

## IV. TRADE POLICIES BY SECTOR

### (1) AGRICULTURE

#### (i) Features

1. Agriculture contributes about 10% to Thailand's GDP<sup>1</sup> and accounts for about 34% of employment.<sup>2</sup> In 2010, agriculture exports (WTO definition) represent about 12% of total exports of goods and 4% of imports.<sup>3</sup> Agriculture is more important to Thailand's economy than these figures suggest as they do not take into account the supply of agriculture goods and services or the importance of food processing to employment and the economy.

2. Agriculture's contribution to GDP has declined from nearly 14% in 1990, reflecting the faster growth in manufacturing and services compared with agriculture. In real terms, agriculture grew by an average of just over 2% per year in the 2000-10 period but growth was erratic, ranging from 12.7% in 2003 to a decline of 2.4% in 2004 as production followed the changes in international commodity prices and domestic production conditions.<sup>4</sup>

3. Thailand is a major producer of several agricultural products. It is the second biggest producer in the world of cassava and pineapples, the third biggest producer of mangoes and a big producer of several other important agricultural products such as palm oil, sugar cane, coconuts, and paddy rice. Rice is Thailand's most important crop but production is relatively diverse. In 2008, the top ten products combined made up less than three-quarters of the total value of production (Table IV.1).

**Table IV.1**  
**Production of selected agricultural products, 2003-10**  
('000 tonnes)

	2003	2004	2005	2006	2007	2008	2009	2010	% world production in 2009
Rice	27,038	28,538	30,292	29,642	32,099	31,651	31,463	..	4.6
Mangoes	1,700	1,700	1,800	1,800	2,303	2,374	2,470	..	7.0
Pig meat	660	677	669	865	915	864	756	1,312	0.7
Chicken meat	1,227	878	950	962	986	1,019	1,506	1,543	1.3
Sugar cane	74,259	64,996	49,586	47,658	64,365	73,502	66,816	..	4.0
Dried chillies and peppers	60	75	90	115	153	162	170	..	5.8
Cassava	19,717	21,440	16,938	22,584	26,916	25,156	30,088	..	12.5
Natural rubber	2,860	3,007	2,977	3,070	3,022	3,167	3,090	..	30.2

.. Not available.

Source: FAO Stat online database; and the Thai authorities.

4. Of a total land area of 52.6 million hectares, about 41% is used for agriculture, of which about half is in rice paddies. Although rice production is not increasing as rapidly as production of other

<sup>1</sup> Bank of Thailand online information. Viewed at: <http://www.nesdb.go.th/Default.aspx?tabid=95> [July 2011].

<sup>2</sup> National Statistical Office online information. Viewed at: [http://web.nso.go.th/en/survey/lfs/lfs2010\\_tab.htm](http://web.nso.go.th/en/survey/lfs/lfs2010_tab.htm) [July 2011].

<sup>3</sup> Comtrade online database.

<sup>4</sup> Bank of Thailand online information, "Thailand's Macro Economic Indicators". Viewed at: <http://www.bot.or.th/English/Statistics/EconomicAndFinancial/EconomicIndices/Pages/index.aspx#> [March 2011].

crops and animal products, it still dominates farming in Thailand. There are 5.79 million farm holdings in Thailand, practically all of them are family farms, with an average farm size of 3.2 ha.

5. Foreign investment in agriculture in Thailand is restricted by the Land Code B.E. 2497 (1954) which prohibits purchase and ownership of land by foreign persons or foreign owned enterprises based in Thailand, although foreigners may lease land and buildings for periods of up to 30 years. However, the Foreign Business Act B.E. 2542 (1999) prohibits foreigners from activities that fall under three lists:

- under List One (businesses not permitted for foreigners for "special reasons"), foreigners are prohibited from rice farming, horticulture, and farming of animals;
- under List Two, on the grounds of national safety or security or affecting arts and culture, tradition, folk handicraft or natural resources and the environment, foreigners are prohibited from sugar cane farming unless they obtain the permission of the Minister of Commerce with the approval of the Cabinet; and
- under List Three, on the grounds that Thai nationals are not yet ready to compete, foreigners are prohibited from rice milling and rice flour production, domestic trade in native products, and plant cultivation and propagation unless permitted by the Director-General of the Commercial Registration Department with the approval of the Foreign Business Committee.

6. Agriculture production varies considerably from one part of the country to another. While rice farming is by far the biggest user of land in most regions, in the Southern Region it represents only 10% of cultivated land, and rubber plantations represent over half of land use.<sup>5</sup> In general, land devoted to growing crops other than rice is increasing as farmers have been encouraged to diversify.

## **(ii) Trade in agriculture**

7. With a relatively open economy and a large agricultural surplus, Thailand is a major exporter of several products, particularly rice, canned chicken meat, sugar, canned pineapple, and cassava (Table IV.2). Thailand is the principle supplier of rice to the world market, making up nearly one third of world exports although producing less than 5% of world production. Thailand is also a major exporter of processed foods rather than basic commodities, with exports of cassava starch almost equal to exports of cassava, and exports of preserved pineapples and preserved chicken exceeding exports of the fresh or frozen products. Thailand is also the world's major source of natural rubber making up over one third of total exports and nearly one third of total production.

8. Exports are concentrated in relatively few products. In 2010, rice represented 27% of all agriculture exports (WTO definition, which does not include rubber) from Thailand and sugar another 11%. This pattern of exports has been relatively stable for some years, although the total value has increased significantly for rice, sugar, canned chicken, and cassava. The increase in rice and sugar prices since 2005 has increased their share of total agriculture trade from about 16% of the total value of agriculture exports in 2005 to 38% in 2010.

9. The main destination for Thailand's exports of agriculture goods varies with the product. In 2010, Nigeria was the main destination for rice, followed by the United States, Côte d'Ivoire, South Africa, and the Philippines. The main destination for sugar exports is Indonesia followed by Japan,

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<sup>5</sup> National Statistics Office (2003).

Cambodia, and the Philippines. The main destination for cassava is China, which takes practically all of Thailand's exports of this product.

10. Imports of agriculture products are more widely distributed than exports, with the top ten representing about 60% of total imports of agriculture goods. The main imports are inputs for domestic production (oil-cake and soy beans mostly for animal feed, and cotton for textiles) rather than food, although imports of wheat and concentrated milk are also important (Table IV.3). The main sources for oil-cake and soy beans are Brazil and Argentina while the main sources for cotton and wheat are the United States and Australia. New Zealand and Australia are the main sources for dairy products.

**Table IV.2**  
**Exports of selected agricultural products, 2005-10**

HS Code	Product description		2005	2006	2007	2008	2009	2010	% of world exports in 2008
1006	Rice	000 tonnes	7,542	7,434	9,198	10,216	8,620	8,940	32
		US\$ million	2,322	2,579	3,470	6,108	5,046	5,341	29
1701	Cane or beet sugar	000 tonnes	3,041	2,239	4,408	5,012	5,053	4,501	4
		US\$ million	703	734	1,259	1,432	1,803	2,152	8
1602	Other prepared or preserved meat <sup>a</sup>	000 tonnes	284	306	336	408	398	439	14
		US\$ million	874	990	1,187	1,789	1,641	1,832	18
2008	Fruits, nuts otherwise prepared <sup>a</sup>	000 tonnes	774	889	835	904	780	767	16
		US\$ million	622	699	775	964	805	892	9
0714	Manioc, arrowroot, salep <sup>b</sup>	000 tonnes	3,035	4,217	4,562	2,888	4,364	4,279	69
		US\$ million	319	456	558	480	607	817	39
2309	Preparations used for animal feeding	000 tonnes	386	418	433	456	461	491	2
		US\$ million	447	504	589	708	702	802	4
1108	Starches, inulin <sup>b</sup>	000 tonnes	1,421	1,759	1,459	1,235	1,759	1,711	30
		US\$ million	235	376	408	449	488	772	20
2106	Food preparations not elsewhere specified	000 tonnes	401	397	369	396	399	422	7
		US\$ million	422	443	433	530	580	659	9
3505	Dextrins and other modified starches	000 tonnes	674	646	788	727	712	706	25
		US\$ million	275	298	403	458	391	510	16
2103	Sauces	000 tonnes	154	152	165	176	193	221	5
		US\$ million	161	192	234	295	340	410	8
4001	Natural rubber	000 tonnes	2,952	3,057	2,966	2,832	2,740	2,734	36
		US\$ million	3,695	5,430	5,641	6,721	4,308	7,896	35

a Exports under HS 1602 are mostly canned chicken, and exports under HS 2008 are mostly canned pineapple.

b Exports under HS 0714 are almost entirely manioc (cassava), and exports under HS 1108 are almost entirely starch from cassava.

