stevioside and food containing stevioside	262 (2002)
8. Food additives	281 (2004)
9. Sodium cyclamate and food containing sodium cyclamates	113 (1988)
10. Food for weight control	121 (1989)
11. Food in sealed containers	144 (1992), 179 (1997) and 253 (2002)
12. Modified milk for infants and modified milk of follow-up formula for infants and children	156 (1994) and 167 (1995) and 286 (2004)
13. Food for infants and food of follow-up formula for infants and small children	157 (1994), 168 (1995), 171 (1996), and 287 (2004)
14. Supplementary food for infants and young children	158 (1994) and 169 (1995)

Source: Data provided by the authorities.

¹³¹ WTO document G/SPS/N/THA/93, 4 April 2003.

¹³² These foods are listed in FDA online information. Viewed at: <http://www.fda.moph.go.th/eng/food/details/foodCategoryIndex.stm>.

(c) Quarantine requirements

122. In response to allegations by one major trading partner over the implementation aspects of SPS standards in Thailand (including slaughterhouses or farm facilities)¹³³, the authorities indicated that, in line with the Animal Epidemics Act B.E. 2499 (1956) and its amendments as well as related regulations, Thailand has an audit system for national veterinary service. Within the system audit, livestock production units (farm or slaughterhouse) are subjected to individual inspection. The published regulations for imports of animals or animal products are general instructions for every exporting country; modifications of some conditions in a given regulation are possible, based on risk analysis, scientific evidence, and recommendations of the veterinary inspectors. In case of an outbreak of animal disease in an exporting country, restrictions on imports of livestock or their products from that country may be imposed prior to notification. This is to prevent the introduction of the disease into Thailand. However, import restrictions due to disease outbreak are imposed only after the incidence has been officially reported by the OIE. The outbreak of infectious diseases is an emergency situation. The authorities emphasize that based on scientific reasons and disease control principles, import restrictions to prevent disease spreading, even before the circulation of notifications, are indeed justified, and should not be considered as trade barriers.

123. Major legislative amendments took place in 1999. The Plant Quarantine Act B.E. 2507 (1964) was amended in 1999 with a view to harmonizing Thailand's domestic pest control measures with international requirements. The amendment, *inter alia*, included: the Plant Quarantine Committee; import and export control measures for plants and germplasms; increased penalties for any violation of the law; and adjustment of the administrative fees for phytosanitary services. Recently, the Department of Agriculture revised three Ministerial Regulations under the Plant Quarantine Act B.E. 2507 (1964) amended by Plant Quarantine Act (2nd Edition) B.E. 2542 (1999). The new regulations, published in the *Royal Gazette* of 1 June 2007, and effective 31 July 2007, list articles (such as fresh fruit), whose entry into Thailand is prohibited or restricted. The importation of prohibited articles for commercial purpose must pass the pest risk analysis process, subject to conditions set by the Director-General of the Department of Agriculture. Imports of restricted articles must be accompanied by a phytosanitary certificate, while some restricted articles are subject to conditions set by the Director-General of the Department of Agriculture and an additional declaration must be provided certifying that the consignment is free from certain pest and disease.

124. The Animal Epidemics Act B.E. 2499 (1956) was last amended in 1999 with a view to harmonizing of animal disease control measures; the amendment, *inter alia*, introduced regulations on activities involving embryos; strengthened the authority of veterinarians and the Department of Livestock Development to control animal diseases; and strengthened of penalties. The Animal Feed Quality Control Act B.E. 2525 (1982) was also amended in 1999. Two Ministerial Notifications under the Plant Quarantine Act B.E. 2507 (1964), issued on 14 October 2003 and 17 March 2004, specify GM plants as prohibited articles with exceptions for imports for research purpose as well as for corn and soybean used as raw material for human food or animal feed or industrial use. Ministerial Regulations under the Animal Epidemics Act B.E. 2499 (1956) were promulgated in 2001; they stipulated requirements for import, export, and transit of animals and carcasses thereof. An amendment in 2002 stipulates controls on import, export, and transit of dogs and cats in order to prevent diseases such as rabies and leptospirosis; A 2003 amendment (dated 27 May 2003) added aquatic animals and amphibians. Another Ministerial Regulation under the dated 24 December 2004, added more animal diseases, and made it compulsory to report the incidence of the diseases listed.

¹³³ USTR (2006).

125. A health certificate issued in the exporting country must accompany imports of certain food products. Health certificates are required for imports of certain live animals and their products, and a phytosanitary certificate is needed for the prohibited and restricted materials. As from 1 June 2003, Thailand has levied import fees on meat products, at approximately US\$114 per tonne on beef and pork, US\$227 per tonne for poultry, and US\$114 per tonne on offal, to cover the cost of quarantine procedures such as laboratory inspection, waste treatment, disinfection, and labour costs.

(d) Labelling requirements

126. A ministerial announcement on genetically modified food products has been in force since May 2003. Food products derived from GM or engineered maize and soya in whole or in part must be labelled as such in legible form¹³⁴; the announcement also prohibits labelling such as GM free or non-GM food.

(vi) Intellectual property rights

127. Thailand is a member of the World Intellectual Property Organization and a party to the Berne Convention. However, it has not acceded to the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, or the Rome Convention (International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations). The authorities indicate that although Thailand is not a member of the Rome Convention, most of the principles therein are already incorporated in its current copyright legislation, in accordance with Article 2 of the TRIPS Agreement. Reportedly, Thailand began preparations in 2005 to accede to the Paris Convention and the Patent Cooperation Treaty¹³⁵; it seems that there were to apply to join the latter in 2007.¹³⁶

128. Since its previous Review in 2003, Thailand has made submissions to the TRIPS Council on, *inter alia*, the stage of implementation of its obligations under the TRIPS Agreement and replies to questions on its national legislation posed by Members, as well as a joint communication on the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD) and the protection of traditional knowledge.¹³⁷

(a) Legislative and institutional developments

129. Since its previous Review, Thailand has taken further action to strengthen its IPR legal framework and to implement the WTO TRIPS Agreement by enacting the Geographical Indications Act (2003) and the Optical Disc Production Act B.E.2548 (2005). The Department of Intellectual Property (DIP) at the Ministry of Commerce is, *inter alia*, entrusted with implementing the laws on patents, trade marks, copyrights, and other relevant legislation as well as promoting, developing and protecting IPRs.¹³⁸ Furthermore, as part of Thailand's general regulatory reform plan (Chapter II), the DIP has started the process of amending laws on trade marks, copyrights, patents, and trade secrets.

¹³⁴ The requirement applies to food products containing more than a certain amount of modified or engineered DNA. The requirement does not apply to small producers that sell food products directly to consumers.

