

## **II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES**

### **(1) OVERVIEW**

1. Political issues have dominated the national agenda since 2005. In 2006 a military-led Council for National Security took over, leading to a new constitution and elections in 2007. In 2008, two short-lived coalition administrations were followed by a Democrat Party-led coalition, which was in office from December 2008 until Parliament was dissolved in May 2011. Elections were held on 3 July 2011. The period also saw demonstrations and unrest involving a number of groups. These, as well as global economic instability have had some effect on the economy and the investment climate, including a few weeks in November and December 2008 when Bangkok International Airport was closed.<sup>1</sup>

2. The trade regime was relatively untouched although some reforms were delayed, for example intellectual property legislation, privatization of PTT (the state controlled petroleum company) and EGAT (the electricity generation and transmission company), and decentralization.<sup>2</sup> Despite the political problems, Thailand has managed to introduce some reforms - such as setting up a regulator for the electricity sector, amending the Investment Promotion Act, and implementing the Patent Cooperation Treaty.

3. Thailand continues to support the multilateral trading system and has been active in the WTO Doha Round with interests in agriculture, non-agricultural market access, intellectual property, rules including fisheries subsidies, and other issues.

4. Over the years it has also remained committed to "open regionalism" and continues to negotiate an increasingly complex mesh of regional and bilateral trade agreements (section 6 (ii)).

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

### **(2) GENERAL CONSTITUTIONAL AND INSTITUTIONAL FRAMEWORK**

6. The 2007 Constitution is now in force and was amended in March 2011. The Constitution follows the standard structure of previous charters, dealing with statehood and sovereignty, the monarchy, citizens' rights and duties, a National Human Rights Commission, prescribed national policy objectives, government, Parliament, which has a partly appointed (upper) Senate, the legal system, and other topics. A 2011 amendment raised the number of MPs in the (lower) House of Representatives to 500, with 375 in single-seat constituencies (replacing multi-seat constituencies) and 125 elected by proportional representation from party lists. The 3 July 2011 general election was for those MPs. The constitutional basis for economic policy is "Sufficiency Economy" (Section 83), a concept encapsulating the ideas of moderation, sustainability, living within one's means and making ends meet.<sup>3</sup> This is followed by 14 sub-paragraphs (in Section 84) prescribing a free market economy

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<sup>1</sup> Economist Intelligence Unit (2011), and various earlier reports and updates; and IMF (2010).

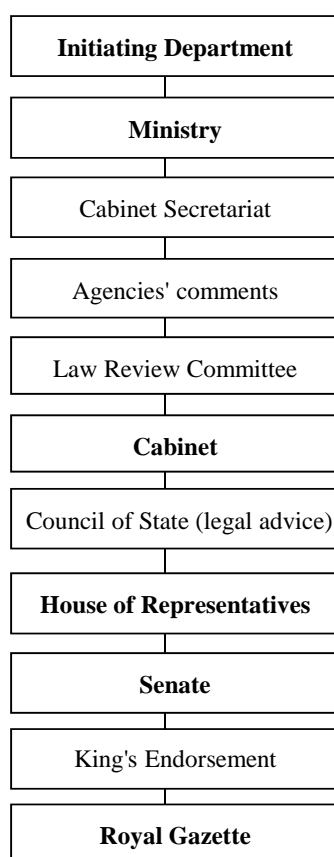
<sup>2</sup> ADB (2011).

<sup>3</sup> "Sufficiency Economy" ("sethakid phophiang") is a term coined by the King. It is discussed at greater length in WTO (2008). From the point of view of practical economic policy it is interpreted as building

with financial discipline and without competition from the public sector except for specific security and social needs. But they also include such objectives as promoting a fair income distribution, savings for old age, and the economic interests of special groups such as farmers and minorities. International treaties involving sovereignty, security or economic or other interests - including trade agreements - have to be approved by Parliament, with adequate public consultation. Due consideration or compensation must be given to medium and small-scale enterprises and others who may suffer as a result. A March 2011 amendment requires an organic law to specify the types of these agreements that need parliamentary approval, which may allow for more flexible free trade negotiations (Section 190 and amendment).<sup>4</sup>

### Chart II.1

**From policy to law: how government-initiated legislation passes through the Thai system**



*Source:* Information provided by the Thai authorities.

7. The Constitution provides for a judicial system consisting of Courts of First Instance; a Court of Appeal; the Supreme Court of Justice, which includes a Criminal Division for Persons Holding Political Positions; an independent Constitutional Court; administrative courts; and specialist courts such as an Intellectual Property and International Trade (IPIT) Court. Judges are appointed by the

economic resilience to shocks, keeping investment and household debt within sustainable levels, and ensuring growth with stability.

<sup>4</sup> *Royal Gazette*, 24 August 2007, 4 March 2011. Viewed at: [www.ect.go.th/newweb/th/law/?GroupID=7](http://www.ect.go.th/newweb/th/law/?GroupID=7), (in Thai) or [www.ect.go.th/english/files/laws/Constitution2540.pdf](http://www.ect.go.th/english/files/laws/Constitution2540.pdf) (in English) [30 May 2011]; Economist Intelligence Unit (2011); and World Bank (2011), p. 80.

King on the recommendation of judicial commissions. Because courts are independent, they are not under the Justice Ministry.

8. The 2007 Constitution, like its 1997 predecessor, seeks further decentralization, devolving political and some fiscal power to local government organizations, prescribed in Chapter IX on local government. This was discussed in some detail in the previous Review of Thailand. A key objective of decentralization, which is partly handled by the 1999 Decentralization Act, is to reduce inequality between the regions, attracting development by boosting infrastructure investment and by giving local government greater powers over decisions on infrastructure and services, supported by fiscal resources. Progress remains slow - too slow to solve some of the country's pressing political problems, in the view of some experts.<sup>5</sup>

### **(3) STRUCTURE OF TRADE POLICY FORMULATION**

#### **(i) Executive branches of government**

9. At time of writing, the executive branch's role in trade policy is largely unchanged since the previous Review of Thailand. The last major administrative reforms were in 2002 leading to 20 ministries (previously 14) and 162 departments within them. No major changes have occurred since 2003. Final responsibility for formulating trade and other economic policies remains largely with the Prime Minister and his Cabinet. The Commerce and Finance ministries have the main responsibility for trade and investment policies, although some authority extends to the Agriculture and Cooperatives, Industry, Public Health, Energy, Information Technology and Communications, and Transport ministries, and the Bank of Thailand (the central bank). The Department of Trade Negotiations in the Ministry of Commerce is mainly responsible for bilateral and multilateral trade negotiations. It consults widely with other government and non-government agencies.

10. Also at the time of writing, the inter-agency Committee on International Economic Relations Policy, chaired by the Deputy Prime Minister for economic affairs, and its sub-committees, retains its main role of coordinating Thailand's international economic policies among the ministries.

#### **(ii) Advisory, planning, and other bodies**

11. As was reported in the previous Review, various institutions within the Government review and assess of public policies. One is the Office of the National Economic and Social Development Board (NESDB), under the Prime Minister's Office.<sup>6</sup> No independent body is directly responsible for publicly evaluating or advising the Government on trade and sectoral assistance policies. The NESDB's main function is to prepare Thailand's five-year national economic and social development plans and monitoring their implementation (section (4) below). It also monitors how well Thailand is meeting the Millennium Development Goals.<sup>7</sup> Independent research institutes or Thai universities' research units regularly assess and analyse the impact of public policies, including on trade, often at the request of government agencies. The results are normally made public or are available on request. The semi-governmental Thailand Research Fund has financed a Thai-language organization "WTO

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<sup>5</sup> See also, for example, *Bangkok Post*, "Reform is not something to be afraid of", 4 May 2011, interview with former prime minister Anand Panyarachun, who chaired the 2005 National Reconciliation Commission, and 2010 government-appointed National Reform Committee.

<sup>6</sup> NESDB online information. Viewed at: [www.nesdb.go.th](http://www.nesdb.go.th), accessed 31 May 2011.

<sup>7</sup> NESDB (2010b). Among the many "achieved" points is the assessment that the country is meeting the goal of "addressing the special needs of the least developed countries" through official development assistance to Cambodia, Laos, and Myanmar.

Watch" involving a number of academics who have produced numerous books and articles, although the organization's website has not been updated since 2009.<sup>8</sup>

12. The private sector interacts with the Government formally and informally. The Prime Minister chairs a Joint Public-Private Consultative Committee, which includes the three main private-sector associations: the Thai Chamber of Commerce, the Federation of Thai Industries, and the Thai Bankers' Association. On international trade, the Government regularly consults all three, while the Thai Chamber of Commerce is also responsible for issuing certificates of origin. The three are represented in the Joint Standing Committee on Commerce, Industry and Banking (JSCCIB) and the WTO Committee, which the JSCCIB formed in 1999. The WTO Committee aims to draw input from the private sector into multilateral negotiations so that Thailand's stance is directed towards enhancing Thailand's competitiveness.<sup>9</sup> Other important committees with private, public, and academic representatives are the National Economic Social Development Board, the Board of Investment, and the National Competitiveness Committee.

#### **(4) TRADE POLICY OBJECTIVES**

13. Overall, the Government's economic policy continues to favour liberal, market-based, private-sector-driven growth, with a more recent additional focus on equity. Competition is encouraged to ensure sufficient and sustainable economic growth in most sectors. The strategy for "restoring Thailand's lost dynamism" - as the International Monetary Fund describes it - is to remove some of the constraints on economic activity in order to encourage investment and reverse the sharp falls suffered since the 1990s. The Government believes this should rely on exports, with domestic demand as a secondary means, not by promoting one sector over another, but by improving the environment for economic activity, widening its geographical scope, and then allowing business to decide whether to produce for the domestic or export market.<sup>10</sup> Government policy does nevertheless have some selective focus in promoting local and foreign investment in competitive industries, giving priority to technological development and building up intellectual property, including for small and medium-size enterprises, and exports and services.

14. In practice, the picture is mixed. Over the years some sectors have become more open to competition, such as steel, cement, chemicals, whiskey, and domestic aviation. Some others have not or have only been partly liberalized, such as telecommunications (including broadband licences) and some activities covered by state enterprises. One assessment blames the delays on poor economic conditions, opaque regulations, inadequate laws, political uncertainty, and bureaucratic and public resistance.<sup>11</sup> Elections and changes of government do not normally lead to major changes in trade and economic policy, although the degree of intervention in some sectors can alter, depending on political and other interests.

15. In October 2011, the Eleventh National Economic and Social Development Plan for 2012-16 was due to take effect.<sup>12</sup> These five-year plans guide government policy and are designed to support the market economy, provide social safety nets, and act where the market is less effective. The Eleventh plan's theme is "a happy society with equity, fairness and resilience" (Box II.1) and it

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<sup>8</sup> Viewed at: [www.thailandwto.org](http://www.thailandwto.org), also with material on FTAs; and Thailand Research Fund online information. Viewed at: [www.trf.or.th/en/](http://www.trf.or.th/en/) [31 May 2011].

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

<sup>10</sup> IMF (2010).

<sup>11</sup> Economist Intelligence Unit (2010a).

<sup>12</sup> NESDB (2010a) and (2010b).

continues to follow many principles of the previous plans, including a philosophy of "Sufficiency Economy".

16. The Eleventh Plan picks up a number of themes from its predecessor, which covered the period under review, including resilience to shocks, adaptability, balance, sustainability, good governance, and social fairness and harmony. Themes gaining prominence even though they were in previous plans include the development of a creative, knowledge-based economy.