Source: UN Comtrade database. Viewed at: <http://comtrade.un.org/> [March 2011].

**Table IV.3**  
**Imports of selected agricultural products, 2005-10**

HS Code	Product description		2005	2006	2007	2008	2009	2010
2304	Oil-cake and other solid residues from the extraction of soyabean oil	000 tonnes	1,881	2,174	2,105	2,193	2,077	2,616
		US\$ million	480	513	616	1,028	879	1,054
1201	Soya beans, whether or not broken	000 tonnes	1,608	1,395	1,541	1,723	1,535	1,819
		US\$ million	463	376	559	968	692	810
5201	Cotton, not carded or combed	000 tonnes	504	422	393	436	350	384
		US\$ million	612	570	536	715	485	730
1001	Wheat and meslin	000 tonnes	1,148	1,006	857	696	1,105	1,700
		US\$ million	237	217	258	332	313	443
0402	Milk and cream, concentrated or containing added sugar	000 tonnes	103	99	88	87	75	91
		US\$ million	230	220	302	341	169	292
1901	Malt extract; food preparations of flour, groats, meal, starch or malt extract	000 tonnes	71	64	65	79	68	78
		US\$ million	167	164	183	270	237	277
2106	Food preparations not elsewhere specified or included	000 tonnes	24	28	31	37	33	39
		US\$ million	132	161	192	247	237	272
2309	Preparations of a kind used in animal feeding	000 tonnes	197	241	248	217	212	245
		US\$ million	136	166	173	221	207	244

Source: UN Comtrade database. Viewed at: <http://comtrade.un.org/> [March 2011].

**(iii) Agriculture policies**

11. The Ministry of Agriculture and Cooperatives is responsible for formulating agriculture policy. The main focus of domestic policy is on improving productivity on small farms and the main policy objectives are: to increase employment in agriculture; to improve marketing of agricultural products, particularly products from small rural communities; to improve irrigation and water supply management; and to establish a national farmer council. To achieve these objectives the Ministry has three principal strategies in place:

- (i) the Farmers and Farmers' Organization Development Strategy, which seeks to stabilize farmers' incomes through crop insurance schemes, developing a futures market, and supporting contract farming. Under the Development Strategy, a national farmer council is to be set up and training programmes and a farmer loans scheme developed;
- (ii) the Production Development Strategy, which aims to improve productivity through more efficient production and research and development. The Production Development Strategy also seeks to improve value added through product development, marketing, and certification; and
- (iii) Infrastructure Development, which focuses on resource management, particularly water supply and irrigation.<sup>6</sup>

12. In addition, the Royal Initiative Agricultural Project and other Royal Development Projects are intended to improve agriculture productivity and reduce risk mainly through research and training. The New Agricultural Theory, an example of the Philosophy of Sufficiency Economy, is based on guidelines for the management of land and water resources with the objective of making agriculture sustainable at the household, community, and regional levels.

**(a) Market access**

13. The average MFN applied tariff on imports of agricultural products (WTO definition) is 26.5% which is much higher than the average for non-agricultural products (9%). Furthermore, average tariffs vary a lot from one product group to another ranging from zero for cotton up to 49.2% for beverages and tobacco. Furthermore, within each product group there is a large degree of variability with tariffs ranging from zero up to 65%. In most cases, applied MFN tariffs are lower than bound rates, which average nearly 37% for agricultural products (see Chapter III(1)).

14. According to the authorities, one tariff line for an agricultural product is unbound and several are partially bound.<sup>7</sup>

15. Thailand notified imports under 23 tariff quotas for an eclectic mix of products ranging from milk and cream to onion seeds. Fill-rates vary widely with in-quota imports of some products greatly exceeding the minimum quota (such as potatoes, soybeans, and soybean cake) while some quotas are hardly used (such as garlic, coconut, copra, and maize).<sup>8</sup>

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<sup>6</sup> Council of Ministers (2008a), p.14.

<sup>7</sup> The unbound tariff line is HS 05059010 (duck feathers), and partially bound tariff lines are: certain types of live bovines (HS 01021000 and 01029090), some chicken meat products (02071300), some tariff lines for whey (04041091 and 04049000), a tariff line under animal hair (05029000), a tariff line under skins of birds (05059090), a tariff line under bones treated with acid (05069000), and two tariff lines under mung beans (07133110 and 07133190).

<sup>8</sup> WTO documents G/AG/N/THA/55, 63, 67 and 71.

16. Administration methods used for tariff quotas vary, although all quotas are open to all supplying countries. Import certificates are required from the Department of Foreign Trade in the Ministry of Commerce for all tariff quotas except sugar (certificates from the Office of Cane and Sugar Board in the Ministry of Industry) and unmanufactured tobacco (certificates from the Excise Department of the Ministry of Finance). Allocation of tariff quotas to importers tends to be quite complex with partial allocations on a first-come-first-served basis, to manufacturers for imports of raw materials, to historical importers, and to producer groups.<sup>9</sup>

17. Some quotas are administered in ways that could limit access. For example, in 2011 in-quota imports of maize are limited to the state-owned Public Warehouse Organization, which may import only during 1 March to 30 June. In late 2010, in response to rising prices, the Ministry of Commerce announced that it was suspending application of quotas and tariffs on soybeans, and soybean meal would be subject to a tariff of not more than 2% with no tariff quota limit. However, imports were to be restricted to a limited number of private companies or trade associations.<sup>10</sup>

18. Thailand has reserved the right to use the special agricultural safeguard (SSG) on 52 tariff lines including some dairy products, potatoes, onions, garlic, longans, coffee, tea, pepper, maize, soybeans, copra, palm oil, sugar, tobacco, and silk. However, up to end-2008 it had never used it (Thailand's most recent notification is for calendar years 2007 and 2008).<sup>11</sup>

(b) Domestic support

19. Thailand supports agriculture in a number of different ways. The policy choice depends on whether it is a net exporter or net importer of the product and on the tariff protection it can apply to that product. The focus of policies has been on infrastructural improvement, particularly on irrigation and drainage, and, in recent years, there has been an increasing emphasis on research, pest and disease control, and extension and advisory services. However, there are also several programmes that directly affect production and trade, including for rice, sugar, palm oil, and maize.

20. For rice, a producer price support scheme introduced in 2001 effectively provided producers with a guaranteed price for rice. Under the programme, farmers were given a low-interest loan (a mortgage) based on the quantity of rice harvested and the loan rate. If market prices were greater than the loan rate, the loan could be repaid at the loan rate plus interest or, if prices were below the loan rate, with the harvested rice. The programme was suspended in 2006 after stocks of nearly 5 million tonnes were accumulated. However, it was reintroduced for 2008 with the loan rate of B 10,000 per tonne for the first harvest and B 14,000 per tonne for the second harvest (equivalent to about US\$304 and US\$425, respectively, at the average 2008 exchange rates). Stocks of 2.5 million tonnes were acquired by end-September 2008.<sup>12</sup> In marketing year 2009/10, when stocks reached 6 million tonnes, the mortgage scheme was replaced by a price insurance scheme. Under the new scheme, producers are paid the difference between an insurance price and a weekly benchmark price. The scheme has become popular, with 3.5 million farmers registered. Insurance prices range from B 15,300 per tonne for up to 14 tonnes of fragrant rice per household to B 9,500 per tonne for up to 25 tonnes of glutinous rice per household.<sup>13</sup> These are the equivalent of about US\$503 and US\$312, respectively, at the average exchange rate for January-June 2011.