¹³⁵ USTR (2006); and EIU (2006b).

¹³⁶ As a signatory of this treaty, Thailand's inventions and intellectual property would be protected automatically in several countries under a single international patent application.

¹³⁷ WTO documents: IP/Q/THA/1 IP/Q2/THA/1 IP/Q3/THA/1 IP/Q4/THA/1, 12 February 2004; IP/C/38, 21 November 2005; IP/C/38, 21 November 2005; and IP/C/44, 4 December 2006.

¹³⁸ IPR Service Center online information. Viewed at: http://www.ipthailand.org/en/index.php?option=com_content&task=view&id=58&Itemid=52 [23 February 2007].

Copyright and related rights

130. There has been no change in Thailand's copyright legislation in the period under review. Under the Copyright Act (1994), protection is for the life of the creator, plus 50 years¹³⁹, except in the case of works of applied art, which are protected for 25 years from the date of creation¹⁴⁰; under Thai law, a copyright is considered to exist upon creation of a work and registration is not required. Protection extends to literary works (including computer programs), dramatic, artistic, musical, audio-visual, photographic, cinematographic works, sound recordings, broadcasting works, and all other materials in the literary, scientific, and artistic domains. Authors' moral rights and performers' rights are also protected.

131. In the case of infringement, copyright holders have the right, under the Act, to seek injunctions, compensation for damages, and to recover investigation costs and legal expenses. Competent authorities under the Copyright Law have the right to seize pirated goods upon the request of the copyright holder and to enter any premises where they suspect such goods are being held. Penalties for direct infringement for commercial purposes range from B 100,000 to B 800,000, with prison terms of six months to four years. Exception clauses in the case of computer software include research and study of computers, and personal use by the owner of a copy of the software, provided that the purpose is not for profit. Between 2002 and 2006, annual copyright notifications more than tripled, passing from 12,714 to 39,511; they mostly consist of musical, artistic, sound recording, and audiovisual works.

Trade marks

132. Following its latest amendment in 2000, the Trademarks Act B.E. 2534 (1991) contains, *inter alia*, the principle of national treatment, the registration of colour marks and three dimension marks. Owners of registered trade marks are granted protection for ten years; registration may be renewed every ten years. Trade marks that are identical or similar to well-known trade marks may not be registered and those already registered can be revoked. Also protected are service marks, certification marks, collective marks, and "well-known marks".

133. Applications for trade mark registration must be filed with the Department of Intellectual Property. To qualify, a trade mark must meet the requirements of distinctiveness, differentiation from other registered trade marks, and not be in violation of public order or morality. Thailand's Trademark Act adopts the International Classification of Goods and Services, in accordance with the Nice Agreement. Statistics on trade mark and application registration in Thailand indicate a rise since 2002, despite a drop in registrations in 2003 (Table III.13); applications and registrations by Thai firms exceeds those involving foreigners.

Patents

134. There has been no change in Thailand's patent legislation since its previous Review. The Patent Act B.E. 2522 (1979), as amended, grants protection to nationals of other countries that are party to any international convention to which Thailand is also a party in the same manner as that given to Thai nationals. The importation of patented products by the patentee is considered as

¹³⁹ In the case of a work of joint authorship, copyright lasts for the life of the authors plus 50 years after the death of the last surviving author. Where the author is a legal person, copyright lasts for 50 years from the date the work was created; provided that the work is published during such period, copyright endures for 50 years from its first publication.

¹⁴⁰ If the work of applied art is published within 25 years of its creation, copyright endures for 50 years from first publication.

"working the patent". The Patent Act includes both invention and petty patents; an invention may be in the form of a product or process. Terms of protection, applied from the date of filing, are 20 years for inventions, ten years for designs, and six years for petty patents.¹⁴¹ Under the Patent Act, an invention is defined as any innovation or invention that creates a new product or process, or any improvement on a known product or process. A product design is defined as any form or composition of lines or colours that gives a special appearance to a product and can serve as a pattern for an industrial or handicraft product.

135. Applications for patents must be submitted to the Department of Intellectual Property at the Ministry of Commerce. Statistics on patent registration in Thailand show diverging trends with patent applications rising while patents granted declining to record lows between 2002 and 2006 (Table III.13).

Table III.13
Trade mark and patent statistics, 2002-06

	2002	2003	2004	2005	2006
Trade marks					
Total applications	30,109	33,049	36,968	36,423	33,572
Thai	21,518	23,335	26,414	24,275	21,171
Foreigner	8,591	9,714	10,554	12,148	12,401
Total registrations	23,146	17,983	23,532	27,445	24,115
Thai	13,281	11,440	15,918	18,497	15,595
Foreigner	9,865	6,543	7,614	8,948	8,520
Patents					
Total applications	7,726	8,574	8,942	10,885	9,821
Thai	3,030	3,426	3,428	4,258	3,564
Foreigner	4,696	5,148	5,514	6,627	6,257
Total patents granted	2,466	2,326	2,044	1,322	1,878
Thai	635	797	867	505	568
Foreigner	1,831	1,529	1,177	817	1,310

Source: Department of Intellectual Property. Viewed at: <http://www.ipthailand.org/en/index>; and information provided by the authorities.

Layout designs of integrated circuits

136. Under the Protection of Layout Designs of Integrated Circuits Act B.E. 2543 (2000), a layout design must be the outcome of the designer's own effort and not deemed commonplace. The layout design must be registered with the Department of Intellectual Property; protection enters into force upon registration and issuance of a certificate. The certificate is valid for ten years from the date of filing or the date of the first commercial exploitation, within or outside Thailand, whichever occurs first, but not longer than 15 years from the date of the completion of the layout design's creation.

Trade secrets

137. Protection of undisclosed information under the Trade Secrets Act B.E. 2545 (2002) requires that the information must not be generally known among or readily accessible to persons in the business, must have value attributable to its secrecy, and must be in the control of persons who have taken measures to keep it secret; the Act allows government agencies to disclose information to

¹⁴¹ These terms of protection can be extended twice for periods of two years.

protect any public interest that does not have commercial objectives. The protection lasts as long as the information remains confidential. No registration is required under the Act.