**Box II.1: "A happy society with equity, fairness and resilience"**

Extract from the 11th National Economic and Social Development Plan's executive summary:

**The Eleventh Plan** adopts the "Philosophy of Sufficiency Economy" which has become the guiding light of the country's development since the Ninth Plan. Even though the Philosophy has been a main ingredient immunizing Thailand along the development path for nearly ten years, it still takes time for all parts of the society to embed the tenet into ways of life. There remain areas to improve the country's resilience by encouraging the application of the Philosophy to all walks of life.

In the preparation process, the changing contexts of external environment and internal situations have been analyzed. **The 7 main global changes** are global rules and regulations, the multi-polar global economy, the ageing society, climate change, food and energy security, technological advancement, and international terrorism.

For the **internal** situations, there are changes in many aspects. **Economic aspect**, the fiscal risk has emerged due to rising public debt. It is necessary to find new sources of income generation e.g. from potential services and creative economy as there are more constraints on the income earned from the manufacturing and the agricultural sectors due to limited industrial locations and arable land, changing climate situation, and environmental regulations. **Social aspect**, moving towards an ageing society will lead to a shortage of labor force in the future. Increasing productivity has been constrained by low educational quality. Dropping of standards of morality and ethics and increasing in social inequality are causes of conflicts in the society.

**Natural resources and environmental aspect**, natural wealth of the country has been depleted and deteriorated. Global warming has affected the agricultural sector, and food and energy security. **Spatial aspect, the development of communities, areas, and regions** has been confronted with income disparity, rapid urbanization and slow progress of the decentralization.

Lastly, **national security aspect**, it has been challenged by many factors including conflicts in certain areas while enhancing good governance has been hindered especially from chronic corruption.

Some **risks and weaknesses** have prevailed in the country's development. They are weakness in public administration, the unsustainable economic structure, declining proportion of working age population, loss of traditional values, deteriorating in the natural resources and environment, and threats towards the national security. It is imperative to enhance **resilience** in order to prepare the people, economy, and society to effectively manage these changes. Six areas of resilience need to be maintained and improved including the constitutional monarchy governed the country; the agriculture as a main source of income and food security; the development based on knowledge and advanced technology; the society with good values and culture; and the community as a key effective mechanism in development.

With the guidance of the Sufficiency Economy Philosophy, the framework of the Eleventh Plan is set to be driven under the people-centred development and broad base participation approaches towards balanced, integrated, and holistic development. To attain the agreed Vision of "a happy society with equity, fairness and resilience", the missions, objectives, targets, and strategies are designed as follows:

**Missions** are (1) to promote better income distribution, and fair, harmony and democratic society in order to achieve better quality of life; (2) to create socio-economic security through strengthening production of goods and services based on knowledge, creativity and environmental friendliness, improving social protection for better coverage, and ensuring food and energy security; and (3) to strengthen resilience to changes and crises and develop human resources.

**Main objectives** are (1) to promote a peaceful society with good governance; (2) to promote sustainable development through restructuring the economy, society and politics, and nurturing natural resources and environment; and (3) to prepare the people and the community to be ready for changes.

**Key targets** are (1) Thai society is more peaceful and has good governance; (2) all citizens acquire social protection; (3) total factor productivity in every sector is increased; (4) shares of agricultural and service sectors in the economy are increased; (5) share of creative economy is increased; (6) Thailand's competitiveness ranking is improved; and (7) natural resources and environmental quality are improved.

**Development strategies** are (1) Strategy of promoting the just society; (2) Strategy of developing human resources to promote a life-long learning society; (3) Strategy of balancing between food and energy security; (4) Strategy of creating the knowledge-based economy and enabling environment; (5) Strategy of strengthening economic and security cooperation in the Region; and (6) Strategy of managing natural resources and environment towards sustainability.

Source: NESDB (2010b).

17. Thailand's trade policies conform to the national plans' objectives including: sustainability; free, fair and progressive trade liberalization; income distribution and safety nets; and good governance and transparency. Trade has been driven by the private sector's success in exporting a

wide range of products, by the country's success in sustaining a diversified economy that spans multi-product agriculture, manufacturing, and services, and by successive governments' success in providing an attractive and more-or-less stable investment climate in an export-oriented, business-driven environment. Thai trade policies build on this, aiming to strengthen Thailand's position as a competitive trading nation and service provider, with commerce as an engine of growth. Trade diplomacy favours progressive liberalization multilaterally, regionally, and bilaterally. Unilateral liberalization is often undertaken for various purposes.<sup>13</sup>

18. However, the picture is not entirely liberal or market-oriented. Thai trade policy can also be susceptible to particular interests, political pressure, the remnants of older import substitution policies or "conflicts between upstream and downstream industries" (including agricultural products such as animal feed). These may explain protection that remains through high or complex tariffs, quotas, and other measures, and delays in tariff reform. Sectors benefiting from some protection include agriculture, motorcycles, alcoholic beverages, fabrics, paper products.<sup>14</sup> While Thailand and its Cairns Group allies lobby for agricultural trade liberalization in the WTO, it has also acknowledged that it needs contingency measures such as special safeguards in some instances.

## **(5) TRADE LAWS AND REGULATIONS**

19. Reform of the legal and judicial regime was a feature of the period covered by the previous Review of Thailand, but the National Law Reform Committee set up in 2004 was abolished with the change of government in 2006. Political instability and changes of government have delayed the programme. A list of the main trade-related legislation is in Table II.1.

20. The Government or its ministries may issue regulations and notifications (announcements) under various laws without additional Parliamentary legislation, and these are commonly used to implement trade policies.<sup>15</sup> Some concern has been expressed in the past about the complexity of Thailand's laws and regulations, but in the period covered by this Review, the greatest regulatory uncertainty arose from two court cases. One halted privatization in 2006 for the entire period under review. The other held up investment in dozens of large-scale projects in the eastern seaboard industrial zone of Mab Ta Phut, from 2009 to 2010, on environmental grounds.<sup>16</sup> While a few laws affecting business and trade were enacted in the period, a number remained in preparation, for example on government procurement, energy, electricity, telecoms, e-commerce, and tourism.

21. Efforts continue to streamline business's dealings with the Government, particularly through various online services, such as the new "national single-point e-starting business service", which cut the average processing time for business registration from 4 days to 90 minutes.<sup>17</sup> Reforms of this kind are needed because clearer rules and regulations and more transparent institutional arrangements will make Thailand more attractive for foreign and domestic investors. Thailand's ranking is slipping

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<sup>13</sup> Some of the most recent unilateral tariff cuts announced were on dual-fuel vehicles and their parts and components (World Bank, 2011, p. 81).

<sup>14</sup> Economist Intelligence Unit (2010a), section on competition policy; APEC Secretariat (2009), section on non-tariff measures.

<sup>15</sup> For example, applied tariffs may be increased up to 50% above the statutory rates. Other important issues requiring inter-ministerial coordination but not parliamentary approval include: investment incentives; VAT, excise, interior taxes, and surcharges; controls on imports and exports; and anti-dumping and countervailing policies.

<sup>16</sup> Economist Intelligence Unit (2010a, p. 12).

<sup>17</sup> World Bank (2011), p. 79.

in the World Bank's *Doing Business* reports, scoring well in protecting investors, licensing, and trade regulations but poorly on obtaining credit, taxation, and starting a business.<sup>18</sup>

**Table II.1**  
**Main trade-related legislation, June 2011**

Legislation	Description
Anti-Dumping and Countervailing Duty Act, B.E. 2542 (1999)	Ministry of Commerce can impose anti-dumping or countervailing measures
The Safeguard Measures on Increased Imports Act B.E. 2550 (2007)	A committee headed by the Commerce Ministry and including the Finance Ministry can impose safeguards measures
Bankruptcy Act (No.5), B.E. 2542 (1999)	Amendments to bankruptcy provisions
Corporatisation Act, B.E. 2542 (1999) (also called Capital of State Enterprise Act)	Provides regulatory framework for converting state enterprises to private or public limited companies
Direct Sales and Direct Marketing Act, B.E. 2543 (2000)	Protects consumers against business operators taking "wilful advantage" of them through deception or coercion. Internet sales and marketing seem to be covered
Electronic Transactions Act, B.E. 2545 (2002)	Governs both civil and commercial electronic transactions
Establishment of and Procedure for Bankruptcy Court Act, B.E. 2542 (1999)	Established the Bankruptcy Court and sets out the rules governing its procedures
Foreign Business Act, B.E. 2542 (1999)	Replaced the 1972 Alien Business Law. Identifies the scope of foreign participation in businesses in Thailand
Investment Promotion Act, B.E. 2520 (1977), amended B.E. 2534 (1991) and 2544 (2001)	Sets up the Board of Investment and provides for investment promotion
Governing Leasing of Immovable Property for Commercial and Industrial Purposes Act, B.E. 2542 (1999)	Rights to lease commercial or industrial property for a term of 30-50 years, to use as loan collateral, to transfer leases, and to sub-lease
Money Laundering Control Act, B.E. 2542 (1999)	Combating illicit drug trade and corruption. An Anti-Money-laundering Prevention and Suppression Office established
Price of Goods and Services Act, B.E. 2542 (1999), and Trade Competition Act, B.E. 2542 (1999)	Replaced the 1979 Act on Price Fixing and Anti-Monopoly; Trade Competition Act aims to promote free and fair competition by preventing monopoly; administered by the new Trade Competition Commission
Protection of Layout Designs of Integrated Circuits Act, B.E. 2543 (2000); Protection of Plant Varieties Act, B.E. 2542 (1999); Trade Secret Act, B.E. 2545 (2002); Copyright Act (No. 3), B.E. 2542; Patent Act (No. 3), B.E. 2542; Patent Act, B.E. 2522 (1979); Trademark Act, B.E. 2534 (1991)	Intellectual property protection, including protection of trade secrets
Quarantine Act (No. 2), B.E. 2542 (1999)	Quarantine regulations
Land Code Act (No. 8), B.E. 2542 (1999), Condominium Act (No. 3), B.E. 2542 (1999)	Foreign ownership of land and property
Customs Act	Customs and import procedures, including customs valuation
Telecommunications Business Act, B.E. 2544 (2001)	Defines types of telecommunication licences, licensing scheme, network interconnection, rights of way, tariff regulations, universal service obligations, and the role and responsibilities of the National Telecommunication Commission (NTC)
Act on Organizations to Assign Radio Frequency Spectrum and to Regulate Broadcasting and Telecommunication Services, B.E. 2543 (2000)	National Broadcasting Commission (NBC)
Life Insurance Act, B.E. 2535 (1992)	Provide for licensing requirements and procedures, technical reserves, solvency margins, security deposits; administered by the Department of Insurance
Non-life Insurance Act, B.E. (1992)	

**Table II.1 (cont'd)**

<sup>18</sup> World Bank Group (2011), cited in Economist Intelligence Unit (2010a), p. 12. The summary of changes to business regulations in Thailand, June 2009 to June 2010, says: "Thailand made registering property more costly by repealing a 2-year temporary tax reduction for property transfers. Thailand temporarily lowered taxes on business by reducing its specific business tax for 12 months."