<sup>9</sup> WTO documents G/AG/N/THA/70, 66, 62, and 58.

<sup>10</sup> USDA Foreign Agriculture Service (2011).

<sup>11</sup> WTO documents, G/AG/N/THA/16, 19, 31, 36, 41, 44, 46, 54, 60, 65, and 68.

<sup>12</sup> Forssell (2009).

<sup>13</sup> Oxford Business Group (2011); and the Thai authorities.

21. In October 2011 the guaranteed price system reverted to a mortgage scheme with prices ranging from B 15,000 per tonne for paddy rice to B 20,000 for fragrant rice. The Bank for Agriculture and Agriculture Cooperatives is to provide loans to the Public Warehouse Organization and the Marketing Organization for Farmers to purchase rice at this price at the start of the new mortgage scheme.<sup>14</sup> The increase in guaranteed prices, along with the severe flooding in the country, has raised concerns about the impact on world prices and the quantity of rice Thailand will be able to export.<sup>15</sup>

22. According to the authorities, the Government no longer purchases or stockpiles rice for price support. However, it has been reported that existing stocks have been sold for export, with 2-3 million tonnes released in 2010 and 2-3 million tonnes still held as stocks at the end of that year.<sup>16</sup> Sales are through public auctions, and the authorities noted that they take measures to ensure the auctions are competitive with no collusion between buyers.

23. The sugar industry in Thailand is overseen by the Office of the Cane and Sugar Board, is made up of representatives of the Government, the milling industry, and producers. The Board sets ceiling prices for producers, and the quantities and prices of refined and raw sugar that can be sold by the sugar mills to the domestic market. With an applied MFN tariff of 65%, Thailand can maintain domestic prices higher than international prices and prevent lower priced imports undermining the scheme. In most years, the domestic price is higher than world prices. However, as of October 2010, the controlled price for sugar was set at B 19 per kg for white sugar and the wholesale price for refined sugar at B 20 per kg, which were lower than international prices and led to concerns about domestic shortages.<sup>17</sup> Thus, although it has been stated that sugar is the most heavily protected of Thailand's agricultural industries<sup>18</sup>, this does not seem to have been the case in the past year.

24. Thailand also has price support policies for other agriculture products, including maize, manioc, some tropical fruits, and shallots. In most years the support levels are relatively low and Thailand relies on its tariff structure to maintain domestic prices, and provide a consumer, rather than a taxpayer, transfer to producers.

#### *Export subsidies*

25. Thailand does not have commitments for export subsidies. Notifications to the WTO Committee on Agriculture cover the period up to 2008 and indicate that it has not used export subsidies covered by Article 9 of the Agreement on Agriculture.

#### **(iv) Support levels**

26. Thailand has domestic support commitments from the Uruguay Round for a maximum Current Total Aggregate Measurement of Support (AMS) of B 19,028.48 million, which entered into effect in 2004 at the end of the implementation period. The Current Total AMS was not designed to measure the economic or monetary value of support to producers but to measure compliance with commitments. In its notifications, Thailand has provided information on the budgetary outlay for support provided under different schemes for different products. For some products, such as sugar

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<sup>14</sup> MOAC, press release 5 October 2011 and MCOT online news 8 October 2011. Viewed at: <http://www.moac.go.th> and <http://www.mcot.net/EnglishNews> [October 2011].

<sup>15</sup> IRIN (2011).

<sup>16</sup> USDA Foreign Agriculture Service (2010b).

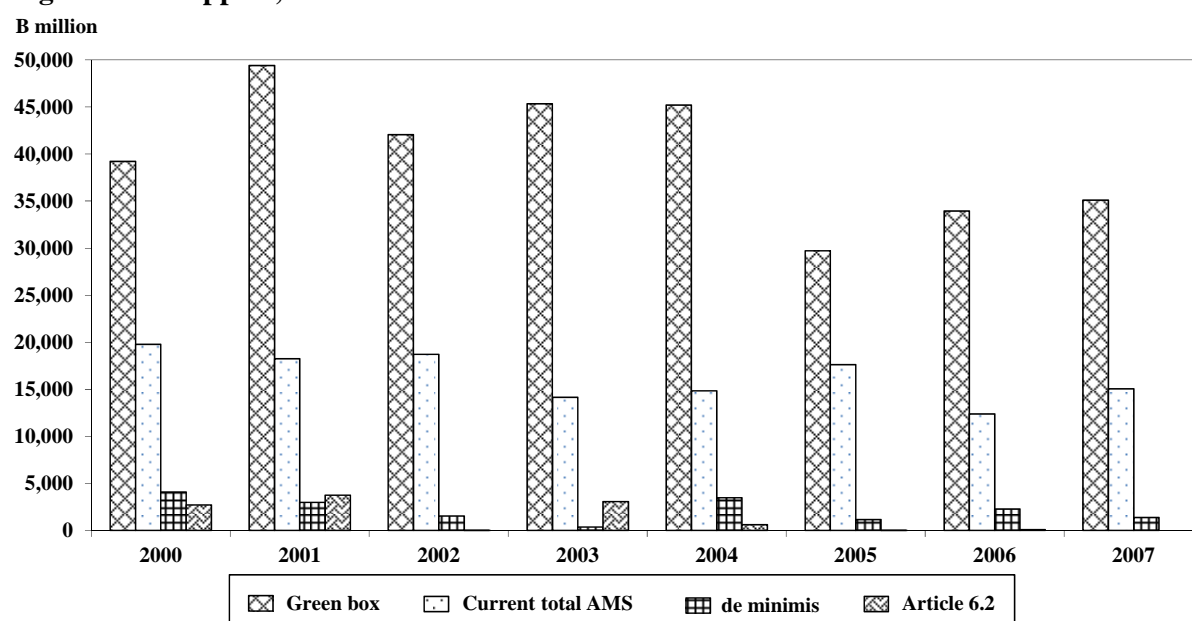
<sup>17</sup> USDA Foreign Agriculture Service (2010c).

<sup>18</sup> Warr (2008).

and dairy, there is little or no budgetary outlay as market access measures are used to maintain prices above international levels.

27. Thailand's most recent notification for domestic support is for the years 2005, 2006, and 2007.<sup>19</sup> This shows that about half of all support to agriculture was for infrastructural services (mostly for dams, drainage, and irrigation) and did not benefit producers directly. The total support for infrastructural services and other measures notified in the Green Box averaged about B 40 billion in the 2000-07 period (Chart IV.1). In addition, to Green Box support, Thailand also provides price supports for several products, particularly rice, as well as input subsidies.