138. The Department of Intellectual Property received 1,801 notifications under the Trade Secrets Act in 2005, up from 1,013 in 2003; in 2006, there was a considerable drop to 508.¹⁴² Reportedly, all processed foods must be accompanied by a detailed list of ingredients and a description of the manufacturing process, disclosure of which could jeopardize an applicant's trade secrets.¹⁴³

Geographical indications

139. Thailand's Geographical Indications Act B.E. 2546 (2003), which entered into force on 28 April 2004, protects domestic and overseas geographical indications from abuse in Thailand.¹⁴⁴ The registration of geographic indications prevents registration of similar or identical terms and the use of names that may cause confusion as to geographical origin, quality, reputation or characteristics; prevents use of the name on goods not emanating from the geographical area in question, unless such use has taken place continuously for ten years prior to 15 April 1994, or earlier, in good faith; and allows for penalties/fines of up to B 200,000 (about US\$5,500). Registration is valid until it is cancelled. In November 2006, the DIP had registered 11 products under the Act: nine Thai products, Pisco (Peru), and Champagne (France), the first European geographical indication to obtain registration.¹⁴⁵

Protection of plant varieties

140. Protection under the Plant Varieties Protection Act B.E. 2542 (1999), which entered into force in December 1999, is for up to 27 years.¹⁴⁶

(b) Parallel imports

141. Parallel imports are allowed for goods protected by copyrights or by registered or unregistered trade marks. By contrast, under the Patent Act, the patentee has an exclusive right to import patented products or products produced by the patented process. However, after a patented product has been produced or sold by a third party with the authorization or consent of the patentee, the patentee's rights over these products are deemed exhausted, including the right to prevent parallel imports. Right holders under the Protection of Layout Designs of Integrated Circuits Act also have an exclusive right to import the protected layout design.

(c) Government use and compulsory licensing

142. There has been no change to Thai legislation on government use and compulsory licensing. Regarding copyright, any interested person may apply for compulsory licensing to translate a work into Thai or to reproduce a translation published in Thai, under special circumstances, for example for

¹⁴² EIU (2006b).

¹⁴³ USTR (2006).

¹⁴⁴ Details on the Act, published in the *Government Gazette* (Volume No. 120, Part 108 Kor.) on 31 October 2003, are available in Asia Law online information, "Thailand Adds Geographical Indications Law to IP Law Stable (IP Review January 2004)". Viewed at: <http://www.asialaw.com/default.asp?Page=20&PUB=68&ISS0=10970&SID=433835> [23 February 2007]; and Rouse & Co International online information, "Champagne – the first EU 'geographical indication' to be registered in Thailand", July 2006. Viewed at: <http://www.iprights.com/publications/alerts/alerts.asp?alertID=291> [23 February 2007].

¹⁴⁵ EIU (2006b).

¹⁴⁶ WTO document IP/N/1/THA/P/1, 13 November 2000.

study, teaching or research without a profit-seeking purpose. Under the Section 46 (Annex III) of the Patent Act any person may apply for a licence three years after the grant of a patent or four years from the date of application, whichever is earlier.¹⁴⁷ In addition, Section 51 provides for the grant of licences for government use purposes, *inter alia*, to carry out any service for public consumption or to prevent or relieve a severe shortage of food, drugs or other consumption items. Thailand is amending the Patent Act to insert provisions on compulsory licensing in line with the flexibilities provided by the WTO Decision of 30 August 2003 on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health.

143. Based on Section 51 of the Patent Act, Thailand has issued three compulsory licences: one heart disease drug and two HIV/AIDS drugs.¹⁴⁸ The Government Pharmaceutical Organization was granted the rights relating to these patent-protected inventions against payment of a royalty fee of 0.5% of total sales value to the right holder. Reportedly, the compulsory licences will not affect the patented market as the medicines would be distributed to those unable to pay, including those already covered by the government; the cheaper drugs will not be exported.¹⁴⁹ Following the issue of these licences, one of the pharmaceutical firms concerned announced that it would cut the price of the medicine in question in low-and medium-income countries, including Thailand; it would be less costly than any generic on the market and 55% less than the current price.¹⁵⁰

(d) Enforcement

144. Thailand has made efforts to tackle piracy and counterfeiting. The authorities indicate that the DIP, the Royal Thai Police, and relevant public and private agencies have taken systematic measures to stem all aspects of IPR violation; production, distribution, and import/export. Nevertheless, according to the authorities, wiping out IPR violation remains difficult as counterfeit or pirated goods are much cheaper than genuine goods, a decisive factor for consumers' decision-making.

145. Upon request or suspicion, customs officers are allowed to seize, at the border, trade-mark-infringing goods that are being imported or exported. With respect to copyright, the right holder must file a request with customs to suspend importation and/or inspect goods. Customs jurisdiction is not confined to border points. In case of suspected smuggling of IPR-infringing products, Customs may invite the IPR owners to inspect the goods. Some representatives of IPR owners join Customs officers to inspect shipments at Klong Toey Port on a regular basis. In order to strengthen border enforcement, the Customs Department has proposed a draft amendment of the Customs Act, which would empower customs officers to inspect goods in transit, and transshipments, and broaden the scope of border enforcement to cover all IPRs.

146. The Government has taken various actions in this area since Thailand's previous Review in 2003. The Royal Thai Police in coordination with the DIP has monitored and raided major shopping

¹⁴⁷ The relevant provisions are in Sections 45, 46, 47 and 47 bis of the Patent Act B.E. 2522 (1979) as amended by Patent Act (No. 2) B.E. 2535 (1992) and Patent Act (No.3) B.E. 2542 (1999).

¹⁴⁸ Under a compulsory license, the government can itself produce (e.g. Government Pharmaceutical Organization of Thailand) - or authorise a third party to do so - a subject matter that is still under patent without the consent of the patent holder, or without having made efforts to obtain authorisation from the right holder, under certain conditions such as it being for non-commercial use, according to Article 31 of the TRIPS. According to the 2001 Doha Declaration on the TRIPS Agreement and public health, each member is free to determine the grounds upon which such licences are granted. Intellectual Property Watch (2006) and (2007).

¹⁴⁹ Ministry of Public Health and National Health Security Office (2007).

¹⁵⁰ *International Herald Tribune*, "Thailand takes on drug industry, and may be winning", 11 April 2007. Viewed at: <http://iht.com/articles/2007/04/11/news/pharma.php>.

centres and CD factories reputed for IPR infringement. Coordination has been improved under a December 2002 Memorandum of Understanding on the Cooperation of the Relevant Government Agencies on the Enforcement of Intellectual Property Rights. In another attempt to curb sales of pirated goods, the Ministry of Commerce signed a Memorandum of Understanding on 16 August 2006 with a number of private-sector representatives and law-enforcement groups to coordinate efforts and cooperation.¹⁵¹ Under the Import and Export Law, the Optical Disc Production Law and other relevant laws, the Government has strictly monitored the OD production business by licensing the importation of OD production machinery and keeping track of the OD production process.