Legislation	Description
Commercial Banking Act, B.E. 2505 (1962)	To be replaced by the new Financial Institutions Act, which is designed to strengthen supervisory practices and procedures in line with international best practices. It will combine the Commercial Banking Act and the Act on the Undertaking of Finance Business, Securities Business, and Credit Foncier Business, thereby creating a uniform standard of supervision
Act on Undertaking of Financial Business, Securities Business, and Credit Foncier Business, B.E. 2522 (1979)	Covers finance business for commerce, development, disposition and consumption, housing and other types prescribed by ministerial regulation. Legislation also covers the formation of a company and application for a licence for finance, securities, and credit foncier companies
Public Company Act, B.E. 2544 (2001)	Listed companies expected to benefit in terms of management and new tools to enhance efficiency in generating investor returns. Aims to promote debt workouts and raise the stock exchange to international standards. Key features include the abolition of the minimum par value for shares and provision of debt to equity conversion to assist creditor-debtor workouts
Mercantile Marine Promotion Act, B.E. 2521 (1978)	Provisions on possible measures to promote the maritime transport sector, prevention and prohibition of unfair practices, registration of maritime transport, port and shipyard operators, and submission of data and information to relevant authority

Source: Information provided by the Thai authorities.

22. Thailand has made efforts to meet its WTO obligations on transparency and notification in most areas (Table II.2).

**Table II.2**

**Latest notifications under WTO Agreements to June 2010, or from August 2007 to June 2010**

Agreement	Requirement/content	Document symbol, date of latest notification (and period covered or content)
<b>Agreement on Agriculture</b>		
Articles 10 and 18.2	Table ES:1 and ES:2 - Export subsidies	G/AG/N/THA/69, 26 October 2009 (2007–2008)
Article 18.2	Table MA:1 - Administration of tariff quotas	G/AG/N/THA/70, 12 February 2010 (2008–2009)
Article 18.2	Table MA:2 - Imports under tariff quotas	G/AG/N/THA/71, 12 February 2010 (2007–2008)
Article 18.2	Table DS:1 and the relevant supporting tables - Domestic support	G/AG/N/THA/72, 27 October 2010 (2005–2007)
Article 5.7 and 18.2	Table MA:5 - Use of special safeguard provisions	G/AG/N/THA/68, 26 October 2009 (2007–2008)
<b>Customs valuation</b>		
Article VII	Customs valuation legislation (date of application)	G/VAL/N/3/THA/1, 7 November 2008
<b>Agreement on Implementation of GATT Article VI of the GATT 1994 (Anti-dumping)</b>		
Article 16.4	Ad hoc reports of anti-dumping actions	G/ADP/N/178, 27 November 2008
	Semi-annual reports of anti-dumping actions (taken within the preceding six months)	G/ADP/N/209/THA, 10 February 2011
Article 16.5	Competent authorities	G/ADP/N/14/Add.31, 26 April 2011
<b>Agreement on Import Licensing Procedures</b>		
Article 7.3	Replies to questionnaire	G/LIC/N/3/THA/3, 30 September 2010
<b>GATT Article XXIV (Regional Trade Agreements)</b>		
Article XXIV:7(a)	Free-trade agreement between ASEAN and Australia-New Zealand	WT/REG284/N/1, S/C/N/545, 9 April 2010
	Free-trade agreement between ASEAN and Japan	WT/REG277/N/1, 14 December 2009
	Free-trade agreement between Thailand and Japan	WT/REG235/N/1, S/C/N/419, 29 October 2007

Table II.2 (cont'd)



Agreement	Requirement/content	Document symbol, date of latest notification (and period covered or content))
Enabling Clause (GATT L/4903)	Free-trade agreement between ASEAN and India	WT/COMTD/N/35, 23 August 2010
	Free-trade agreement between ASEAN and Rep. of Korea	WT/COMTD/N/33, S/C/N/560, 8 July 2010
<b>Agreement on Safeguards</b>		
Articles 9 (footnote 2) 12.1(a), 12.1(b), 12.4	Preliminary determination, investigation initiated, provisional safeguard (glass block)	G/SG/N/6/THA/1, 7 January 2011; G/SG/N/7/THA/1, G/SG/N/8/THA/1, G/SG/N/11/THA/1, 7 January 2011 and suppl1, 28 January 2011;
Article 12.6	Safeguards legislation (2007)	G/SG/N/1/THA/3, 27 August 2009
<b>Agreement on the Application of Sanitary and Phytosanitary Measures</b>		
Article 7 and Annex B	Notification of SPS measures	Latest: G/SPS/N/THA/203, 26 May 2011, total 72 (August 2007 to May 2011, including addenda and revisions)
<b>General Agreement on Trade in Services</b>		
Article III:3	New or amended laws or regulations (Telecommunications Act; Financial Institutions Businesses Act; Life Insurance Act ; Non-Life Insurance Act)	S/C/N/486-489, 16 March 2009;
Articles III:4, and IV:2	Enquiry and contact points	S/ENQ/78/Rev.11, 26 October 2009
Article V:7(a)	Free-trade agreement between ASEAN and Rep. of Korea	WT/COMTD/N/33, S/C/N/560, 8 July 2010; and S/C/N/560/Add.1, 3 May 2011
	Free-trade agreement between ASEAN and Australia-New Zealand	WT/REG284/N/1, S/C/N/545, 9 April 2010
	Free-trade agreement between ASEAN and China	S/C/N/463, 2 July 2008
	Free-trade agreement between Thailand and Japan	WT/REG235/N/1, S/C/N/419, 29 October 2007
<b>GATT Article XVII (State Trading Enterprises)</b>		
GATT Article XVII:4(a) and Paragraph 1 of the Understanding on the Interpretation of Article XVII	Notification of state trading enterprise (Public Warehouse Organization)	G/STR/N/12/THA, 8 July 2008
<b>Agreement on Subsidies and Countervailing Measures</b>		
Article 25.1	Notification of subsidies	G/SCM/N/186/THA, 12 November 2009
Article 25.11	Semi-annual report on countervailing duty actions	G/SCM/N/203/Add.1/Rev.1, 20 October 2010
Article 25.12	Competent authorities	G/SCM/N/18/Add.23, 24 April 2007
<b>Agreement on Technical Barriers to Trade (TBT)</b>		
Article 2.10.1	Notification of Public Health Ministry entitled, "Cooking Brine (No. 2)"	G/TBT/N/THA/360 6 December 2010
Article 2.9.2	(Draft) Notification Rules and Procedures for Storing of Hazardous Substances (liquefied petroleum cylinders)	G/TBT/N/THA/387, 24 June 2011
Article 5.6.2	Notification of the Thai Industrial Standards Institute on Prescribing the Inspection Criteria for Licensing	G/TBT/N/THA/383 1 June 2011
<b>Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)</b>		
Article 69	Notification of contact points	<a href="http://www.wto.org/english/tratop_e/trips_e/trips_notif5_art69_e.htm">http://www.wto.org/english/tratop_e/trips_e/trips_notif5_art69_e.htm</a>
Article 63.2	Notification of laws and regulations (implementing the patent cooperation treaty)	IP/N/1/THA/2, 9 March 2010

Sources: WTO documents, available on the WTO website for example at [www.wto.org/thailand](http://www.wto.org/thailand); <http://spsims.wto.org>; [www.wto.org/english/tratop\\_e/trips\\_e/trips\\_toolkit\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/trips_toolkit_e.htm).

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**(6) TRADE AGREEMENTS AND ARRANGEMENTS****(i) Thailand and the WTO**

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

24. In the Doha Development Agenda negotiations, Thailand has been active in a number of areas. One of its priorities has been agricultural trade reform to open markets, eliminate export subsidies, and make deep cuts in trade-distorting domestic support. Its position is that of a strong exporting developing country whose view of the "development dimension" includes the need for poor farmers to have real access to both developed and developing markets, albeit allowing for some protection through more moderate forms of Special Products (whose tariff cuts will be smaller than prescribed by the formula) and the Special Safeguard Mechanism for developing countries. These positions are expressed through negotiating coalitions such as the Cairns Group and G-20 as well as Thailand's own statements. Thailand is also active in the non-agricultural market access (NAMA) negotiations, jointly submitting proposals on sectoral liberalization and other issues (it is one of a small number of developing countries that would apply a version of the Swiss formula for tariff reductions), in "zeroing" and fisheries subsidies under the rules talks, and in trade facilitation. In intellectual property, it supports proposals for amending the TRIPS Agreement in two areas: to require patent applicants to disclose the origins of genetic material and any associated traditional knowledge used in inventions, and to show evidence of prior informed consent and benefit sharing ("the disclosure proposal" under the relationship between TRIPS and the UN Convention on Biological Diversity); and to extend the enhanced protection of geographical indications (TRIPS Article 23) beyond wines and spirits ("GI extension").<sup>19</sup>

**(ii) Preferential, regional, and bilateral arrangements**

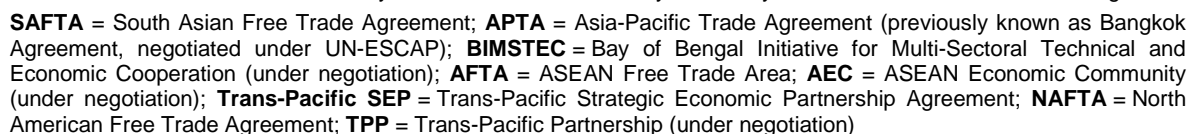
25. Thailand, on its own and through ASEAN, has begun to focus attention on regional and bilateral free-trade agreements. Nevertheless there are some subjects that Thailand has considered to be priorities that are still best handled multilaterally, including agricultural subsidies, anti-dumping disciplines, and improved dispute settlement.

26. Over the years Thailand has remained committed to "open regionalism", and has joined other members of the Association of Southeast Asian Nations (ASEAN) in turning the ASEAN Free Trade Area (AFTA) into an ASEAN Economic Community (AEC) by 2015. The AEC includes lowering non-tariff barriers, trade facilitation and free trade in services, and is part of a triumvirate that also includes Political-Security and Socio-Cultural communities. At their annual Summit in May 2011 ASEAN leaders agreed to work for an ASEAN Community by 2022, in which the group would have a

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<sup>19</sup> Since its last Trade Policy Review, Thailand has jointly authored over 20 official proposals and statements in the Doha work programme, in the TN/\* series of documents, including revisions. These are on: NAMA sectorals and flexibilities; patent disclosure under TRIPS-CBD and GI extension; zeroing, "public interest" and lesser duty rate in anti-dumping; and the "single window" in trade facilitation (viewed at: [www.wto.org/thailand](http://www.wto.org/thailand)). There were no TN/\* series documents from Thailand in agriculture during the period because negotiations on this subject had developed to the stage where a few proposals were submitted as informal "JOB" documents, while most of the negotiation was by oral responses to the draft modalities as they were revised and partly stabilized in 2007-08.

### Chart II.2 ASEAN ‘Noodle Bowl’



*Source:* Data from Asia-Pacific Trade and Investment Agreements Database (APTAD, [www.unescap.org/tid/aptiad/](http://www.unescap.org/tid/aptiad/)), [July 2011]. Graphic adapted from an original by Mia Mikic. See Mikic, Mia (2009), *ASEAN and Trade Integration*, UN ESCAP Staff Working Paper 01/09, 8 April. Some agreements are not included.

<sup>20</sup> ASEAN Secretariat (2008b), (2008a), (2011), and (2010a).

<sup>21</sup> The term "single window" is used in two senses. Domestically, it means access to several agencies at once: traders can have their imports and exports processed by going literally or electronically to a single place to access Customs, other requirements, and finance. Regionally in ASEAN, it means linking up the countries' customs departments so a shipment can be processed by Customs at either end, through the single window.