**Chart IV.1**  
**Agriculture support, 2000-07**

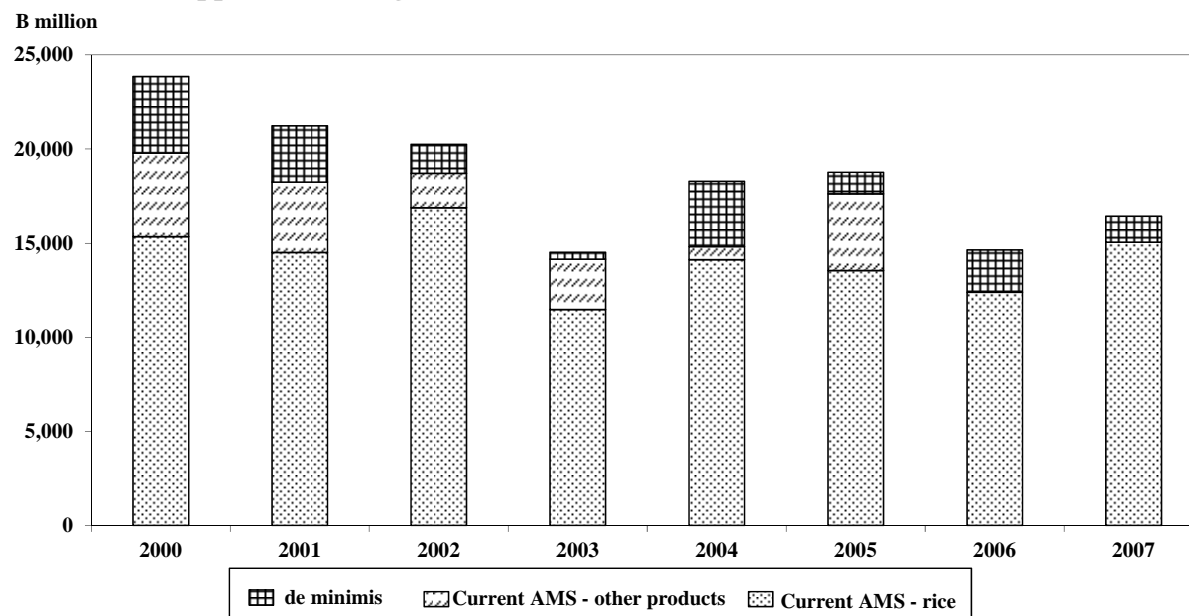


Source: WTO notifications.

28. Within the Amber Box, most of Thailand's support to agriculture is for rice farming, which is also the biggest agricultural subsector (Chart IV.2). Most other support is below de minimis levels, that is, less than 10% of the value of production of that product.

<sup>19</sup> WTO document G/AG/N/THA/72, 27 October 2010.

**Chart IV.2**  
**Amber box support (including de minimis), 2000-07**



Source: WTO notifications.

## (2) FISHERIES

29. The fisheries industry in Thailand contributed over 2% to GDP, 3.6% to total exports, and 5.4% to total employment in 2008 for both fishing and fish processing. Nearly half of all exports of fish products are frozen or preserved shrimps, mainly from aquaculture rather than capture fisheries. Exports grew at annual average rate of over 6% per year in the 2004-10 period, reaching nearly US\$7 billion in 2010, the result of a combination of rising prices and higher yields (Chart IV.3). The main destination market for exports is the United States, followed by Japan and Australia.

30. Thailand has a large trade surplus in fisheries products, with imports of just over US\$2 billion in 2010. According to UN Comtrade database, nearly half of all fisheries imports are frozen fish (mostly skipjack and bonito) imported for processing and exported in prepared/preserved form.<sup>20</sup> The main destinations for exports of canned fish are the EU, Japan, and the United States.

31. The marine fisheries subsector is made up of commercial fishing in boats of over five gross tonnage and small-scale fisheries with smaller boats. The small-scale fisheries operate near shore and exist at, or close to subsistence level. According to the most recent census of marine fisheries in 2000, there were 58,119 marine fishing boats, of which 80% were small scale. However, nearly all the marine catch is taken by the larger commercial boats.

32. Marine fisheries production was 2.1 million tonnes in 2007, worth about B 55,327 million, of which about 60% was taken inside Thailand's Exclusive Economic Zone.<sup>21</sup> However, this dropped to 1.64 million tonnes, worth about B 42,147 million in 2008. Fish catches have been falling since 1961, which indicates that over-fishing has been a problem, and official policy is now aimed at conserving and rebuilding stocks through management measures, such as: restrictions on mesh sizes in parts of

<sup>20</sup> UN Comtrade database. Viewed at: <http://comtrade.un.org/>

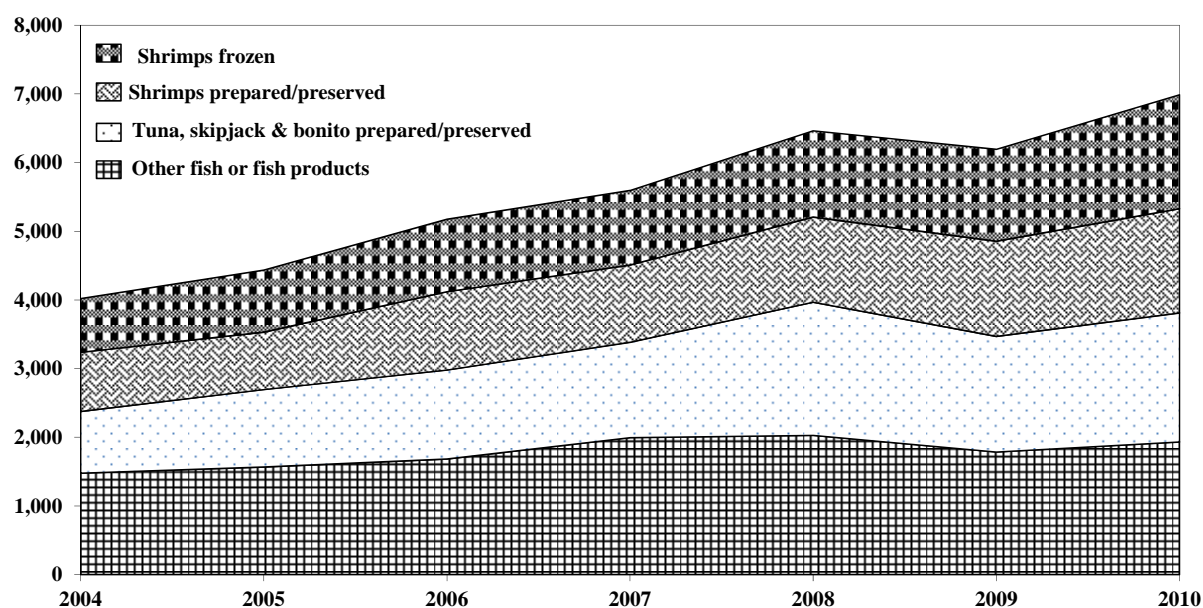
<sup>21</sup> Department of Fisheries (2010).



the Gulf of Thailand; bans on commercial fishing within 3 km of the shore; and annual licensing of fishing rights with existing licence holders eligible for new licences.

**Chart IV.3**  
**Exports of selected fisheries products, 2004-10**

US\$ million



Note: HS 030513 = shrimps frozen; HS 160414 = tunas, skipjack & bonito prepared/preserved; HS 160529 = shrimps prepared/preserved.

Source: Comtrade online database: <http://comtrade.un.org/> [March 2011].

33. Coastal and freshwater aquaculture has grown in response to the decline in the capture subsector. Coastal aquaculture is mostly for prawns, nearly all of which are exported frozen or preserved. Freshwater aquaculture is more diverse but still dominated by two species: catfish and tilapia, although breeding and culture of ornamental fish is becoming increasingly popular.<sup>22</sup>

34. Official policy and research are the responsibility of the Department of Fisheries in the Ministry of Agriculture and Cooperatives while the Department of Marine and Coastal Resources in the Ministry of Natural Resource and Environment is responsible for the natural marine environment. Policy is currently aimed at encouraging local participation in decision making, training and education, improving sustainability while encouraging increased aquaculture production, and increasing the capacity of the overseas fishing fleet.

35. Thailand provides some subsidies for research and development through various government agencies and responds to some of the problems facing the industry caused by rising fuel prices, the economic crises, natural disasters, and declining prices. However, the authorities indicated that the amounts are quite small and are provided on a temporary basis and; because they are provided by different government agencies, the authorities were not able to provide a precise value.

36. Under the Foreign Business Act B.E. 2542 (1999) and the Act Governing the Right to Fish in Thai Fishery Waters B.E. 2482 (1939), foreigners are prohibited from commercial fishing in Thai

<sup>22</sup> FAO (2009).

fishery waters and within its specific economic zones. However, the Act Governing the Right to Fish in Thai Fishery Waters (No.2) B.E. 2539 (1996) permits foreigners to work in the crew of a fishing vessel provided they are registered under the Working of Aliens Act B.E. 2551 (2008).