147. Thailand officially launched the Prevention and Suppression of Intellectual Property Infringement Committee in April 2005, though it had been meeting since 2001.¹⁵² This Committee helps coordinate efforts to crack down on piracy and run intellectual property education programmes. In September 2004, the Department of Justice announced the formation of a new Department of Suppression Investigation (DSI), responsible for investigating crimes affecting national security and involving organized crime and money-laundering¹⁵³; around 200 of its 1,000 officers were assigned to the Intellectual Property Case Office, which investigates IPR cases.

148. Since 1997, the Intellectual Property and International Trade (IPIT) Court, separate and specialized court of original jurisdiction, has enhanced IPR enforcement. The IPIT Court employs specially trained judges (career and associate judges), has its own rules and procedures to expedite the processing of cases (such as continuous hearings without adjournments), and equitable remedies, such as preliminary injunctions.¹⁵⁴ Reportedly, around 5,300 criminal IPRs cases were dealt with the IPIT Court in 2005 (average of six months for a decision).¹⁵⁵ Generally a fine is imposed and the goods are destroyed (Table III.14). Reportedly, this has had little deterrent effect as: fines are often reduced by 50% for a guilty plea or first time infringements; the level of fines does not meet the cost of taking criminal action, and is not a deterrent for infringers, as shown by the number of recidivists; and prison sentences are invariably suspended.

149. According to replies to a 2006 EC questionnaire¹⁵⁶, local production of IPR-infringing items includes music, car parts, pharmaceutical products, software, bags and accessories, clothes, and luxury goods. Local sales (both to locals and to the growing tourist industry) of these products take place in street markets, wholesale and retail in shops, as well as via the internet for certain counterfeit pharmaceutical products. Thailand has become apparently a transit/transshipment/smuggling point for infringing goods from other countries, notably China, Cambodia, Viet Nam, and Myanmar, due to deficient border enforcement. According to the Business Software Alliance, software piracy has

¹⁵¹ The most important aspect of the memorandum is the obligation of department stores and landlords, when advised by the DIP that a tenant has been prosecuted for IPR infringement, to terminate immediately the tenant's lease. Failure to abide by this provision could pave the way for civil liability for landlords and tenants alike. Similar proceedings have had some success in China and Malaysia, though in November 2006, pirated software, music and films remained easily and widely available in Bangkok (EIU, 2006b).

¹⁵² The committee groups representatives from 27 domestic and foreign companies, industry groups, and law firms (EIU, 2006b).

¹⁵³ EIU (2006b).

¹⁵⁴ Bali (2006).

¹⁵⁵ Report cited in replies to an EC questionnaire, viewed at: http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130595.pdf [23 February 2007].

¹⁵⁶ EC online information. Viewed at: http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130595.pdf.

remained high as a result of widespread ignorance or disrespect of the law.¹⁵⁷ Compared with the global software piracy rate of 35%, and 54% for Asia, the rate in Thailand was 80% in 2005, an increase of 1 percentage point over 2004 and 2 percentage points over 2003. Allegedly, software industry revenue losses due to piracy in Thailand in 2005 alone were estimated at a B 10 billion.

Table III.14
Activities against intellectual property rights violation, 2002-05

Legislation	2002	2003	2004	2005
Copyright Act B.E. 2537				
Arrests	3,363	4,142	5,179	5,647
Materials seized (items)	743,724	1,134,552	802,496	1,388,274
Trademark Act B.E. 2534				
Arrests	1,295	1,338	2,602	1,995
Materials seized (items)	1,409,848	3,008,012	1,384,923	850,106
Patent Act B.E.2522				
Arrests	16	26	9	3
Materials seized (items)	150,376	1,104,809	3,279	6
Cassette Business and Television Devices B.E.2530				
Arrests	114	3	36	44
Materials seized (items)	10,911	2,312	30,347	23,181
Total				
Arrests	4,788	5,509	7,826	7,989
Materials seized (items)	2,314,856	5,249,685	2,221,045	2,261,567

Source: Department of Intellectual Property online information. Viewed at: <http://www.ipthailand.org>.

150. Although conviction rates are high, corruption and a cultural climate of leniency can complicate prosecution of cases.¹⁵⁸ Reportedly, the frequency of raids compromised by leaks from police sources remains a concern. Pirates have responded to intensified enforcement by intimidation of right holders' representatives and enforcement authorities. Thai officials generally lack sufficient resources to undertake enforcement actions apart from those initiated by right holders. Effective prosecutions can be labour-intensive for right holders, who often investigate, participate in raids, and assist in the preparation of documentation for prosecution.

151. IPR enforcement remains a concern for some of Thailand's major trading partners. In June 2003, the United States provided Thailand with a proposed IPR Action Plan, which included detailed proposals for action to be taken on enforcement, legislative/regulatory, and judicial issues. The EC plans to offer more technical assistance and cooperation.¹⁵⁹

¹⁵⁷ *Business Software Alliance* press release "Software Piracy Reports Increase By 7 Fold After Re-Launch of Anti-Piracy Campaign", 24 October 2006. Viewed at: <http://www.bsa.org/thailand/press/newsreleases/leads-increase-7-fold.cfm> [26 February 2007].

¹⁵⁸ USTR (2006), and EIU (2006b).

¹⁵⁹ Thailand was placed on the USTR's Special 301 Watch List in November 1994, and remained there in November 2006. Thailand was elevated to the Special 301 Priority Watch List in 2007, based on concerns about lack of adequate enforcement in the area of copyright and weakening of respect for patents, referring specifically to the decision to grant compulsory licences for several patented pharmaceutical products (section (4)(vi)(c)). In an IPR report released by the European Commission in October 2006. Thailand was listed in Category 3, which comprises countries with high levels of production, transit and consumption of illegally copied goods. USTR (2006); and EIU (2006b).

(vii) State involvement in production and trade

152. State involvement in the economy persists. The current 59 state-owned enterprises (SOEs) can be grouped into nine broad sectors: agriculture and natural resources, energy, manufacturing, financial, telecoms, transportation, infrastructure, social and technology, and other services activities (Table III.15). These enterprises, which had a total of around 266,500 employees (0.7% of labour force) in February 2007, contributed B 77 billion (1.0% of GDP) in revenue to the Government in fiscal year 2006; these revenues are forecast to rise to B 90 billion in FY2007 and B 95 billion in FY2008.¹⁶⁰