<sup>22</sup> Sussangkarn and Nikomborirak (2011); and information from the Thai authorities.

27. Beyond ASEAN, the picture of Thailand's free-trade agreements is complicated, sometimes simultaneously involving bilateral and regional deals (Chart II.2 and Table II.3).<sup>23</sup> For example, Australia-Thailand trade is governed by an agreement between the two countries as well as a pact between two groups in which each is a member: Australia-New Zealand, and ASEAN. For businesses, the complexity can be baffling. They may face additional costs going through the hoops to find out which agreement is most suitable for a particular transaction, to get hold of the right paperwork, and to obtain the correct clearance. This may be one of the reasons why some of the agreements have been little used, a situation recognized openly by political leaders in at least one case: the free trade agreement between ASEAN and the Republic of Korea.<sup>24</sup> The Asia-Pacific Economic Cooperation (APEC) group's 88-page 2008 study of 30 agreements involving its members (five involving Thailand) found that the agreements were similar in some areas, such as customs procedures, but diverged considerably in others, particularly rules of origin.<sup>25</sup>

**Table II.3**  
**Status of bilateral and regional trade agreements**  
(% of tariff lines except where specified)

Agreement	Goods			Services	Investment	
	Signed	Tariff cuts start	Zero tariffs			
Thailand-Australia	5.7.2004	1.1.2005	Australia: 1.1.2010 = 96.07% 1.1.2015 = 100%	Thailand: 1.1.2011 = 94.30% 1.1.2025 = 100%	<ul style="list-style-type: none"> <li>Talks to resume after implementation as agreed by both parties</li> <li>Talks framework passed by Parliament</li> </ul>	
Thailand-New Zealand	19.4.2005	1.7.2005	New Zealand: 1.1.2010 = 88.46% 1.1.2015 = 100%	Thailand: 1.1.2010 = 91.60% 1.1.2025 = 100%	<ul style="list-style-type: none"> <li>Talks to commence as agreed by both parties</li> <li>Talks framework passed by Parliament</li> </ul>	
Thailand-Japan	3.4.2007	1.11.2007	Japan: 1.1.2010 = 80.66% 1.4.2010 = 80.66% 1.4.2022 = 88.49%	Thailand: 1.1.2011 = 53.50%  1.4.2017 = 100%	Proposed talks in services (movement of natural persons)	
Thailand-Peru (early harvest)	13.11.2009	Delayed	Peru: 2010 = 50% 2015 = 70%	Thailand: 2010 = 50% 2015 = 70%	Discussions under way on resuming negotiations	
Thailand-India (82 tariff lines)	9.10.2003	1.9.2004	India: 1.9.2006 = 100% of 82 lines	Thailand: 1.9.2006 = 100% of 82 lines	Negotiations under way	
ASEAN (ASEAN Trade in Goods Agreement, ATIGA)	26.2.2009	Various dates	1.1.2010: Malaysia = 98.4% Singapore = 100% Indonesia = 98.7% Philippines = 99.0% Brunei = 99.2% (Cambodia, Laos, Myanmar, Viet Nam: normal goods: 1.1.2010 = 0 - 5% tariff 1.1.2015 = 0% tariff)	Thailand: 1.1.2010 = 99.8%	Eighth set of offers to be submitted in 2011	Investment agreement being ratified

Table II.3 (cont'd)

<sup>23</sup> Mikic (2009), and (2007).

<sup>24</sup> ASEAN Secretariat online information, ASEAN-Republic of Korea relations: viewed at: [www.asean.org/7672.htm](http://www.asean.org/7672.htm) [8 June 2011]. Figures on trade between Thailand's FTA partners are readily available; figures on the proportion of the trade that actually makes use of those agreements are more difficult to find, and where available are based on certificates of origin issued for shipments that do not always take place.

<sup>25</sup> APEC Secretariat (2008b). The agreements involving Thailand were: ASEAN (AFTA), ASEAN-China, Australia-Thailand, New Zealand-Thailand, and Peru-Thailand.

Agreement	Goods			Services	Investment	
	Signed	Tariff cuts start	Zero tariffs			
ASEAN-China	29.11.2004	Early harvest HS 01–08: 1.1.2004 Fruit and vegetables HS 07–08: 1.10.2003 General goods 20.10.2005	China: 1.1.2010 = 86.4%	Thailand: 1.1.2010 = 83.0%	Parliament has approved 2nd set of access in services	Effective 15.2.2010
ASEAN-Japan	11.4.2008	For Thailand 1.6.2009	Japan: 1.1.2010 = 79.50% 1.4.2010 = 79.50% 1.4.2023 = 85.80%	Thailand: 1.1.2011 = 53.50%  1.4.2018 = 97.85%	Being prepared	
ASEAN-Korea, Rep. of	27.2.2009	1.1.2010	Rep. Korea: 1.1.2010 = 92.3%	Thailand: 1.1.2010 = 84.1% 1.1.2012 = 92.2% 1.1.2017 = 95.4%	Effective 1.1.2010	Effective 31.10.2009
ASEAN-India	13.8.2009	1.1.2010	India: 31.12.2013 = 70.18% 31.12.2016 = 79.35%	Thailand: 1.1.2011 = 16.30% 31.12.2013 = 70.90% 31.12.2016 = 79.34%	Consultations under way	
ASEAN-Australia- New Zealand	27.2.2009	12.3.2010	Australia: 12.3.2010 = 95.96% 1.1.2020 = 100% New Zealand: 12.3.2010 = 95.96% 1.1.2012 = 90.13% 1.1.2020 = 100%	Thailand: 12.3.2010 = 72.29% 1.1.2015 = 89.77% 1.1.2020 = 98.80%	Negotiations on further access in services in 3 years	Tables of reservations against liberalization in 5 years
BIMSTEC (Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation)	n.a.	n.a.	India, Sri Lanka, Thailand (targets) Fast track 1.7.2013 = 10% Normal track 1.7.2014 = 48%	Negotiations under way		

n.a. Not applicable.

Source: Department of Trade Negotiations, Bangkok, July 2011.

28. Bilaterally, Thailand has four free-trade or economic-partnership agreements, with Australia (2005), New Zealand (2005), India (for 82 goods tariff lines, 2004), and Japan (2007). The early harvest provisions of an agreement with Peru were signed in November 2010 but have not entered into force. In 2006, talks with the United States and Bahrain were suspended and with the European Free Trade Association (EFTA) were "put on hold". The EU started negotiating with ten ASEAN members as a group but in 2009 switched to bilateral talks with Singapore, Malaysia, and more recently Viet Nam while exploring bilateral negotiations with others, including Thailand. Negotiations continue with India on the remaining goods tariff lines and on services and investment. New bilateral talks have begun with Chile.<sup>26</sup>

29. ASEAN as a group has concluded five free-trade agreements in goods only, or goods and services: with China (goods 2005, a first group of services 2007, and investment February 2010); Japan (2007, for Thailand 2009); Republic of Korea (initially 2006, with Thailand signing on in 2009, broader goods and services January 2010 and investment October 2009); India (goods 2010); and Australia and New Zealand (March 2010). Negotiations continue with India on services and

<sup>26</sup> Information from the authorities; Department of Trade Negotiations, FTA online information. Viewed at: [www.thaifta.com/english/index\\_eng.html](http://www.thaifta.com/english/index_eng.html) [30 May 2011]; Economist Intelligence Unit (2010a); APEC Secretariat (2009), pp. 85-91; EFTA online information. Viewed at: [www.efta.int/free-trade/ongoing-negotiations-talks/thailand.aspx](http://www.efta.int/free-trade/ongoing-negotiations-talks/thailand.aspx) [31 May 2011]; and European Commission EU Trade, "Overview of FTA and other Trade Negotiations", updated May 2011. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc\\_118238.pdf](http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf) [30 May 2011].

investment and with China on a second group of services. Regionally, Thailand is also involved in continuing negotiations on the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC). It has not joined the Trans-Pacific Partnership (TPP) negotiations.<sup>27</sup>

30. Most (11) but not all of these preferential arrangements have been notified under the WTO Transparency Mechanism for Regional Trade Agreements (RTAs). They are: ASEAN-Australia-New-Zealand; ASEAN-China; ASEAN-India; ASEAN-Japan; ASEAN-Republic of Korea; ASEAN Free Trade Area (AFTA); Global System of Trade Preferences among Developing Countries (GSTP); Japan-Thailand (WT/REG235/ series of documents, 2011); Laos-Thailand; Thailand-Australia (WT/REG185/ series of documents, 2006-07); and Thailand-New Zealand (WT/REG207 series of documents, 2007). BIMSTEC is notified as an "early announcement" (still under negotiation).<sup>28</sup>

(a) Preferential arrangements for developing and least developed countries

31. Thailand provides preferential tariff treatment on certain imports from other developing countries under the GSTP (Chapter III). According to the authorities the utilization rate of GSTP treatment for Thai exports remains low because only a limited number of products are eligible, and because the differences between regular tariffs and preferential GSTP rates are not attractive enough. In 2010, up to US\$34.1 million worth of exports came under the GSTP (figures based on rules of origin certificates, not actual exports), with US\$23.7 million for Republic of Korea and the rest to India, Sri Lanka, and Brazil.<sup>29</sup>

32. Some Thai exports benefit from preferential treatment under Generalized Systems of Preferences (GSPs) or similar arrangements in a number of markets: according to the Department of Foreign Trade these are: the United States, European Union, Japan, Canada, Switzerland, Norway, Turkey, and Russia and ten other members of the Commonwealth of Independent States.<sup>30</sup> The schemes are largely unchanged since the Thailand's previous Review. Total exports under the GSP are estimated at about US\$11-13 billion (US\$12.9 billion in 2010), less than 10% of total exports - and about 55% of total exports of the goods eligible for GSPs. Most GSP exports were to the EU (61% of the total), and the United States (28%), followed by Turkey, Switzerland, Canada, Japan, and Norway. In Japan's case, the GSP figures are low because trade also takes place under the free-trade agreement: only about 200 items are now under the GSP.<sup>31</sup>

33. The United States - once Thailand's largest export market but now down to fourth after the EU, China, and Japan - has extended Thailand's privileges annually. The last major change was in July 2006, when nine Thai products (fresh durians, dried papayas, dried tamarind, rice flour, candied fruit and nuts, preserved papayas, oil cake, cathode-ray-tube and video-cassette-recorder colour

<sup>27</sup> Information from the Thai authorities; Economist Intelligence Unit (2010a); APEC Secretariat (2008c), pp. 85-91; EFTA online information. Viewed at: [www.efta.int/free-trade/ongoing-negotiations-talks/thailand.aspx](http://www.efta.int/free-trade/ongoing-negotiations-talks/thailand.aspx) [31 May 2011]; and Thai Foreign Ministry online information. Viewed at: [www.mfa.go.th/bimstec/bimstecweb/html/background.html](http://www.mfa.go.th/bimstec/bimstecweb/html/background.html) [30 May 2011]. TPP countries are Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, United States and Viet Nam.

<sup>28</sup> WTO Regional Trade Agreements Information System. Viewed at: <http://rtais.wto.org> [1 June 2011]. Other databases containing information on ASEAN and Thai trade agreements include APEC's (viewed at: <http://fta.apec.org>), which is searchable in some detail, and UN ESCAP's Asia-Pacific Trade and Investment Database (viewed at: [www.unescap.org/tid/aptiad](http://www.unescap.org/tid/aptiad)).