### **(3) ENERGY**

#### **(i) Introduction**

37. Although Thailand has significant resources of natural gas and is an exporter of refined petroleum products, it is a net importer of energy, including electricity. It also has an energy-intensive economy (as measured by primary energy consumption per 2005 U.S. dollar of GDP): the 2008 level of nearly US\$20,000 per Btu was over 40% higher than the average for Asia and Oceania and more than twice the world average, although it was also lower than the 2005 peak.<sup>23</sup> The main source of energy for electricity generation is natural gas, and the main sources for vehicle fuels are petrol, diesel, liquefied petroleum gas (LPG), and natural gas. The use of renewable energy is being encouraged through tax advantages, price controls, and subsidies for biofuels.

38. The Ministry of Energy is responsible for government policy for the exploration and extraction of hydrocarbons as well as for production, transmission, and sale of electricity. Government policy is to diversify the energy mix, through domestic production and imports, and greater use of biofuels. The State will continue to apply controls to energy prices and to encourage conservation.<sup>24</sup> The Energy Strategy, put forward in January 2009 by the Minister of Energy, set out detailed targets and the methodology to achieve them. These include: improving energy security through diversification of both the supply and the sources of energy; encouraging alternative sources of energy; controlling prices; conservation; and environmental protection.<sup>25</sup>

39. The Energy Policy and Planning Office (EPPO) in the Ministry of Energy is responsible for developing energy policies, including plans for managing energy shortages and improving conservation as well as coordinating, monitoring, and overseeing implementation of government policy.<sup>26</sup> The National Energy Policy Council, which is chaired by the Prime Minister and includes several government ministers and the Director-General of the EPPO, is responsible for submitting policy plans to the Council of Ministers, establishing the rules for setting prices, and monitoring private and public entities involved in energy to ensure that their operations comply with national energy policy.<sup>27</sup>

#### **(ii) Hydrocarbons**

40. Thailand is a net importer of petroleum and natural gas, with consumption of petroleum almost three times greater than production (Table IV.4). However, Thailand is a net exporter of refined petroleum products using imports of crude as the raw material. Although there has been some growth in the use of alternative fuels for transport and renewable sources for generating electricity, fossil fuels continue to dominate the energy mix with natural gas being the main fuel for electricity generation, followed by coal.

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<sup>23</sup> US Energy Information Administration online information. Viewed at: <http://www.eia.gov/countries/country-data.cfm?fips=TH> [May 2011].

<sup>24</sup> Council of Ministers (2008b).

<sup>25</sup> Minister of Energy (2009).

<sup>26</sup> EPPO (2006).

<sup>27</sup> National Energy Policy Council Act, B.E. 2535 (1992) as amended by the National Energy Policy Council Act (No. 2), B.E. 2550 (2007), and the National Energy Policy Council Act (No. 3), B.E. 2551 (2008). Viewed at: <http://www.eppo.go.th/index-E.html> [May 2011].

41. Production of oil has increased steadily since 2000 reaching 330,000 bbl/day in 2009, up from about 176 bbl/day (Table IV.4). Most of the oil produced is crude, but about one third are condensates from natural gas production. The main reserves of both are found off-shore in the Gulf of Thailand.

**Table IV.4**  
**Petroleum, natural gas and coal, production and reserves, 2000-09**

		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
<b>Petroleum</b>											
Total production	'000 bbl/day	176	191	204	236	223	265	286	305	321	330
Consumption	'000 bbl/day	794	769	827	881	967	1,005	996	995	962	975
Refinery capacity	'000 bbl/day	899	1,064	1,068	1,068	1,068	1,078	1,125	1,125	1,117	1,240
Proved reserves	bn bbl	0.4									0.5
<b>Natural gas</b>											
Production	bn cu m	20	20	21	22	22	24	24	26	29	31
Consumption	bn cu m	22	25	27	29	30	33	33	35	37	39
Reserves	tn cu m	0.23									0.36
<b>Coal</b>											
Production	m tonnes	18	20	20	19	20	21	19	18	18	19
Production	equivalent m tonnes oil	5.1	5.6	5.7	5.3	5.6	5.9	5.3	5.1	5.0	5.3
Consumption	equivalent m tonnes oil	7.8	8.8	9.2	9.4	10.4	11.2	12.4	14.1	15.3	14.1
Reserves	m tonnes										1 354.0

Source: BP (2010), *Statistical Review of World Energy*, June. Viewed at: [http://www.bp.com/liveassets/bp\\_internet/globalbp/globalbp\\_uk\\_english/reports\\_and\\_publications/statistical\\_energy\\_review\\_2008/STAGING/local\\_assets/2010\\_downloads/statistical\\_review\\_of\\_world\\_energy\\_full\\_report\\_2010.pdf](http://www.bp.com/liveassets/bp_internet/globalbp/globalbp_uk_english/reports_and_publications/statistical_energy_review_2008/STAGING/local_assets/2010_downloads/statistical_review_of_world_energy_full_report_2010.pdf).

42. PTT Public Company Limited, which replaced the Petroleum Authority of Thailand in 2001, continues to play a role in oil production through joint ventures between PTT Exploration and Production (PTTEP) and international oil companies. A significant amount of oil production is from condensates from natural gas wells. The PTT was partially privatized in 2001 and is listed on the Bangkok Stock Exchange, although the Ministry of Finance continues to hold 51.36% of shares.

43. Gas production has also increased steadily since 2000, and reserves have increased due to new discoveries and better extraction. Production of gas and condensate includes the state-controlled PTTEP acting on its own and in joint ventures with other companies. PTT also has a monopoly on the distribution and delivery of natural gas in Thailand.

44. Within the Ministry of Energy, the Petroleum Committee and Sub-Committee are responsible for preparing policy on oil and gas exploration and production while the Department of Mineral Fuels (DMF) is responsible for implementing it, including inviting bids and awarding concessions for exploration, production, and sale of oil and gas.<sup>28</sup>

45. Government policy is to reduce fluctuations in fuel prices by subjecting them to different types of controls (Chapter III(4)(iv)). In the past this objective was achieved by subsidizing petrol, diesel, and natural gas through the Oil Fund, which is funded by levies on fuel production, budgetary support, and borrowing. However, as the Oil Fund's losses increased, the petrol and diesel subsidies were ended in October 2004 and July 2005, respectively.

46. Since then, prices have been controlled through changes in: excise duties; municipal taxes; contributions to the Oil Fund; contributions to the Conservation Fund; and direct price controls.

<sup>28</sup> Presentation by Bunboon S, Department of Mineral Fuels, to the 5<sup>th</sup> PPM Seminar, Bangkok, 2006.

Subsidies from the Oil Fund are reserved for higher alcohol content gasohol. Liquefied petroleum gas (LPG) and compressed natural gas for vehicles (NGV) continue to be subsidized through the PTT selling to consumers for less than the purchase price. In January 2009, proposals by the Ministry of Energy to increase LPG prices were rejected by the National Energy Policy Council.<sup>29</sup> In 2010, the PTT provided LPG at less than the world market price (US\$333 per tonne compared with US\$412 per tonne). The PTT received B 2 per kg from the Government for NGV sales to cover losses from selling at B 8.50 per kg compared with costs of B 14-15 per kg.

47. The Government continues to promote biofuels using several measures to encourage their use and production. Under the Alternative Energy Development Plan 2008-22, the objective is to increase the share of alternative energy to 20% of total energy used by 2022. Ethanol and biodiesel production have increased considerably over the past few years, reaching over 400 million litres and 560 million litres respectively in 2009. Ethanol is produced from both sugar cane and tapioca while most biodiesel comes from palm oil.<sup>30</sup>

48. In April 2010, excise duties on cars that can use gasohol were reduced by 5 percentage points for vehicles capable of using a 20:80 alcohol:petrol mix (E20), and by 8 percentage points for vehicles capable of using E85. In October 2010, some car parts for hybrid-electric vehicles were exempted from import duties for three years (see Chapter III). Furthermore, ethanol for blending with petrol to make gasohol qualifies for a B 7 per litre exemption from excise duties, and contributions to the Oil Fund from gasohol and biodiesel production are lower; Gasohol95 E85 receives a subsidy of B 13.50 per litre from the Oil Fund.