Table III.15
State involvement in the economy, 2007

Sector	Function and trade-related privileges
Agriculture and natural resources	
Forest Industry Organization (F.I.O)	Plantation management, re-forestation, logging, sawmilling and forest industries. According to the authorities: not responsible for export or import; generates income from forest industry and related activities; without special privileges; and freely competes with the private sector
Botanical Garden Organization (BGO)	Responsible for the establishment and administration of botanical, country and regional plant collection centres, and botanical museums
Dairy Farming Promotion Organization of Thailand (D.P.O.)	Promotion of dairy farming including sales of domestic output to meet domestic-content requirements; no external trade
Marketing Organization for Farmers (MOF)	Marketing of agricultural products and supply of services; no external trade
Fish Marketing Organization (FMO)	Fish marketing facilities; no external trade
Office of the Rubber Replanting Aid Fund (ORRAF)	Promotes good quality rubber plants to farmers by using new technology and develops fair market mechanism for farmers selling their products
Rubber Estate Organization (R.E.O)	Production, purchase, and distribution of rubber and rubber by-products; no external trade
Energy	
PTT Public Company Limited ^a (PTT)	Oil and gas production, distribution, and import. According to the authorities: PTT operates as a normal private enterprise; receives no special privileges from the Government; and freely competes with other international and domestic enterprises. Source for government purchases
Electricity Generating Authority of Thailand (EGAT)	Sole rights for distribution and trade in electricity; owns and operates several types and sizes of power plants
Provincial Electricity Authority (PEA)	Supply of electricity; no external trade
Metropolitan Electricity Authority (MEA)	Supply of electricity; no external trade
Industry	
Thailand Tobacco Monopoly (TTM)	Supply and production of cigarettes (domestic monopoly); imports of tobacco
Playing Cards Factory (PCF)	Monopoly supply and production of playing cards; exclusive import rights
Liquor Distillery Organization (LDO)	Production and supply of alcohol (sole domestic producer), and production of liquor; exclusive production rights for 95% ethyl alcohol
Battery Organization of Thailand (B.O.T.)	Battery production
The Tanning Organization (TTO)	Production and sale of tanning products
Police Printing (P.P.)	Printing business to serve public and private sectors

Table III.15 (cont'd)

¹⁶⁰ TMC Net, "Thailand: The operating environment (Executive Briefing Via Thomson Dialog News Edge) from the Economist Intelligence Unit", 10 January 2007. Viewed at: <http://www.tmcnet.com/usubmit/2007/01/10/2238481.htm>.

Sector	Function and trade-related privileges
Social and technological	
Public Pawnshop Office (OOP)	Government pawnshop for low to medium income earners with low interest rates
Sports Authority of Thailand (SAT)	Aims to supervise and promote sports in Thailand. Conducts studies, analyses, evaluation, project implementation, project planning, and statistics on sport promotion; it also acts as the centre for sports coordination domestically and internationally
Zoological Park Organization (ZPO)	Caters for endangered species and participates in animal breeding programmes; facilitates visitors and community education, biological research and wildlife conservation
Thailand Institute of Scientific and Technological Research (TISTR)	Conducts research for the development of science and technology in accordance with national policy and plan; promotes knowledge in science and technology to the public
National Science Museum (NSM)	Operates science and technology museum to promote public awareness and importance of science and technology and to encourage participation in the development of science and technology to support and sustain the development of the country
Government Pharmaceutical Organization	Procurement of drugs, and drug manufacture; source for government procurement
Services	
Government Lottery Office (GLB)	State lottery operator, responsible for managing, marketing and conducting lotteries in Thailand
Marketing Organization (MO)	Distribution center for agricultural and OTOP products with fair prices; promotes marketing network amongst producers and buyers
Public Warehouse Organization (P.W.O.)	Purchase and distribution of agricultural products; exclusive import rights for potatoes and tea
Tourism Authority of Thailand (TAT)	Promotes tourism and the tourist industry
Syndicate of Thai Hotels and Tourists Enterprises Limited (THAI HO)	Leases land to hotel development operators
Transportation	
Airports of Thailand Public Company Limited ^b (AOT)	Provides facilities and related services to airline operators
Port Authority of Thailand (PAT)	Main organization to manage and supervise both central and regional ports
State Railway of Thailand (SRT)	Administers and operates all railway functions throughout Thailand
Bangkok Mass Transit Authority (BMTA)	Bus service operator in Bangkok and metropolitan areas
Aeronautical Radio of Thailand Limited (AEROTHAI)	Provides air traffic control and aeronautical communication services for airlines operations
Express Transportation Organization of Thailand (E.T.O.)	Liquidated in 2006
Thai Maritime Navigation Co. Limited (TMN)	Sea freight forwarder
Thai Airways International Public Co. Limited (THAI)	Air carrier and related services
Transport Co. Limited (TCL)	Domestic bus service operator
Civil Aviation Training Center (CATC)	Responsible for domestic and international training, and operates related aviation services
New Bangkok International Airport Co. Limited (NBIA)	Ceased operation and handed over responsibilities to AOT
Mass Rapid Transit Authority of Thailand (MRTA)	Operates mass rapid transit systems within the greater bangkok area and other provinces
Expressway and Rapid Transit Authority of Thailand (ETA)	Provides alternative road facility with safety and high quality services to Bangkok commuters
Bangkok Dock Company Limited	Shipbuilding and ship repairs
Telecommunications	
TOT Corporation Public Company Limited ^c (TOT)	Provides telecommunications and other related services through sole operation and/or joint ventures with other entities
Cat Telecom Public Company Limited (CAT)	Provides telecommunications and other related services both locally and globally
Thailand Post Co. Limited (THAILAND POST)	Postal service provider
MCOT Public Co. Limited (MCOT)	Mass communication businesses, including TV, radio broadcasting, news service, and other joint operations with private parties

Table III.15 (cont'd)

Sector	Function and trade-related privileges
Infrastructure	
Metropolitan Waterworks Authority (MWA)	Provides good quality supply of water to residents, business, and industries in Bangkok and its surrounding cities
Provincial Waterworks Authority (PWA)	Provides good quality supply of water to people residing in provinces, besides Bangkok and its surrounding cities
Industrial Estate Authority of Thailand (IEAT)	Provides services for the facility and utility systems necessary for industrial and business operations; develops suitable locations for industrial estates
Waste Water Management Authority (WMA)	Manage wastewater treatment system
National Housing Authority (NHA)	Housing provider for people in low to medium income groups. Engages in urban development, urban renewal and slum problem solving, in order to bring about better quality of life, society and environment
Financial	
Krung Thai Bank (KTB)	Provides all kinds of financial services and competes with private banks
Government Saving Bank (GSB)	Provides all kinds of financial services, guaranteed by the Government
Government Housing Bank (GHB)	Provides housing finance for domestic consumers, especially low and medium income borrowers
Bank for Agriculture and Agricultural Cooperatives (BAAC)	Provides financial assistance to help farmers and farmer institutions increase productivity and incomes and offers deposit services to farmers throughout the country
Export-Import Bank of Thailand (EXIM)	Offers short and long-term credits, in domestic and overseas markets, in local or foreign currencies. Issues short- and long-term financial instruments for sale to financial institutions and the public; does not accept deposits from the general public
Small and Medium Enterprise Development Bank of Thailand (SME)	Provides financial services and consultancy for small and medium enterprises in Thailand
Secondary Mortgage Corporation (SMC)	Secondary mortgage finance and any other businesses that supports and develops secondary mortgage finance
Small Industry Credit Guarantee Corporation (SICGC)	Provides credit guarantee service to help small industrial enterprises obtain greater amounts of credit from financial institutions

a PTT Public Company Limited was incorporated as a public company on 1 October 2001 on corporatization from the Petroleum Authority of Thailand under the Corporatization Act of B.E. 2542 (1999).

b The Airports of Thailand Public Company Limited was established on 30 September 2002.

c TOT was transformed from an SOE under the Ministry of Transportation and Communications (MoTC) into a public company, on 31 July 2002, under the control of the Ministry of Information and Communication Technology (MICT).