<sup>29</sup> Information from the Thai authorities.

<sup>30</sup> Viewed at: <http://www.dft.moc.go.th/level3.asp?level2=26> accessed 14 June 2011, in Thai. Not listed were Australia and New Zealand, whose GSP schemes might have been superseded by their free-trade agreements with Thailand.

<sup>31</sup> Data from the Department of Foreign Trade.

televisions, and jewellery and non-electrical ornaments) were reinstated, but four types of goods (cereals, canned lychees and longans, aluminium products, and plastic goods) were dropped. The United States raised the tariff on Thai gold jewellery from 0% to 5.5%, in July 2007.<sup>32</sup> The risk of losing GSP privileges in the United States is one reason for the Government's efforts to tighten intellectual property protection, so that it can be removed from the Section 301 Priority Watch List.

34. Under its 2006 GSP programme the EU restored benefits for Thailand in fishery products, edible preparations and beverages, plastic and rubber, leather and fur skins, footwear, and consumer electronics. New GSP rates were introduced in 2005 to help Thai shrimp exporters who were suffering from the tsunami of December 2004, but other sectors have lost the privileges, i.e. vehicles, aircraft, vessels and associated transport equipment, and jewellery. As the result of its negotiations with WTO Members on enlargement (under GATT Article XXVIII), from January 2007 the EU lowered its rate on cooked poultry meat from Thailand to 8% (from 10.9%), and raised the quota for the quantity that can be imported into the EU at this preferential rate. In May 2011, the programme was rolled over until the end of 2013. The Thai Government hailed the move as good news, since the country's exports to the EU under the scheme were worth over B 8 billion in 2010. Among the other products expected to benefit were auto products, spectacle lenses, and air conditioners.<sup>33</sup>

(b) Regional arrangements

ASEAN<sup>34</sup>

35. Thailand is a founder member of the Association of South-East Asian Nations (ASEAN); it participates in the ASEAN Free-Trade Area (AFTA), set up 1993 and now moving towards an ASEAN Economic Community by 2015. ASEAN economic integration aims to promote the region's competitive advantage as a single production unit through greater economic efficiency, productivity, and competitiveness. ASEAN is Thailand's largest preferential trading partner (Table II.4).

36. On the goods side, ASEAN has integrated all its existing initiatives into a single legal instrument, the ASEAN Trade in Goods Agreement (ATIGA), signed at the ASEAN Summit in February 2009 and in effect on 17 May 2010. The agreement covers tariff liberalization, rules of origin, non-tariff measures, trade facilitation, customs, standards/technical regulations and conformity, assessment procedures and mutual recognition and harmonization agreements, and trade remedies.<sup>35</sup>

37. After the 1997 financial and economic crisis, members agreed in 1999 to eliminate almost all import duties among the original ASEAN-6 members (Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, and Thailand) by 2010, which they did, and for the remaining ASEAN-4 (Cambodia, Laos, Myanmar, and Viet Nam) to do so by 2015 with some flexibilities including

<sup>32</sup> Economist Intelligence Unit (2010), p. 89. Thailand was the top exporter to the United States under the GSP in 2010 at US\$3.6 billion according to a report citing US Census Bureau data. Viewed at: <http://renewgsptoday.com/2011/02/11/gsp-imports-in-2010-up-11-thailand-becomes-top-gsp-supplier-country/>, 11 February 2011.

<sup>33</sup> Economist Intelligence Unit (2010), p. 89; Thai Public Relations Department news, "EU extends GSP for Thailand until Dec 2013", 7 June 2011. Viewed at: <http://thainews.prd.go.th/en/news.php?id=255406070011>; and European Commission online information. Viewed at: <http://trade.ec.europa.eu/doclib/html/147958.htm> [14 June 2011].

<sup>34</sup> ASEAN Secretariat online information. Viewed at: [www.aseansec.org](http://www.aseansec.org); and UN Economic and Social Commission for Asia and the Pacific, Asia-Pacific Trade and Investment Database (APTID). Viewed at: [www.unescap.org/tid/aptiad/](http://www.unescap.org/tid/aptiad/) [2 June 2011].

<sup>35</sup> ASEAN Secretariat online information. Viewed at: <http://www.aseansec.org/24697.htm>; ASEAN Secretariat (2010b); and Mikic (2009).

exceptions for "highly sensitive" rice and some other sensitive products. Quantitative restrictions and other non-tariff barriers are also being eliminated.

38. Thailand's latest consolidated Common Effective Preferential Tariff (CEPT) in 2010 shows zero-duty on imports from ASEAN countries on all the 8,300 eight-digit tariff lines listed — except for a small number of agricultural products — fresh cut flowers, potatoes, non-roasted coffee, coffee husks and copra — whose duty is kept at 5% indefinitely.<sup>36</sup> The ASEAN-4 have been implementing their Common Effective Preferential Tariff (CEPT) commitments according to the schedules agreed when they joined ASEAN.

**Table II.4**  
**Thailand's use of preferences under free-trade agreements, 2010**

<b>Agreement</b>	<b>Thai FTA exports (certificates issued) US\$ million</b>	<b>Imports from Thailand under FTAs US\$ million</b>	<b>%</b>
Thai-Australia	6,557.3	5,612.8	85.6
Thai-New Zealand	745.5	—	—
Thai-India (82 early harvest products)	786.5	566.2	72.0
Thai-Japan	7,145.8	4,771.8	66.8
ASEAN-China	11,453.1	7,372.3	64.4
ASEAN-Japan	1,928.2	26.0	1.3
ASEAN-Rep. Korea	2,637.0	880.1	33.4
ASEAN-India	2,705.1	899.7	33.3
ASEAN-Australia -New Zealand	395.5	26.3	6.6
Total outside ASEAN	34,353.9	20,155.2	58.7
Thailand-rest of ASEAN (9)	25,553.3	14,024.1	54.9
Total inside and outside ASEAN	59,907.2	34,179.3	57.1
	<b>Total Thai imports US\$ million</b>	<b>Thai imports under FTAs US\$ million</b>	<b>FTA imports as % of total</b>
Thai-Australia	5,895.9	607.7	10.3
Thai-New Zealand	507.6	219.0	43.1
Thai-India (82 early harvest products)	182.9	21.0	11.5
Thai-Japan	37,856.1	3,894.7	10.3
ASEAN-China	24,239.4	4,146.2	17.1
ASEAN-Japan	(37,856.1)	38.1	0.1
ASEAN-Rep. Korea	8,056.5	507.3	6.3
ASEAN-India	2,252.7	33.8	1.5
ASEAN-Australia -New Zealand	(6,406.4)	1,996.5	31.2
Total outside ASEAN	78,991.1	11,464.3	14.5
Thailand-rest of ASEAN (9)	30,327.5	6,118.1	20.2
Total inside and outside ASEAN	109,318.6	17,582.4	16.1

Note This table is a rough indication of Thailand's trade under bilateral or regional agreements. The top half deals with Thai exports. The Thai Government does not have figures for exports under preferential agreements, only the certificates issued for shipments eligible for preferences. These values are compared to trading partners' import figures based on their FTA certificates, which may be a more accurate indication of actual imports - except for New Zealand, which does not issue FTA import certificates. The bottom half deals with Thai imports. Here, preferential trade is compared to total trade (preferential and non-preferential). Import figures in parentheses under ASEAN agreements with Japan and Australia-New Zealand are not included in the totals below them because of double counting with the bilaterals.

Source: Department of Foreign Trade, Bangkok, June 2011.

39. On services, ASEAN countries are also negotiating liberalization within the region under the 1995 ASEAN Framework Agreement on Services (AFAS). This aims to achieve commitments beyond those that members (except WTO-non-member Laos) made under the GATS, sometimes called "GATS-plus". Eight packages have been negotiated in five rounds of talks from 1996 to 2010. Individual countries' commitments include those that cut across all sectors and those that are specific

<sup>36</sup> ASEAN Secretariat online information. Viewed at: [www.aseansec.org/documents%5CCEPT%5C2010-Thailand.pdf](http://www.aseansec.org/documents%5CCEPT%5C2010-Thailand.pdf); for the consolidated preferential tariffs for the ASEAN-6 see: [www.aseansec.org/24774.htm](http://www.aseansec.org/24774.htm) [ 2 June 2010]; and additional information from the Thai authorities.



to individual sectors, and exemptions from non-discrimination among ASEAN members.<sup>37</sup> The aim is to gradually cover all sectors and all modes of supply, and to achieve a free flow of services by 2015, with flexibility. The commitments have meant liberalized trade in priority sectors, i.e. air travel, e-ASEAN (telecommunications and IT services), healthcare, and tourism. Thailand's ASEAN services commitments broaden the scope of services activities beyond GATS for ASEAN members in business services, telecommunications, construction, financial services, tourism, recreational services, air transport, and maritime transport. Nevertheless, foreign equity limitations of 49% on commercial presence remain in the horizontal section, and Thailand is said to be well behind schedule on allowing foreign ownership in service sectors.<sup>38</sup>

40. Other agreements aim to promote trade, investment, and greater regional integration within ASEAN. One example is the ASEAN Investment Area (AIA), signed in October 1998, which aims to increase foreign investment from ASEAN and non-ASEAN regional sources by removing barriers to all ASEAN investors by 2010 and for all investors by 2020, with some exceptions.<sup>39</sup> Some areas are listed as sensitive and are excluded temporarily or for the longer term. The February 2008 lists cover manufacturing, agriculture, fishery, forestry, mining and quarrying and related services. Brunei Darussalam, Indonesia, Malaysia, Myanmar, the Philippines, Singapore, and Thailand had until 1 January 2003 to phase out their temporary exclusions in manufacturing. Cambodia, Laos, and Viet Nam had until 1 January 2010.

41. The ASEAN Industrial Cooperation Scheme (AICO), was signed in 1996 to promote investment projects that involve ASEAN companies in two or more ASEAN countries by offering incentives such as preferential duties on components shipped from one ASEAN country to another for further manufacturing, for example car parts shipped from one ASEAN country for assembly in another. One of the scheme's aims was to encourage technology-based investments in ASEAN. As tariffs on trade within ASEAN have fallen to zero in general, and although other incentives, such as local content accreditation and investment incentives are left as the key features the scheme is being wound down.<sup>40</sup>

42. These different ASEAN arrangements are being brought together into the ASEAN Economic Community (AEC) by 2015. Its aim is to turn ASEAN into a single market and production base with the free flow of goods, services, capital, investment, and skilled labour. To ensure progress is made, ASEAN has accelerated integration in 12 priority product sectors, i.e. wood-based, automotive, rubber-based, textiles and apparel, agriculture-based, fishery, electronics, e-ASEAN (an initiative to strengthen the use of information and communications technology across the region, for electronic commerce, and more broadly for business, society, and government), healthcare, air travel, tourism, and logistics. Key measures to be implemented within a timetable for the priority goods sectors include:

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<sup>37</sup> "MFN exemptions". In ASEAN documents, "most-favoured nation (MFN)" is used to describe non-discrimination among the group's members. Therefore, MFN within ASEAN is actually *preferential* compared to MFN in the WTO.

<sup>38</sup> ASEAN Secretariat online information. Viewed at: [www.aseansec.org/4949.htm](http://www.aseansec.org/4949.htm) and [www.aseansec.org/6626.htm](http://www.aseansec.org/6626.htm), and services agreements and declarations. Viewed at: [www.aseansec.org/19087.htm](http://www.aseansec.org/19087.htm) [2 June 2011]. See also Sussangkarn and Nikomborirak (2011).