49. In 2007, the Government introduced a requirement that all diesel oil contain 2% biodiesel (B2 diesel). The mandated level of biodiesel was increased to 3% in 2010. In May 2010, the mandated level of biodiesel was amended to allow 3% to 5% biodiesel in order to give flexibility to oil producers and to be in accordance with the season-dependent variation in palm oil production. In order to encourage use of higher levels of biodiesel B5 diesel, excise duties, municipal tax, and VAT have been reduced and a subsidy from the Oil Fund provided so that the retail price is about B 29 per litre compared with B 30 per litre for B2 diesel.

50. The result of different funds and taxes on fuel is a complicated pricing structure with five different charges on fuels (VAT, excise duties, municipal tax, Oil Fund, and Conservation Fund) only one of which is *ad valorem* (VAT) and the same for all fuel types. The other charges are in baht per litre (or kg for gas), vary according to the type of fuel, and are changed from time to time as the authorities try to stabilize fuel prices (Table IV.5).

**Table IV.5**  
**Taxes and duties on fuel, 2007-11**  
Bt/litre (except LPG Bt/kg)

April 2007						April 2008					
	Excise Duty	Municipal Tax	Oil Fund	Conservation Fund	VAT	Excise Duty	Municipal Tax	Oil Fund	Conservation Fund	VAT	
Unleaded 95	3.685	0.369	3.460	0.070	7%	3.685	0.369	3.450	0.750	7%	
Gasohol91	3.317	0.332	1.000	0.063	7%	3.317	0.332	-0.250	0.250	7%	
Gasohol95 E20						3.317	0.332	-0.300	0.250	7%	
Gasohol95 E85											
Biodiesel B5	2.190	0.219	0.300	0.067	7%	2.190	0.219	-1.500	0.250	7%	
LPG	2.170	0.217	-1.251	0.000	7%	2.170	0.217	0.303	0.000	7%	

Table IV.5 (cont'd)

<sup>29</sup> Economist Intelligence Unit (2010b).

<sup>30</sup> PTT (2011).

April 2009						April 2010					
	Excise Duty	Municipal Tax	Oil Fund	Conservation Fund	VAT	Excise Duty	Municipal Tax	Oil Fund	Conservation Fund	VAT	
Unleaded petrol 95	5.000	0.500	7.000	0.750	7%	7.000	0.700	7.500	0.250	7%	
Gasohol91	4.500	0.450	2.350	0.250	7%	6.300	0.630	1.400	0.250	7%	
Gasohol95 E20	4.000	0.400	-0.300	0.250	7%	5.600	0.560	-0.400	0.250	7%	
Gasohol95 E85	0.750	0.075	-5.700	0.250	7%	1.050	0.105	-	0.250	7%	
Biodiesel B5	2.190	0.219	-0.200	0.250	7%	5.040	0.504	-0.800	0.250	7%	
LPG	2.170	0.217	0.303	0.000	7%	2.170	0.217	0.435	0.000	7%	
April 2011											
	Excise Duty	Municipal Tax	Oil Fund	Conservation Fund	VAT						
Unleaded petrol 95	7.000	0.700	7.500	0.250	7%						
Gasohol91	6.300	0.630	0.100	0.250	7%						
Gasohol95 E20	5.600	0.560	-1.300	0.250	7%						
Gasohol95 E85	1.050	0.105	-	0.250	7%						
Biodiesel B5	0.005	0.001	1.489	0.250	7%						
LPG	2.170	0.217	1.147	0.000	7%						

Source: EPPO.

### (iii) Electricity

51. Demand for electricity in Thailand has been rising steadily over the past decade, and growth in electricity generation recovered sharply in 2010 to 163,668 GWh, after two years of low growth. Natural gas is the main fuel (72% of generation), followed by coal and lignite (18%), and imports (4%) from Malaysia and the Lao People's Democratic Republic (Table IV.6). The state enterprise, the Electricity Generating Authority Thailand (EGAT) is the main generator (47% of generating capacity) although large and small independent power producers (39% and 7% respectively) are becoming more important.<sup>31</sup>

**Table IV.6**  
Power generation by fuel type, 2003-10  
(GWh)

	Natural gas	Coal	Oil	Hydro	Imported	Other	Total
2003	85,688	19,301	2,510	7,208	2,473	1,231	118,408
2004	90,289	20,404	5,701	5,896	3,378	1,842	127,511
2005	94,468	20,614	7,817	5,671	4,372	1,857	134,798
2006	94,398	24,468	7,885	7,950	5,152	2,065	141,919
2007	98,148	30,881	2,995	7,961	4,488	2,553	147,026
2008	104,386	30,838	1,013	6,951	2,784	2,250	148,221
2009	105,930	29,808	493	6,966	2,451	2,710	148,364
2010	117,941	29,764	600	5,347	7,254	2,763	163,668

Source: EPPO online information. Viewed at: <http://www.eppo.go.th/info/index.html> [May 2011].

52. As well as being the main generator of electricity, EGAT is the only purchaser from the independent power producers and operates the transmission network under the Enhanced Single Buyer (ESB) model used in Thailand. The ESB model was originally intended to apply after the

<sup>31</sup> EPPO online information. Viewed at: [http://www.eppo.go.th/info/5electricity\\_stat.htm](http://www.eppo.go.th/info/5electricity_stat.htm) [May 2011].

privatization of EGAT in 2001 and, when the privatization proposal was withdrawn, its corporatization in 2005. However, EGAT was not corporatized and it remains a state-owned enterprise. There are two distribution authorities, both state-controlled enterprises: the Metropolitan Electricity Authority (MEA), which is responsible for distribution and sale of electricity in Bangkok and two neighbouring provinces; and the Provincial Electricity Authority (PEA), which is responsible for distribution and sale in the rest of the country.

53. The Energy Industry Act B.E. 2551 (2007) established the Energy Regulatory Commission (ERC) as an independent regulator for electricity generation, transmission, distribution, and retail, and for gas transport and supply as well as for LPG terminals.<sup>32</sup>

54. The ERC is also responsible for operating the Power Development Fund, which collects contributions from power generators. Contributions to the Fund depend on the type of fuel used to generate electricity and range from B 0.02 per kWh for coal and hydro to B 0.01 per kWh for wind and solar electricity. According to the ERC, the fund is used to subsidize the Provincial Electricity Authority (PEA) by about B 10 billion per year; in addition, in 2009 the EGAT was required to support the PEA through a transfer of B 2.8 million. A new subsidy arrangement is expected to be developed, based more on output in the manner of public service or universal service obligations, so that a uniform electricity tariff can continue to be applied to all consumers of electricity in Thailand.<sup>33</sup>

55. Since 2008, licences have been awarded to EGAT for generation, transmission, and systems operation and to the Metropolitan and Provincial Electricity Authorities for distribution, while 9 licences for generation have been given for large power plants (including 2 for generators that have been separated from EGAT), 60 for small power producers, and 118 for very small power producers.

56. The ERC is also responsible for setting electricity tariffs for consumption, subject to the approval of the National Energy Policy Council. The total tariff is composed of a base tariff plus a fuel adjustment mechanism. The base tariff depends on the category of consumer and, as of early 2009, ranged from B 2.28 per kWh for water pumping for agriculture to B 3.26 per kWh for small general services. For residential users, government institutions and non-profit organizations, and water pumping for agriculture, the base tariff is less than the marginal cost of providing electricity. The Fuel Adjustment Mechanism is added to the base tariff and reviewed every four months and adjusted to take account of fuel prices. Since early 2009, households using less than 90 kWh per month have been exempt from charges.<sup>34</sup>

57. The Power Development Plan 2010-30 (PDP 2010) updated the 2008-21 Plan to take account of the lower rates of growth in electricity demand seen in 2008 and 2009, and to increase the emphasis on generation from renewable sources set out in the Alternative Energy Development Plan 2008-22. The PDP 2010 was approved by the NEPC and endorsed by the Cabinet in March 2010. Under the PDP 2010, the planned capacity should more than double to 65.5 GW by end 2030 (from 29.2 GW in 2009) with about 7% from renewable sources (excluding large hydro plants).<sup>35</sup>

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<sup>32</sup> EPPO online information. Viewed (in English) at: [http://www.eppo.go.th/admin/cab/law/energy\\_industry\\_act-2007.pdf](http://www.eppo.go.th/admin/cab/law/energy_industry_act-2007.pdf) [May 2011].