Source: Information provided by the Government of Thailand; and Ministry of Finance (2005), *Thailand Economic Outlook 2005*, 27 June, Fiscal Policy Office. Viewed at: <http://www.thailandoutlook.com/NR/rdonlyres/FE757436-5B84-46DA-82F8-F08DEE127869/0/ChapterIV.pdf> [27 February 2007].

153. There are various laws and regulations aimed at enhancing implementation of the privatization programmes, including the Trade Competition Act (1999), the Foreign Business Act (1999), Taxation Laws (amended in 2002), and the Corporatization Act (enacted in 1999). The Cabinet's 7 April 2004 resolution increased the importance of effective regulatory oversight and prevention of abuse of monopoly power of corporatized entities.¹⁶¹ It adopted the policy to create systematic regulatory mechanisms to control monopoly power and abuse thereof in respect of consumers and other operators, as part of the principles to protect the interests of the nation, people, consumers, and state enterprise employees. As a result, the Government must maintain a 50% stake in all state enterprises and a 75% holding in power and water utilities¹⁶²; and with the exception of state agencies and enterprises, no shareholder, Thai or foreign, is allowed to hold more than a 5% stake in a privatized company. Total foreign shareholdings are limited to 25%.

¹⁶¹ APEC (2006b), Chapter 10.

¹⁶² TMC Net, "Thailand: The operating environment (Executive Briefing Via Thomson Dialog News Edge) from the Economist Intelligence Unit", 10 January 2007. Viewed at: <http://www.tmcnet.com/submit/2007/01/10/2238481.htm>.

154. Under the Corporatization Act 1999, SOEs set up by law are being corporatized (i.e. transformed into companies). Five SOEs were corporatized and six companies were formed in the period 1999-06: the Petroleum Authority of Thailand (presently PTT Public Co. Ltd.); Airport Authority of Thailand (AOT Public Co. Ltd.); Telephone Organization of Thailand (TOT Public Co. Ltd.); Communications Authority of Thailand (restructured and corporatized into CAT Telecom Public Co. Ltd. and Thailand Post Co. Ltd.) and Mass Communications Authority of Thailand (MCOT Public Co. Ltd.). The authorities still wholly own TOT Public Co. Ltd., CAT Telecom Public Co. Ltd., and Thailand Post Co. Ltd. In November 2006, the authorities signed a two-year contract with a Thai rating agency to evaluate the performance of SOEs, with an eye to improving efficiency and thus their competitiveness.

155. Privatization in Thailand has met with strong resistance from labour unions and parts of civil society.¹⁶³ In 2006, the privatization programme suffered a major setback when a Supreme Administrative Court decision effectively reversed the corporatization and the planned listing of the Electricity Generating Authority of Thailand (EGAT), the country's largest power company (Chapter IV). The original privatization plan, under which 16 SOEs were to be privatized by end 2006, was abandoned after the EGAT decision. The listing of all 16 firms would have added an estimated B 1.5 trillion to the capitalization of the Stock Exchange of Thailand.

156. The Government has proposed the preparation of a new law to replace the Corporatization Act, which will combine fundamental guidelines and principles. The first is criteria on the selection of SOEs to be corporatized. The second is an improved corporatization process, which will be more transparent and accountable by prescribing mandatory public hearings at key stages, the establishment of relevant independent regulators prior to corporatization and share listing, and abolishing legal privileges and powers previously enjoyed by the SOEs. The third is clear guidelines on the offering of shares. No corporatization or privatization will be undertaken until the new legislation is enacted.

157. Thailand's latest notification to the WTO Working Party on State Trading Enterprises covered the Public Warehouse Organization (PWO); the Liquor Distillery Organization (LDO); and the Thailand Tobacco Monopoly (TTM).¹⁶⁴ In addition, a number of other publicly owned companies are directly or indirectly involved in trade of goods or services (Table III.15). No statistics on annual imports, exports, procurement or domestic sales of these corporations were available from the authorities.

(viii) Regulation of corporate practices

(a) Competition policy and price controls

158. Thailand's laws and regulations on competition policy remain unchanged since its previous Trade Policy Review in 2003.¹⁶⁵ According to the previous Constitution of the Kingdom of Thailand B.E. 2540 (1997) (Chapter II), the Government must support a market-based economy, and regulate and ensure fair competition, consumer protection, and anti-monopoly practices through direct and indirect means; the authorities indicate that despite the repeal of the Constitution they still support these principles. The Trade Competition Act B.E. 2542 (1999) remains the main law defining Thailand's competition policy framework. The Department of Internal Trade (DIT) of the Ministry of Commerce is responsible for implementing the legislation and ensuring fair competition in the domestic market.

¹⁶³ There remain comprehensive statutory state monopolies in some key service sectors, such as petroleum and electricity.

¹⁶⁴ WTO document G/STR/N/11/THA, 17 August 2006.

¹⁶⁵ APEC (2006b), Chapter 8.

159. Under the Price of Goods and Services Act (1999) the authorities ensure the fair price of goods and services, and adequate supply of goods to meet domestic demand. The Central Commission on Price of Goods and Services was established to prevent price manipulation or other unfair business practices, where these may affect consumers directly. Subject to Cabinet approval, the Commission has the power to designate (by issuing a notification) any particular goods or services as controlled goods or services, or fix the purchase or distribution prices of controlled goods or services, and to maintain the prices at a certain level.

160. Items controlled under the Prices of Goods and Services Act 1999 are contained in the Controlled List (Table III.16)¹⁶⁶, and the Monitored List¹⁶⁷, and are enforced primarily at the manufacturer and distributor level. The Controlled List is revised at least once a year and approved by the Cabinet before implementation; each item can be subjected to any of the eight prescribed legal measures (Table III.16). An approval from the DIT must be obtained to raise prices on most products in the Controlled List and the Monitored List. The DIT can request manufacturers to review their prices if they are deemed too high or too low after a technical cost analysis for the product. In general, most manufacturers follow the DIT's requests as the DIT may take legal or administrative actions against those who do not and if the manufacturers still do not comply, their products will be reclassified into the Controlled List to more stringent requirements.