<sup>39</sup> ASEAN Secretariat online information. Viewed at: [www.asean.org/10341.htm](http://www.asean.org/10341.htm) [2 June 2011]. The AIA is based on coordination and publicity within ASEAN, opening all industries and granting national treatment immediately, with some exceptions phased out for ASEAN investors by 2010 and all other investors by 2020; and making the investment regime easier to use and more transparent.

<sup>40</sup> ASEAN Secretariat online information. Viewed at: [www.aseansec.org/6402.htm](http://www.aseansec.org/6402.htm) and [www.aseansec.org/18266.htm](http://www.aseansec.org/18266.htm) [2 June 2011]. The website lists 129 approved projects up to 21 April 2005, most in the automotive industry: see <http://www.aseansec.org/6398.htm> [2 June 2011]. Additional information from the Thai authorities.

- duty-free trade on all identified products by 2007 for the original ASEAN-6 and 2012 for the newcomers ASEAN-4;
- improving the rules of origin by making them more transparent, predictable, and standardized;
- adopting "substantial transformation" as an alternative criterion for determining a product's origin;
- extending the application of the ASEAN harmonized tariff nomenclature (AHTN) for ASEAN's external trade;
- developing a simplified, improved, and harmonized customs declaration form;
- ensuring full implementation of the green lane system for products traded under the common effective preferential tariff;
- developing the single window approach, including electronic processing of trade documents nationally and regionally;
- accelerating the implementation/development of sectoral mutual recognition arrangements (MRAs); and
- harmonizing procedures for issuing visas to international travellers and allowing ASEAN nationals to travel without visas within ASEAN.

43. ASEAN's institutional mechanisms are also being strengthened, for example on dispute settlement under an ASEAN Protocol on Enhanced Dispute Settlement Mechanism signed in November 2004. The aim is to ensure the relevant ASEAN economic agreements are implemented correctly and for disputes to be settled quickly.

44. The ASEAN Plus Three (China, Japan, and Republic of Korea) have studied creating an East Asia Free Trade Area (EAFTA) since 2002. Although regular progress reports on studies are submitted to annual summit meetings, negotiations have yet to start. However, cooperation continues in areas such as rules of origin, customs issues, energy, food security, sustainable forestry, climate change and many others.<sup>41</sup>

45. ASEAN-Japan: This free-trade agreement entered into force in June 2008 after 70 categories of goods were listed for intensive tariff reduction. The agreement requires further negotiations on services and investment, which began in October 2010 and were scheduled to continue in 2011. Analysts say the agreement has little impact on Thailand because of its bilateral agreement with Japan.<sup>42</sup>

46. The ASEAN-China Free Trade Area (ACFTA) was signed in December 2004. The goods part took effect in July 2005. It aims to eliminate most tariffs on trade between ASEAN and China by 2012 and 2018. Tariffs will not be eliminated across the board, with cuts in some sensitive products still under discussion.<sup>43</sup> Most tariffs are to be eliminated by 2012 for the ASEAN-6 and China, and by 2018 for the rest of ASEAN. Less than 100 lines at the 6-digit level for the ASEAN-6 and China, and 150 for the rest are subject to progressive tariff cuts.<sup>44</sup> On services, ASEAN and China signed the first package of an ACFTA Agreement on Trade in Services in January 2007 (effective July 2007). A

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<sup>41</sup> ASEAN Secretariat online information. Viewed at: [www.asean.org/20182.htm](http://www.asean.org/20182.htm) and [www.asean.org/16580.htm](http://www.asean.org/16580.htm) [2 June 2011].

<sup>42</sup> Information from the Thai authorities; and Economist Intelligence Unit (2010a), p. 14.

<sup>43</sup> Information from the Thai authorities; and Economist Intelligence Unit (2006), cited in WTO (2008).

<sup>44</sup> WTO RTA database, "ASEAN-CHINA (Goods), Summary Fact Sheet", June 2008. Viewed at: [http://rtais.wto.org/rtadocs/42/FactualDocs/English/ASEAN-China\(G\)\\_W.doc#FPS](http://rtais.wto.org/rtadocs/42/FactualDocs/English/ASEAN-China(G)_W.doc#FPS) [8 June 2011].

second package has been negotiated and approved by the Thai Parliament.<sup>45</sup> The agreement goes beyond Thailand's WTO GATS commitments on education and transport services and on modes of supply for professional and tourism services. An agreement on dispute-settlement was also signed.

47. ASEAN and the Republic of Korea (ROK) have agreements on trade in goods and services in place since 2006 and 2007, with Thailand signing on in 2009. An agreement on investment took effect in October 2009. These became a fully fledged ASEAN-ROK Free Trade Area (AKFTA) on 1 January 2010. The sensitive list for goods will be reviewed in 2012. However the two sides' leaders have acknowledged that the agreement is under-used and pledged to encourage greater use.<sup>46</sup>

48. A comprehensive agreement between ASEAN and Australia-New Zealand was signed in 2009 and took effect in March 2010, covering goods, services, and investment, including financial services, telecommunications, electronic commerce, and intellectual property. The agreement requires non-tariff measures in goods to be reviewed within two years (i.e. by 2012) and services commitments to be reviewed by 2013.<sup>47</sup>

49. An agreement on liberalizing goods trade between ASEAN and India was signed in August 2009, two years after their original July 2007 target date for conclusion, and took effect from 1 January 2010. Consultations on services and investment started in 2008. The Thai Parliament approved a negotiating framework for services and investment in November 2009. The goods agreement was reached on eliminating duties on almost 80% of tariff lines in two steps ending in 2016. Excluded are around 490 tariff lines, said to represent about 5% of total import value. Among the difficulties faced in the talks were said to be "Special Products" (palm oil, tea, coffee, and pepper).<sup>48</sup>

#### *Asia-Pacific Economic Cooperation (APEC)*<sup>49</sup>

50. The APEC group's trade objective is "open regionalism" without necessarily creating a free-trade area of its own. APEC's trade efforts therefore focus more on its members meeting unilateral targets for liberalization and for better quality measures across the spectrum from customs procedures and standards to subsidies and contingency actions. It even includes "model measures" that members could use when negotiating regional or bilateral free-trade agreements among themselves.<sup>50</sup> APEC's aim is for its members to liberalize comprehensively, consistently with the WTO, without discriminating among the group's members or between them and the rest of the world, as described in the Action Agenda from the 1995 Osaka Summit. Despite that aim, many APEC economies, including ASEAN members, have either formed or are contemplating regional trading arrangements that give preferential trade terms to some APEC and non-APEC economies and not to others.

<sup>45</sup> ASEAN Secretariat online information, "ASEAN-China FTA". Viewed at: [www.asean.org/19105.htm](http://www.asean.org/19105.htm); "RTA Fact Sheet", viewed at: [www.aseansec.org/Fact%20Sheet/AEC/AEC-12.pdf](http://www.aseansec.org/Fact%20Sheet/AEC/AEC-12.pdf) [8 June 2011]; and information from the Thai authorities.

<sup>46</sup> ASEAN Secretariat online information. Viewed at: [www.asean.org/7672.htm](http://www.asean.org/7672.htm) [8 June 2011]; and information from the Thai authorities.

<sup>47</sup> Information from the Thai authorities; and Economist Intelligence Unit (2010), p. 14.

<sup>48</sup> Information from the Thai authorities; and APEC Secretariat (2009), p. 88 and Annex 4.

<sup>49</sup> APEC Secretariat online information. Viewed at: [www.apec.org](http://www.apec.org).

<sup>50</sup> APEC Secretariat (2008a), Annex 2. The "model measures" include safeguards, competition policy, environment, temporary entry for business purposes, customs administration and trade facilitation (prepared by the APEC Business Advisory Council or ABAC), electronic commerce, rules of origin and origin procedures, sanitary and phytosanitary measures, trade in goods, technical barriers to trade, transparency, government procurement, cooperation, dispute settlement, and trade facilitation.

51. Thailand intends to meet APEC's target of free and open trade, including in services and investment by 2020 for developing economies (2010 for developed economies). The target is voluntary and non-binding and is to be achieved through concerted unilateral liberalization. Individual Action Plans (IAPs) are road maps containing APEC's members' intended actions in 15 policy areas for achieving APEC's liberalization goals. The action plans are updated and reviewed regularly: Thailand's latest action plan study report was written in 2008 and discussed in an APEC senior officials' meeting in February 2009.<sup>51</sup>

52. Thailand's 2008-09 action plan review concluded that Thailand has made significant progress towards achieving its goals, perhaps well ahead of schedule. The report congratulates Thai officials for their efforts: economic and political instability has slowed progress but the reviews "must be conducted in light of realities and not a vacuum". Among the concerns raised were the administration of customs and trade programmes, and suggestions that they are sometimes non-transparent and non-objective.<sup>52</sup> Thailand has been active in the work on "model measures", in particular on cooperation, sanitary and phytosanitary measures, subsidies and countervailing measures, and anti-dumping. It has also been active on reducing red tape and other aspects of trade facilitation, one of three key parts of the 1995 Osaka Action Agenda. The 2008-09 action plan's review listed 16 improvements to customs procedures, involving electronic or online customs and financial processing, single-window or one-stop services, harmonized or standardized classification and valuation for goods, more advanced technology such as x-ray container inspections, and streamlined procedures in general.<sup>53</sup> These efforts contributed to APEC's aim of reducing transaction costs by 5% from 2001 to 2005 and a further 5% in 2006-10.

#### *Asia-Europe Meetings (ASEM)*<sup>54</sup>

53. The Asia-Europe Meetings are informal dialogues and cooperation programmes among European and Asia-Pacific "partners" who now number 48 (the 27 EU members, the European Commission, the ASEAN 10, the ASEAN Secretariat, and Australia, China, India, Japan, Korea, Mongolia, New Zealand, Pakistan, and Russia). Summits have been held every two years since 1996, alternating between the Asia-Pacific and Europe. A range of economic, political, security, and social issues are discussed at various levels, its achievements described as "a dialogue facilitator", "a policy-making laboratory", and "managing Europe-Asia relations". As an example of the subjects covered, recent activities (in May 2011) included meetings on food security, sustainable forestry and water resources. ASEM has been working on a Trade Facilitation Action Plan (TFAP) for some years, aiming to reduce non-tariff barriers, increase transparency, and promote trade opportunities between the two regions. It specifies bi-annual "concrete goals" in the priority areas of customs, standards and conformity assessment, public procurement, quarantine and SPS, intellectual property, mobility of business people, and other trade activities, such as market access in distribution.<sup>55</sup> The Asia-Europe Business Forum (ABEF) promotes regional cooperation in the private sector. The ASEM Trust Fund also finances technical assistance on financial sector restructuring and addressing poverty.

<sup>51</sup> APEC Secretariat (2009). Among the sources used is WTO (2008).

<sup>52</sup> APEC Secretariat (2009), p. 12.

<sup>53</sup> APEC Secretariat (2009), pp. 91-95.

<sup>54</sup> Asia-Europe Foundation (ASEF) online information, "ASEM Infoboard". Viewed at: [www.aseminfoboard.org](http://www.aseminfoboard.org); and EU Commission online information. Viewed at: <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/regions/asem/> [4 June 2011].