<sup>33</sup> ECRC (2010).

<sup>34</sup> ECRC (2010).

<sup>35</sup> EGAT (2010).

**(4) SERVICES****(i) Main features and multilateral commitments**

58. Services still account for a large part of the Thai economy. However, their share in GDP has dropped slightly from 44.6% in 2007 to 42.9% in 2010, in contrast with the rising share of services in other Asia-Pacific economies. On the other hand, the contribution of services to total employment in Thailand increased from 38.5% in 2007 to 40.2% in 2009 (Table I.1), and labour productivity in the sector remained practically unchanged. The main service subsectors in 2010 were whole-sale and retail trade (13.1%); transport and communication (6.8%); hotels and restaurants (4.7%); and financial intermediation (4.1%). During 2007-10, the services sector grew at an average annual rate of 2.7% in real terms, lower than the growth rate for the economy as a whole (3.2%). Services (mostly travel, communication, and transportation) accounted for 15% of total exports in 2010. Thailand's services trade balance posted a surplus during the review period (Chapter I).

59. Thailand's Schedule of Specific Commitments covers 75 of the 160-odd service sectors under the GATS.<sup>36</sup> In its horizontal commitments, Thailand exempted mode 3 (commercial presence) from national treatment and scheduled market access limitations on this mode, including the condition that commercial presence is allowed only through a limited liability company registered in Thailand with foreign equity participation not exceeding 49%. However, under the sector-specific commitments, foreign equity limitations on mode 3 vary by sector, ranging from 20% to 49% for telecommunication services, 25% to 49% for most banking, insurance, and other financial services, and 49% for professional services (legal, accounting, engineering, and architectural services), as well as for certain construction services, distribution, educational, environmental, tourism, recreational, and maritime, rail, and road transport services. In general, the temporary movement of natural persons (mode 4) is unbound, except for business people, corporate managers/executives, and specialists.<sup>37</sup>

60. Thailand accepted the GATS Fourth and Fifth Protocols, on basic telecommunications and financial services, respectively.<sup>38</sup> In telecommunications, Thailand scheduled a general condition that a service provider must be a Thai registered company with foreign equity participation not exceeding 20% and with foreign shareholders representing no more than 20% of the company's total number of shareholders (head-note to the telecommunication section); however, a 40% limit on foreign equity was scheduled for specified telecommunication subsectors. Conditional upon passage of the necessary laws, Thailand committed to introduce new market access and national treatment commitments on public telecommunication services into its Schedule, as well as elements of the Reference Paper on Regulatory Principles for Basic Telecommunication Services, as of 2006.<sup>39</sup> In this connection, the authorities have indicated that the telecommunications sector has undergone a process of reform and restructuring over the past three years and a new regulatory body will be set up shortly to oversee the sector, with the Ministry of Information and Communication Technology retaining responsibility for policy-making and mapping out the direction for further liberalization. The outcomes of this process will be reflected in Thailand's Schedule of Commitments upon completion.

61. According to Thailand's commitments on financial services, the establishment of new branches of foreign banks is subject to licensing, although foreign banks that had operated in Thailand before July 1995 were allowed to open up to two additional branches. Market access through locally

<sup>36</sup> WTO Trade Profiles online information. Viewed at: <http://stat.wto.org/ServiceProfile/WSDBServicePFView.aspx?Language=E&Country=TH> [9 February 2011].

<sup>37</sup> WTO document GATS/SC/85, 15 April 1994.

<sup>38</sup> WTO document GATS/SC/85/Suppl.2, 11 April 1997, and GATS/SC/85/Suppl.3, 26 February 1998.

<sup>39</sup> WTO document GATS/SC/85/Suppl.2, 11 April 1997.

incorporated banks is limited to the acquisition of shares of existing banks, where foreign equity participation is limited to 25% and at least three-fourths of the directors must be Thai citizens. However, these limits may be relaxed by the Minister of Finance, upon recommendation of the Bank of Thailand. Similar limitations apply to finance companies. For life and non-life insurance services, foreign equity participation is capped at 25% and new establishments are subject to licence approved by the Minister of Finance with the consent of the Cabinet.<sup>40</sup> There is a national treatment limitation concerning life insurance premiums, which are tax deductible up to a certain amount for holders of policies issued by locally licensed companies.

62. Thailand lodged MFN exemptions pertaining to computer reservation services and other business services, transport services (including international maritime cargo, road transport, and aircraft repair and maintenance), banking and other financial services<sup>41</sup>, and the services stipulated in the relevant provisions of the Treaty of Amity and Economic Relations with the United States.<sup>42</sup>

63. In the framework of DDA negotiations on services, Thailand submitted initial and revised offers, in August 2003 and October 2005, respectively. Thailand offered to include a new category of mode 4 in its horizontal commitments and improve its sector-specific commitments in business services, distribution, education, tourism, recreational, and maritime and air transport services.<sup>43</sup>

64. At the regional level, Thailand has adopted services liberalization commitments under the ASEAN Framework Agreement on Services (AFAS)<sup>44</sup>, and the ASEAN Economic Community Blueprint (signed in 2007); the latter includes a commitment to substantially reduce all restrictions on trade in services by 2015 (Chapter II(6)(ii)).<sup>45</sup>

65. Overall, the liberalization of Thailand's services sector is still an ongoing agenda. Significant restrictions remain on market entry and foreign equity participation in several subsectors, and the regulatory framework is burdensome. Rationalizing the regulatory regime and increasing competition in Thailand's services sector could help to enhance innovation and productivity, and hence increase the competitiveness of the Thai economy as a whole.

## **(ii) Financial services**

66. During the review period, Thailand continued the implementation of its long-term Financial Sector Master Plan Phase I (FSMP Phase I), initiated in 2004 with the aim of creating a more efficient, inclusive, and internationally competitive financial sector. The reform has led to the consolidation of Thailand's financial landscape<sup>46</sup>, helped increase competition in the sector, improved risk management, expanded the scope of banks' businesses, and developed mechanisms to protect consumers. The financial regulatory framework has also undergone substantial reform with the enactment of the new Financial Institutions Businesses Act B.E. 2551 (2008) (FIBA), which strengthened the Bank of Thailand supervisory and enforcement powers, and the introduction of significant amendments to the insurance and securities regulations.

<sup>40</sup> WTO document GATS/SC/85/Suppl.3, 26 February 1998.

<sup>41</sup> The MFN exemptions concerning banking and other financial services were eliminated in 1998. WTO document, GATS/EL/85, Suppl. 2, 26 February 1998.

<sup>42</sup> WTO document, GATS/EL/85, 15 April 1994.

<sup>43</sup> WTO (2008).

<sup>44</sup> Reportedly these commitments do not go much beyond GATS nor do they imply actual liberalization (Sally, 2007, pp. 1594-1620).

<sup>45</sup> ASEAN online information. Viewed at: <http://www.aseansec.org/publications/AFAS-2009.pdf>.

<sup>46</sup> The number of private financial institutions was reduced from 83 in 2003 (before the programme started) to 38 in 2010.