Table III.16
Legal measures applied to products in the Controlled List, as of March 2007

Measures	Products
Report selling prices; and must obtain approval before increasing prices	Milk powder and fresh milk; fertilizer; pesticide; milk product including condensed milk, low fat milk, coffee creamer; canned food; electrical wire
Report selling prices and inform of price changes 7-15 days in advance	Liquid detergent; dish detergent; sanitary napkins; tyres; cement; detergent; soap; shampoo; vehicles like passenger cars, motorcycles and trucks; craft paper; corrugated cardboard
Report selling price 1-2 days after price change	Liquefied petroleum gas
Report services charge and cost	Copyright services provider
Maximum-price control	Sugar
Report selling prices monthly	Plastic in primary form (i.e. plastic resin); printing and writing paper; paper pulp
Report cost, inventories, and stock holding	Palm oil
Restrict transportation	Palm oil (report monthly stockpile, inventories and import plan); rice (report monthly quantity movements above 10 tonnes in the restricted areas)

Source: Department of Internal Trade (DIT).

161. According to the authorities price control mechanisms are based upon the "analysis of updated assumptions". The Central Commission on Prices of Goods and Services reviews the list of controlled goods or services at least once a year to ensure price conformity with economic conditions, having regard to: the cost of production; production, import, export, purchasing, and distribution expenses; "appropriate" profits; and effects on investment geared to expand production capacity at subsequent stages.

¹⁶⁶ World Bank (2006c).

¹⁶⁷ The 200 products and 20 services under the Monitored List are regulated by the DIT's administrative measures and divided into three sub-groups: the sensitive list (gasoline oil, diesel oil, milk powder, fresh milk, wire/cable, and delivery services) for which domestic and international prices are monitored closely every day; the priority watch list (sugar, fertilizer, animal feed, tyres, cement, galvanized iron, steel rod, section, steel sheet (hot/cold/roll and stainless) and repair services) for which domestic prices and the general market situation are monitored twice a week; and the watch list (186 items and 18 services) for which product prices are monitored every two weeks. The entire monitored list is available from the Department of Internal Trade online information. Viewed at: http://www.dit.go.th/uploadnew/2007118E367_200_items.pdf [21 February 2007].

162. According to a 2006 World Bank study, the two lists cover slightly less than half of Thailand's manufacturing sector value-added; they also account for less than 20% of the CPI basket.¹⁶⁸ These price controls allegedly depress profitability and private investment while having a relatively small impact on inflation. Furthermore, the sharp rise in energy prices coupled with firms' inability to adjust prices, partly due to price controls, also seem to have negatively affected firms' production and total factor productivity. Reportedly, price controls on some products are not transparent because determinations are sometimes based on outdated assumptions, including exchange rates, and go for long periods without review, even upon repeated petition for review by affected parties.¹⁶⁹ Since 2003, only sugar has been subject to a retail price ceiling; the authorities indicate that this was aimed at maintaining fairness among to the producers of sugarcane, sugar refineries, middlemen, and consumers.

163. In September 2006, due to the political situation, the Council for Democratic Reform under Constitutional Monarchy issued a notification to prohibit the hoarding of goods or raising prices of all kinds of goods; this notification was lifted in April 2007.

164. Under the Trade Competition Act, which entered into force in April 1999, the Trade Competition Commission is responsible for carrying out research and monitoring competitive conduct, and implementing competition legislation and regulations. The Commission consists of the Minister of Commerce (chairperson), the Permanent-Secretary of Commerce (vice-chairperson), the Permanent-Secretary for Finance, and 8 to 12 "qualified persons" appointed by the Council of Ministers.¹⁷⁰ The Director-General of the DIT is the Secretary-General of the Commission. The Trade Competition Commission is empowered to appoint inquiry subcommittees to conduct investigations and inquiries into anti-competitive practices. The Act, *inter alia*: prohibits businesses that are deemed dominant from setting unfair prices, 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 business operators outside Thailand for personal consumption; and any act that has negative effects such as impairing or obstructing business operations of other businesses.

165. The Trade Competition Commission has the authority to issue written orders to business operators deemed to be in violation of the provisions of the Trade Competition Act; the orders may involve suspension, cessation or correction of unfair business practices. Failure to abide by the provisions of the Trade Competition Act may result in jail terms of one to three years, and/or fines of up to B 6 million. An Appellate Committee appointed by the Council of Ministers in December 2000 is empowered to consider and decide on appeals against Trade Competition Commission orders. Business operators governed by other laws and regulations, such as SOEs (under the State-owned Enterprise Law) and groups of farmers (under the Agricultural Cooperatives Law) are exempted from the Act.¹⁷¹

¹⁶⁸ World Bank (2006c).

¹⁶⁹ USTR (2006).

¹⁷⁰ No less than half of the qualified persons must be from the private sector.

¹⁷¹ More specifically, Section 4 of the Trade Competition Act, 1999 exempts: the Central administration, provincial administration or local administration; state enterprises under the law on budgetary procedures; farmers' groups, cooperative societies recognized by law and having as their object the operation of business for the benefit of the occupation of farmers; and businesses prescribed by the Ministerial Regulation, which may provide for exemption from the application of this Act in whole or only in respect of any particular provision thereof.

166. Since its inauguration, the Office of Trade Competition Commission has made decisions in three cases; one involved alleged excessive pricing by a cable television monopoly and one alleged tie-in sales of beer with whisky; no penalties were imposed in either case. The third case, which is still in process, involves alleged exclusive "dealing" in motorcycle business.

167. To make its law enforcement more transparent and effective, the Trade Competition Commission has set the threshold for a business operator with market domination, indicated by market share and sales volume. The threshold was approved by the Council of Ministers and entered into force in January 2007.¹⁷² The Commission issued the Guideline for Wholesales and Retail Business, effective October 2006, to deal with unfair trade practices in wholesale and retail businesses. The guideline attempts to set principles of and rules for fair trade practices in wholesale and retail businesses, including issues such as coercion, non-discrimination, trade barriers, clearance rules, advance agreement, and fair competition. In addition, to strengthen implementation of the law, the Commission has improved the procedure for complaints and verifying information. According to the authorities, the weak enforcement of the competition legislation can also be attributed to institutional, procedural, legal or resource limitations in the Office of Trade Competition, including lack of funds for staff-training, public relations, and investigative activities.¹⁷³

(b) Corporate governance: accounting and disclosure practices

168. Thailand's successful economic restructuring and long-term development depends on creating an efficient capital market capable of mobilizing savings and channelling them into the most productive uses. Good corporate governance is essential for the establishment of such a market; studies show a positive correlation between the quality of corporate governance and share prices in the local market, which are, in turn, a key determinant of companies' cost of capital. Inadequate standards of corporate governance could jeopardize other reforms, notably corporate and financial restructuring as well as privatization.