<sup>55</sup> EU online information. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2008/august/tradoc\\_140018.pdf](http://trade.ec.europa.eu/doclib/docs/2008/august/tradoc_140018.pdf) [4 June 2011].

*Other areas of regional cooperation*

54. Thailand participates in other sub-regional cooperation or development groups. APEC's 2008-09 review of Thailand's action plan observes briefly that little progress has been made in negotiations for market access in goods under the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) because of differences over exclusions, and no progress at all on services or investment. BIMSTEC's aim is to forge links between ASEAN and SAARC in trade, investment, and technical cooperation, and to develop a free-trade area based on a framework agreement signed in 2004. The original targets were for free trade to be phased in at a range of paces from 2007 to 2017. A goods agreement was signed in June 2009 and each country was to attach tables listing the goods for tariff cuts or elimination, but so far no table has been submitted. Negotiations on services are under way. Cooperation is in 13 priority sectors with the designated lead countries: trade and investment; tourism; energy; technology; fisheries; transport and communications; agriculture; public health; poverty alleviation; counter-terrorism and transnational crime; protection of biodiversity and the environment and natural disaster management; culture; and people-to-people contact. Thailand leads the work on fisheries, public health, and people-to-people contact.<sup>56</sup>

55. Greater Mekong Subregional Economic Cooperation (GMS-EC) involves Cambodia, the People's Republic of China (PRC, specifically Yunnan Province and Guangxi Zhuang Autonomous Region), Laos, Myanmar, Thailand, and Viet Nam. Set up in 1992 with assistance from the Asian Development Bank (ADB), the programme aims to enhance economic relations, covering nine priority sectors: agriculture, energy, environment, human resource development, investment, telecommunications, tourism, transport infrastructure, and transport and trade facilitation. The programme is built around "economic corridors" - development through appropriately designed infrastructure - using cross-border transport links for goods and services to encourage investment in areas that would otherwise be remote and inaccessible. The programme also supports the ASEAN-China Free Trade Area and ASEAN trade liberalization.<sup>57</sup>

56. The aim of Ayeyawady-Chao Phraya-Mekong Economic Cooperation Strategy (ACMECS), which covers a similar area (without China), is to bridge the economic gaps among Cambodia, Laos, Myanmar, Viet Nam, and Thailand, and to promote prosperity in the sub-region in a sustainable manner. ACMECS seeks to build upon existing regional cooperation programmes and complement bilateral frameworks wherever possible and appropriate. The key areas of cooperation are trade and investment facilitation, transport linkages, agriculture, industry and energy, public health, tourism, and human resource development. ACMECS supports the goals of ASEAN as well as other regional and sub-regional frameworks, and continues to form a major component of Thailand's foreign policy, including assistance to other developing countries.<sup>58</sup>

57. The Indonesia–Malaysia–Thailand Growth Triangle (IMT–GT), formed in 1993, seeks to accelerate economic transformation in less developed neighbouring provinces in the three countries by promoting sub-regional economic cooperation to drive growth and development. It now covers 14 provinces in southern Thailand, 8 states of Peninsular Malaysia, and the 10 provinces of Sumatra in Indonesia, with 70 million people. The private sector plays a key role. Its focus is on trade and

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<sup>56</sup> APEC Secretariat (2009), p. 89; and Thai Foreign Ministry online information. Viewed at: [www.mfa.go.th/bimstec/bimstecweb/html/background.html](http://www.mfa.go.th/bimstec/bimstecweb/html/background.html) [30 May 2011]; World Bank (2011), p. 81; and information from the Thai authorities. BIMSTEC began life as "Bangladesh, India, Myanmar, Sri Lanka and Thailand Economic Cooperation", but the name was changed when Bhutan and Nepal joined in 2004. Details of earlier developments are in WTO (2008).

<sup>57</sup> Online information. Viewed at: [www.gmsec.org](http://www.gmsec.org), and [www.adb.org/gms/](http://www.adb.org/gms/) [14 June 2011].

<sup>58</sup> Online information. Viewed at: [www.acmecs.org](http://www.acmecs.org) [14 June 2011].

investment, technology transfer, production cooperation, and use of natural resources, as well as development of infrastructure and transportation linkages in the triangle area. Work currently comes under a 2007-11 "roadmap" covering trade and investment promotion in the region; agriculture, agri-industry and tourism; infrastructure support and connectivity; human resources development and natural resource management; and institutional support and public-private sector collaboration. Thailand leads two of the six working groups, those on halal products and services, and on tourism.<sup>59</sup>

58. The Asia Cooperation Dialogue (ACD) is a Thai initiative launched in June 2002 to serve as a "missing link" for all Asian sub-regions to create strategic partnerships and cooperation. Ministers from its 30 members have met annually, most recently in Colombo (2009) and Teheran (2010). Areas of cooperation include energy, agriculture, biotechnology, tourism, poverty alleviation, information technology development, e-education, and finance.<sup>60</sup>

(c) Bilateral arrangements

59. As with regional pacts, Thailand believes that bilateral free trade agreements can be an effective catalyst for liberalization and eventually a building block for the multilateral trading system. Thailand sees bilateral agreements as a means to maintain and strengthen its shares in traditional and potential new export markets such as Japan, the United States, China, India, Australia, New Zealand and Peru. In several cases negotiations on further liberalization continue even after implementation has begun.

60. A comprehensive Japan-Thailand Economic Partnership Agreement (JTEPA) covering trade in goods and services as well as investment, took effect from 1 November 2007. Tariffs were eliminated immediately on 31% of goods imported into Thailand, and on 86% of Thai exports to Japan. For Thailand, tariffs on 5,495 products or 99.82% of tariff lines are being cut or eliminated or set as tariff quotas over 10 years. For Japan, the numbers are 8,612 products or 98.06% of tariff lines over 15 years. The eventual aim for services, after negotiations are completed, is for Thai investors to be allowed to expand businesses such as spas, hotels, and restaurants in Japan. Japanese investors will have access to the Thai services market, beyond its WTO GATS commitments, in advertising, logistics, consulting, computer and related services, maintenance and repair for household electrical appliances, wholesale trade and retailing in certain products, luxury hotels, restaurants, and management consulting (general management, marketing management, human resources management, product management). Thai investors will be allowed to invest in all industries except medicine, aerospace, oil production, energy, mining, fishery, agriculture, forestry and other related industries. Japanese investors are allowed up to 50% equity in manufacture of automobiles with no requirement to apply for authorization, subject to certain conditions. Talks continue on further liberalization for Thai agricultural products and Japanese industrial products.<sup>61</sup>

61. The Thailand-Australia Free Trade Agreement (TAFTA) entered into force on 1 January 2005. It is to lead to the elimination of tariffs across all sectors by 2025 for Thailand and by 2015 for Australia; around half of Thailand's tariffs were eliminated upon entry into force, and most of the remaining tariffs were phased down and eliminated by 2010. The agreement aims to substantially improve the environment for bilateral services, investment, and business mobility.

<sup>59</sup> Online information. Viewed at: [www.imtgt.org](http://www.imtgt.org) [14 June 2011].

<sup>60</sup> Online information. Viewed at: [www.acddialogue.com](http://www.acddialogue.com) [14 June 2011]. Members are Bahrain, Bangladesh, Bhutan, Brunei Darussalam, Cambodia, China, India, Indonesia, Iran, Japan, Kazakhstan, Republic of Korea, Kuwait, Laos, Malaysia, Mongolia, Myanmar, Oman, Pakistan, the Philippines, Qatar, Russian Federation, Kingdom of Saudi Arabia, Singapore, Sri Lanka, Tajikistan, Thailand, United Arab Emirates, Uzbekistan, and Viet Nam. For more information see WTO (2008).

<sup>61</sup> APEC Secretariat (2009), Annex 4; World Bank (2011), p. 81; information from the Thai authorities; and WTO (2008).

Further negotiations on trade in services and investment were scheduled to start in 2008. The Thai Parliament has approved a framework for these talks. Thailand is also reported to be seeking further relaxation for trade barriers on its agricultural products, and on restrictions on Thais being employed in Australia.<sup>62</sup>

62. The Thailand and New-Zealand Closer Economic Partnership (CEP) Agreement, effective 1 July 2005, aims to establish free trade by 2015 for New Zealand's imports and by 2025 for Thailand's, with tariff elimination or reduction phased in annually. Again, further negotiations on trade in services and investment were scheduled to start in 2008 and the Thai Parliament approved a framework for the talks.<sup>63</sup>

63. The Thailand-Peru protocol on accelerating liberalization of trade in goods and trade facilitation was signed in November 2005. Early harvest provisions prescribe tariff elimination or reduction, phased in annually and covering 70% of tariff lines by 2015. However this was delayed because three additional protocols were negotiated and signed between 2006 and 2010, on rules of origin, converting tariff classification from the 2002 Harmonized System to the 2007 version, and third party invoicing. At the time of writing the two countries were going through their internal procedures to implement the early harvest.<sup>64</sup>

64. Talks between Thailand and India were delayed, but have resumed. Under a 2003 framework agreement, tariffs were eliminated on 82 items as an early harvest between September 2004 and September 2006. The framework covers four areas: goods, services, investment, and other areas of economic cooperation. In December 2010 talks resumed on a comprehensive agreement covering all four areas as a "single undertaking" and at the time of writing were expected to conclude in 2011.<sup>65</sup>

65. Preparations for Thai-EU free-trade talks restarted in November 2010 after Thailand initially objected to including alcoholic drinks. Thai officials say the first approach was from the EU. Thailand has not yet started negotiating but has consulted stakeholders on a possible bilateral deal in goods, services, and investment, and has begun an impact assessment. A negotiating mandate has been submitted to Parliament. Meanwhile, the EU is reported to be considering moving back to the idea of an agreement with ASEAN.<sup>66</sup>

66. Tariff reductions under the agreement between Thailand and Bahrain were suspended in 2006, reportedly because of Bahrain's obligations on commitments with third countries under the Gulf Cooperation Council. Thailand's interest is access to Middle Eastern markets, and the talks with Bahrain might evolve into an agreement with the GCC. A Framework Agreement on Closer Economic Partnership entered into force on 29 December 2002. The two parties exchanged a list of 626 items, on which tariffs of 3% were to be eliminated immediately under an early harvest programme, with other tariffs were to be eliminated by 2010.

67. Other bilateral free-trade agreements that have been considered include with Chile (Parliament approved the negotiations framework in September 2010, with three rounds of talks scheduled for 2011), Pakistan, Papua New Guinea, and Hong Kong, China. Talks with the United

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<sup>62</sup> World Bank (2011), p. 81; information from the Thai authorities; and WTO (2008).

<sup>63</sup> Information from the Thai authorities; and WTO (2008).

<sup>64</sup> Information from the Thai authorities; APEC Secretariat (2009), p. 88 and Annex 4; and World Bank (2011), p. 81; and WTO (2008).

<sup>65</sup> Information from the Thai authorities; APEC Secretariat (2009), p. 87 and Annex 4; World Bank (2011), p. 81; and WTO (2008).

<sup>66</sup> Information from the Thai authorities; and World Bank (2011), p. 81.