169. In the face of the weak balance sheets of various corporations, improving corporate governance across sectors has become a government priority. Various analyses of the 1997 Asian financial crisis have highlighted inappropriate accounting and disclosure practices and insufficient accounting requirements. The Government's strategy for economic recovery has included various measures to remedy these shortcomings.

170. The Accounting Act, which entered into force in August 2000, required all companies to register the names of their accounting officers. The Act also gave legal force to the accounting standards pronounced by the Federation of Accounting Professions (FAP) (Institute of Certified Accountants and Auditors of Thailand (ICAAT) until 2004).¹⁷⁴ There are 71,328 qualified company accountants.

171. The 2002 Securities and Exchange Commission (SEC) Action Plan on Good Corporate Governance includes: amending relevant laws, issuing a set of best practices, introducing incentive schemes, and an educational programme. The Plan is aimed at promoting shareholders' rights,

¹⁷² No details on these thresholds were available from the authorities. In February 2005, the Trade Competition Commission seems to have settled on the following definition of dominant player: a firm with more than a 50% share of its market (subject to a minimum turnover of B 1 billion); any three companies with a combined market share exceeding 75% and combined sales of more than B 1 billion also are classified as dominant if each has a market share of at least 10% (EIU, 2006b).

¹⁷³ WTO document WT/WGTCP/W/188, 29 May 2002.

¹⁷⁴ Online information on accounting standards viewed at: <http://www.iasplus.com/country/thailand.htm#0511> [1 March 2007].

transparency and accounting standards, good corporate governance, directors' accountability, a good corporate governance rating programme, and educational and public relations programmes.¹⁷⁵ These were last updated in March 2006; more principles have been added to make it comprehensive and comparable to the OECD Principles of Corporate Governance as well as to include the recommendations in the World Bank, Report on the Observance of Standards and Codes related to Thailand corporate governance (CG-ROSC).¹⁷⁶ The 2006 principles and recommended best practices cover the rights of shareholders, equitable treatment of shareholders, role of stakeholders, disclosure and transparency, and responsibilities of the Board. Other recent SEC activities include prevention of money siphoning by listed companies, monitoring of auditors' performance, surveillance of financial statements of companies under rehabilitation, appointment of an "auditor watchdog", ongoing issuance of accounting guidelines, launching corporate governance report on listed companies, enhancing roles of independent directors, and striving for law reform.

172. The SEC maintains various measures to ensure and enforce compliance with good corporate governance practices by listed companies, such as updating disclosure requirements and accounting standards to international levels. If disclosure documents are found to be incorrect or insufficient, the SEC orders amendments to be made, and the Stock Exchange of Thailand (SET) suspends trading of such stock. In this context, at the time of the previous TPR the SEC was to announce names of listed companies that had accomplished a high level of information disclosure, and information concerning investigation of complaints, and inappropriate acts of companies under SEC supervision. Between 2004 and 2006 the SEC received 1,964 complaints, 85% (1,668) of which were processed. Listed companies that accomplish high level of information disclosure are awarded with the Best Corporate Governance Report Awards arranged by the SET; there were 11 such companies in 2004, 11 in 2005, and 8 in 2006.

173. The number of listed companies in the SET and Market for Alternative Investment (MAI) rose from 421 in 2003 to 522 in May 2007; during the same period, 25 companies were de-listed, mainly as a result of merger or non-compliance with SET rules and regulation. None of these companies was de-listed as a result of failure to observe standards or codes of good corporate governance. The authorities are of the view that, in the interest of retail investors, mandatory delisting should be a last resort; the SEC and the SET focus more on the management of the listed companies by imposing measures on the management. A list is made of companies whose management does not comply with good corporate governance practices; no such list was available from the authorities. The SEC sanctions target a wide range of actions, including insider trading and negligence by company directors in their fiduciary duties, which can be considered related to corporate governance. In 2005, the SEC imposed various measures such as notices for rectification, warning, probation, and suspension or revocation of approvals. In 2005, the SEC presented 48 cases involving 62 offenders to the its Settlement Committee; total fines of B 15.3 million were imposed and this amount more than doubled (i.e. B 32.7 million) in the period from January to September 2006.¹⁷⁷ According to the 2005 World Bank CG-ROSC, Thailand had taken important steps to address weaknesses in its corporate governance framework although challenges, especially those concerning the protection of shareholders' rights, remained; 225 out of 433 companies participating in the September 2005 Annual General Assembly meeting received "Good" rating.¹⁷⁸

¹⁷⁵ SEC online information. Viewed at: <http://www.sec.or.th/secen1/news/secnews/10-2002.doc>.

¹⁷⁶ SET (2006).

¹⁷⁷ Securities and Exchange Commission (2005).

¹⁷⁸ SEC online information. Viewed at: http://www.sec.or.th/en/cg/agm/agmupdate_e.shtml [1 March 2007].

174. Reforms in the corporate governance legal framework have been slow and need to be expedited.¹⁷⁹ There is a lack of a range of sanctions – criminal, civil and administrative – to facilitate effective enforcement. The National Corporate Governance Committee has assigned the Ministry of Justice to set up a steering group to draft a bill enabling the imposition of civil sanctions in securities offences. International Financial Reporting Standards (IFRS) have yet to be adopted; the Federation of Accounting Professions has set the timeframe for full adoption of IFRS by the end of 2007. Private sector awareness of the potential benefits of improved corporate governance may need to be enhanced. Further steps need to be taken to improve protection of shareholder rights, including the introduction of cost-effective legal channels for shareholders seeking redress. The focus should remain on implementation and on completing the legislative and regulatory agenda, improving enforcement (prosecution process), enhancing financial reporting and disclosure consistent with international standards, and promoting business ethics and best practices.

(c) Bankruptcy procedures

175. Major amendments to the Bankruptcy Act in 1998, 1999, and 2004¹⁸⁰, on bankruptcy and foreclosure procedures, allow creditors to seek payment from loan guarantors. A Bankruptcy Court was also established in mid 1999 (Chapter II(5)); the Court has processed more than 4,300 cases since its inception.

¹⁷⁹ World Bank (2005a).

¹⁸⁰ For further information on the Bankruptcy Act (No. 7) 2004, which entered into effect in July 2004, see: http://www.insolvencyreg.org/sub_member_profiles/thailand/index.htm.