States were suspended in 2006, and with the European Free Trade Association (EFTA) were "put on hold".<sup>67</sup>

## (7) TRADE DISPUTES AND CONSULTATIONS

### (i) Dispute settlement under the WTO

68. Thailand continues to view WTO dispute settlement as a workable instrument that makes the multilateral trading system more stable and predictable. However, the cost can be high when cases require outside expertise or legal services, which is why some cases are not pursued in the WTO. In Thailand's view, increasing use of the dispute settlement system by developing countries means the Advisory Centre on WTO Law is an important means of providing the legal expertise.<sup>68</sup> Thailand's proposals for improving dispute settlement in the Doha Round talks include increasing the number of Appellate Body judges and regulating "carousel" retaliation so that it matches better any harm caused by an infringement.<sup>69</sup>

69. Thailand has been involved directly in 16 dispute cases under the WTO, 13 as complainant and three as respondent. Three were initiated during the review period, one as complainant and two as respondent. Two early cases (DS35 and DS181, see Table II.5) were settled with mutually agreed solutions. In five pre-2008 cases Thailand has not sought to move beyond the first stage of requesting consultations. A case brought against Thailand in 2008 has similarly not moved to the next stage. The largest number of Thai complaints is still about agricultural or fisheries products; however, the range of products involved is broadening, several involve anti-dumping measures or safeguards, and most cases involve Thailand and either the European Union or the United States (Table II.5).

**Table II.5**  
**Dispute settlement cases, 2011**

No.	Dispute	Complainants	Request for consultation	Panel report circulated / adopted	Appellate Body Report circulated / adopted	Arbitration requested / circulation of reports
<b>(a) Thailand as complainant</b>						
DS17	European Communities — Duties on Imports of Rice	Thailand	05.10.95	n.a.	n.a.	n.a.
DS35	Hungary — Export Subsidies in respect of Agricultural Products	Argentina; Australia; Canada; New Zealand; Thailand; United States of America	27.03.96	(Mutually agreed solution 20.07.97)	n.a.	n.a.
DS47	Turkey — Restrictions on Imports of Textile and Clothing Products	Thailand	20.06.96	n.a.	n.a.	n.a.
DS58	United States of America — Import Prohibition of Certain Shrimp and Shrimp Products	India; Malaysia; Pakistan; Thailand	8.10.96	15.05.98	12.10.98 / 06.11.98	n.a.

Table II.5 (con'td)

<sup>67</sup> APEC Secretariat (2009), pp. 90-91; Department of Trade Negotiations online information. Viewed at: [www.thaifta.com/english/index\\_eng.html](http://www.thaifta.com/english/index_eng.html) [30 May 2011]; additional information from the Thai authorities; Economist Intelligence Unit (2010a); and EFTA online information. Viewed at: [www.efta.int/free-trade/ongoing-negotiations-talks/thailand.aspx](http://www.efta.int/free-trade/ongoing-negotiations-talks/thailand.aspx) [31 May 2011].

<sup>68</sup> See WTO (2008).

<sup>69</sup> APEC Secretariat (2009), p. 79.



No.	Dispute	Complainants	Request for consultation	Panel report circulated / adopted	Appellate Body Report circulated / adopted	Arbitration requested / circulation of reports
DS181	Colombia — Safeguard Measure of Imports of Plain Polyester Filaments from Thailand	Thailand	07.09.99	(Mutually agreed solution 27.10.99)	n.a.	n.a.
DS205	Egypt — Import Prohibition on Canned Tuna with Soybean Oil	Thailand	22.09.00	n.a.	n.a.	n.a.
DS217	United States of America — Continued Dumping and Subsidy Offset Act of 2000 (Byrd Amendment)	Australia; Brazil; Chile; European Communities; India; Indonesia; Japan; Korea, Republic of; Thailand	21.12.00	16.09.02	16.01.03 / 27.01.03	Article 21.3(c) (implementation period): 14.03.03 / 13.06.03 Article 22.6 (retaliation): 23.06.04 / 31.08.04
DS242	European Communities — Generalized System of Preferences	Thailand	07.12.01	n.a.	n.a.	n.a.
DS283	European Communities — Export Subsidies on Sugar	Thailand	14.03.03	15.10.04	28.04.05 / 19.05.05	Article 21.3(c) (implementation period): 30.08.05 / 28.10.05
DS286	European Communities — Customs Classification of Frozen Boneless Chicken Cuts	Thailand	25.03.03	30.05.05	12.09.05 / 27.09.05	Article 21.3(c) (implementation period): 09.12.05 / 20.02.06
DS324	United States of America — Provisional Anti-Dumping Measures on Shrimp from Thailand	Thailand	09.12.04	n.a.	n.a.	n.a.
DS343	United States of America — Measures Relating to Shrimp from Thailand	Thailand	24.04.06	28.02.08	16.07.08 / 01.08.08	n.a.
DS383	United States of America — Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand	Thailand	26.11.08	22.01.10 / 18.02.10	n.a.	n.a.
<b>(b) Thailand as respondent</b>						
DS122	Thailand — Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H Beams from Poland	Poland	06.04.98	28.09.00	12.03.01 / 05.04.01	n.a.
DS370	Thailand — Customs Valuation of Certain Products from the European Communities	European Communities	25.01.08	n.a.	n.a.	n.a.
DS371	Thailand — Customs and Fiscal Measures on Cigarettes from the Philippines	Philippines	07.02.08	15.11.10	17.06.11 / 15.07.11	n.a.

n.a. Not applicable.

Note: Excludes the 48 disputes in which Thailand has been a third party. Before December 2009, the European Union was known in the WTO as the European Communities.

Source: WTO online information. Viewed at: [www.wto.org/disputes](http://www.wto.org/disputes), [www.wto.org/english/tratop\\_e/dispu\\_e/find\\_dispu\\_cases\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/find_dispu_cases_e.htm).

**(ii) Other**

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

**(8) FOREIGN INVESTMENT REGIME****(i) Recent developments**

71. Thailand maintains a relatively open foreign investment regime. It views foreign direct investment (FDI) as vital to the economy's growth, and encourages investors from all sources; FDI inflows have remained robust during the period under review (Chapter I), and Thailand is ranked a high 19th in the World Bank's *Doing Business 2011* report and is well-placed in UNCTAD's *World Investment Prospect Survey 2010–12*.<sup>70</sup> The downside is that it has among the most stringent limits on foreign equity holding, according to another World Bank publication with the majority of sectors compared subject to restrictions.<sup>71</sup> Sectors fully open to foreign capital participation include light manufacturing, pharmaceutical products, and food products. The Foreign Business Act B.E.2542 (1999) lists sectors and business activities where foreign ownership must be below 50%, although in some cases this can be raised with special permission. Some restrictions are contained in laws specific to the sector, for example telecommunications.

72. During the period under review, foreign investors were more concerned about political instability and unpredictability and less about some of the issues such as infrastructure and the energy outages that featured in the previous review. Among the concerns about uncertainty raised were a 2009 court decision to halt temporarily dozens of large-scale projects in Map Ta Phut, the country's biggest industrial zone; and the repeated postponement of the auction for third-generation mobile-telephony licences. Other weaknesses in Thailand's investment environment include low education levels and a shortage of suitably qualified workers, infrastructure bottlenecks, particularly in and around Bangkok and the eastern seaboard, intellectual-property rights violations, and red tape.<sup>72</sup>

**(ii) Basic framework**

73. During the period under review no major changes were made to the regulatory and institutional framework governing foreign investment in Thailand. As noted in previous Trade Policy Reviews, the legislation (Foreign Business Act B.E. 2542) dates back to November 1999. The Foreign Business Act (FBA) maintains negative lists of restricted activities.<sup>73</sup>

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

<sup>70</sup> World Bank Group (2010a); and UNCTAD (2010).

<sup>71</sup> World Bank Group (2010b).

<sup>72</sup> Economist Intelligence Unit (2010), p. 12, including the views of 13,000 executives surveyed in the World Economic Forum's 2010-11 *Global Competitiveness Report*.

<sup>73</sup> See WTO (2004) and (2008).

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

#### *Land and labour restrictions*

76. Under the Industrial Estate Authority of Thailand Act 1979, industrial operators are allowed to own land in an industrial estate or an industrial zone for carrying out their business activity to the extent that the Board of the Industrial Estate Authority of Thailand may deem appropriate. The foreign investment must be a minimum of B 40 million, for at least three years, in a business that benefits the economy, promotes social welfare or is BOI promoted. While non-Thai businesses and individuals may still own land only on government-approved industrial estates, the Land Act as amended in 1999 allows foreign investors to own up to 1,600 square metres of land for residential purposes in certain areas, including the Bangkok Metropolis. Under the Condominium Act, as amended in 1999, foreigners may also own up to 49% of the total space of all units in a condominium, subject to certain conditions.<sup>74</sup> For five years from the date of legislative change, up to 100% foreign ownership was allowed in the Bangkok Metropolis and other areas specified in Ministerial Regulations where a condominium is situated on land not exceeding 8,000 square metres (Condominium Act). Under the Investment Promotion Act 1977, a person may be permitted to own land for carrying on a promoted activity to the extent that the BOI deems appropriate. The BOI may grant permission for foreigners to own land within specified limits for offices and residences of executives and employees (BOI Announcement No. 2/2546, 2003). Foreigners may also construct buildings on leased land. The Act on the Lease of Immovable Property for Industrial and Commercial Purposes 1999 allows a foreigner to lease property for commercial or industrial purposes for a period of not more than 50 years, renewable. Leases can also now be used for loan collateral.

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

#### **(iii) International agreements**

78. Thailand has been a member of the World Bank Multilateral Investment Guarantee Agency (MIGA) since 29 April 2000. Thailand also has bilateral investment treaties (BITs) with 38 economies. It is a party to the Agreement on the Promotion and Protection of Investments concluded amongst the ASEAN countries, and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), and is a signatory to the International Convention on the Settlement of Investment Disputes between States and Nationals of other States (the ICSID Convention). Although it has modernized its own arbitration and conciliation rules

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<sup>74</sup> Foreigners may also use funds from local bank accounts to make such purchases instead of having to bring in foreign funds.

(Arbitration Act B.E. 2545 (2002) and Regulations on Compliance with Arbitration Awards, 2001) in line with the UNCITRAL Model Law on International Commercial Arbitration, Thailand has been in the lengthy process of ratifying the ICSID Convention. The authorities indicate that, in any case, foreign investors have access to other reliable dispute settlement procedures under applicable BITs and FTAs that include *ad hoc* arbitration under the UNCITRAL rules. Other avenues being used by foreign investors to resolve disputes are the 1990 arbitration and conciliation rules of the private Arbitration Institute under the supervision of the Court of Justice, and the Thai Commercial Arbitration Rules administered by the Thailand Board of Trade. The Department of Intellectual Property, Department of Insurance, and the Security and Exchange Commission also provide arbitration services.

79. Apart from the non-MFN Treaty with the United States (Chapter IV(4)), Thailand has signed 39 investment promotion and protection agreements with other economies; 33 have entered into force. These include the ASEAN Agreement on the Promotion and Protection of Investments. The FTAs concluded with Australia, New Zealand, and Japan also include a chapter on investment. These agreements cover obligations on national and MFN treatment, expropriation, transfers, fair and equitable treatment, and investor-state dispute settlement mechanisms.

80. Thailand is pursuing further agreements with developed and developing countries, especially agreements that promote FDI and encourage technology transfer. Thailand has 54 double-taxation treaties, covering most of its major trading partners, and is negotiating nine more.<sup>75</sup> Several of these agreements contain "tax sparing" provisions, including those concluded with Japan, Australia, Cyprus, Denmark, Israel, Luxembourg, New Zealand, Norway, Spain, and Switzerland.

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<sup>75</sup> Economist Intelligence Unit (2010), pp. 64-66.