67. The financial sector grew at an average annual rate of 6.4% in real terms between 2007 and 2010, the highest growth rate among economic sectors. It contributed 4.1% to GDP in 2010, up from 3.6% in 2007, and 1% of total employment (Table I.2). At end 2010, the financial sector's assets represented 344% of GDP (300% in 2007); banks accounted for some 81% of the financial sector's assets (i.e. banks, specialized financial institutions, and insurance companies).<sup>47</sup>

(a) Banking and finance

*Market structure*

68. Thailand's banking sector comprises 32 commercial banks, including 16 locally incorporated commercial banks, 15 foreign bank branches, and 1 foreign bank subsidiary.<sup>48</sup> There are also three finance companies and three credit foncier companies, as well as eight "specialized financial institutions" (SFIs) controlled by the Government.<sup>49</sup>

69. As of December 2010, locally incorporated commercial banks (Thai commercial banks), accounted for 85.3% of the banking sector's assets and 88.2% of the liabilities, while the foreign bank branches and the foreign bank subsidiary represented 14.7% of the banking sector's assets and 11.8% of the liabilities.<sup>50</sup> Although there were no major changes in the structure of Thailand's banking sector during the review period, foreign ownership in Thai commercial banks increased somewhat: in 2010, four locally incorporated commercial banks had more than 49% foreign ownership, compared with only two in 2007 (Table IV.7). The World Bank reports that foreign participation in the Thai banking system, either directly or indirectly, is on the rise, and it may contribute to improving competitiveness in the sector.<sup>51</sup>

**Table IV.7**  
**Structure of the Thai banking system: number of institutions and their respective market share, 2007-10**

Institution type	2007		2008		2009		2010 <sup>a</sup>	
	No.	Share <sup>b</sup>	No.	Share	No.	Share	No.	Share
Thai commercial banks	17	86.7	17	87.2	16	86.6	16	85.3
Locally incorporated, owned and controlled by Thai	15	78.8	14	79.3	13	79.9	12	78.4
Locally incorporated, with more than 49% foreign ownership	2	7.8	3	7.9	3	6.7	4	6.9
Foreign bank branches and subsidiaries	17	13.3	17	12.8	16	13.4	16	14.7
<b>Total</b>	<b>34</b>	<b>100</b>	<b>34</b>	<b>100</b>	<b>32</b>	<b>100</b>	<b>32</b>	<b>100</b>

a December.

b Market share in term of assets.

Source: Information provided by the Thai authorities.

<sup>47</sup> Information provided by the Thai authorities, sourced from the BOT's data base and the Office of the National Economic and Social Development Board.

<sup>48</sup> The Mega International Commercial Bank.

<sup>49</sup> The SFIs comprise six banks and two finance corporations: the Bank of Agriculture and Agricultural Cooperatives (BAAC), the Government Savings Bank (GSB), the Government Housing Bank (GHB), the Small- and Medium- Sized Enterprises Bank (SME Bank), the Export-Import Bank of Thailand (Exim Bank), the Small Business Credit Guarantee Corporation (SBCG), the Secondary Mortgage Corporation (SMC), and the Islamic Bank of Thailand (I-Bank).

<sup>50</sup> Information provided by the Bank of Thailand. See also Bank of Thailand online information. Viewed at: [http://www2.bot.or.th/statistics/Download/FI\\_CB\\_001\\_S3\\_ENG\\_ALL.XLS](http://www2.bot.or.th/statistics/Download/FI_CB_001_S3_ENG_ALL.XLS) [10 February 2011].

<sup>51</sup> According to the World Bank, by August 2010, 9 out of 16 Thai commercial banks had more than 49% foreign ownership, either directly or indirectly through the instruments issued by the Thai Non-Voting Depositary Receipts Company Ltd (World Bank, 2010c).

70. Although commercial banks continue to dominate the financial system, the role of SFIs has become increasingly important as they serve as instruments of the Government's credit policies. SFIs provide financial assistance to low-income households and specific economic sectors, such as agriculture, small businesses, housing, and export promotion. It has been estimated that SFIs' share of the financial system's total assets was 22% in 2009<sup>52</sup>, and 19.6% in 2010.<sup>53</sup> The Government also holds a majority equity stake (55.2%) in the Krung Thai Bank and minority shares in two other commercial banks.<sup>54</sup> In total, through its participation in commercial banks and SFIs, the Government's share in the banking sector assets was 32% in 2009 and 29% in 2010.<sup>55</sup>

71. Overall, Thai banks' fundamentals were further strengthened during the review years, enabling the banking system to remain resilient to the global financial crisis that emerged in 2008. Commercial banks have improved their balance sheets, strengthened their capital base, and recorded profits. The average capital adequacy ratio (capital-to-risk-assets ratio) rose from 15% in 2007 to 16.2% at the end of 2010, well above the minimum regulatory requirement of 8.5%.<sup>56</sup> This was the result of banks' capital increases and greater profitability. At the same time, non-performing loans (NPLs) continued to decline. The ratio of gross NPLs to total loans decreased from 7.3% in 2007 to 3.6% in 2010, while the ratio of NPLs net of provision (net NPLs) fell from 3.9% to 1.9%.<sup>57</sup> In addition to strong fundamentals, little exposure to subprime-related and structured products, strong reliance on domestic deposits for funding, and adequate domestic liquidity have enabled the Thai banking system to weather the effects of the recent global financial crisis. Improvements in risk management and more cautious business strategies have also helped the banks to remain resilient.<sup>58</sup>

72. The FSMP Phase I was concluded in 2008. Some of the key measures undertaken during Phase I included the promotion of voluntary mergers, the expansion of commercial banks' business scope so as to enable them to serve all client groups and perform most types of financial operations, and the rationalization of the bank licensing regime.<sup>59</sup> In addition, a "One Presence" policy was introduced to reduce duplication and limit financial conglomerates to a single licensed deposit-taking institution. Consolidation was also encouraged through the reduction of taxes and land-transfer fees applicable to financial institution mergers.

#### *Legal framework*

73. A key aspect of the reform under the FSMP Phase I was the enactment of the 2008 FIBA, which unified the legal framework and strengthened the BOT's supervision and enforcement powers. The FIBA entered into force in August 2008, as a consolidated Act replacing the Commercial Banking Act B.E. 2505 (1962) and the Act on Finance Businesses, Securities Businesses and Credit Foncier Businesses B.E. 2522 (1979). It regulates the activities of commercial banks, finance companies, and credit foncier companies.

74. Under the FIBA, the BOT may increase, on a case-by-case basis, the statutory cap on foreign ownership in commercial banks and other financial institutions from 25% to 49%, and the limit on the

<sup>52</sup> World Bank (2010b).

<sup>53</sup> Information provided by the Thai authorities.

<sup>54</sup> These are the Thai Military Bank (TMB) and the Siam Commercial Bank (SCB).

<sup>55</sup> Information provided by the Thai authorities. See also World Bank (2010b).

<sup>56</sup> Bank of Thailand (undated a, b, and c).

<sup>57</sup> Information provided by the Thai authorities. See also Bank of Thailand online information.

Viewed at: [http://www2.bot.or.th/statistics/Download/FI\\_NP\\_001\\_ENG\\_ALL.XLS](http://www2.bot.or.th/statistics/Download/FI_NP_001_ENG_ALL.XLS) [15 February 2011].

<sup>58</sup> IMF (2009).

<sup>59</sup> More details on the rationalization of the bank licensing system can be found in WTO (2008).

number of foreign directors from one quarter to one half of total directors.<sup>60</sup> Moreover, the Finance Minister, with the advice of the BOT, has the authority to allow foreign investors to hold more than 49% of a commercial bank's shares, where this is deemed necessary to improve the financial performance or strengthen the security of any financial institution, or the financial system as a whole. This authorization may be granted according to specified rules and criteria and subject to a time-limit. The authorities indicated that these rules and criteria are in the process of being defined.

75. The FIBA makes the BOT the sole regulator of commercial banks and provides it with broad supervisory powers to conduct consolidated supervision of financial conglomerates and take prompt corrective action. The Act also permits regulators of SFIs to assign the supervision of these institutions to the BOT. The Minister of Finance retains the authority to grant or revoke banking licences upon recommendation of the BOT. An amendment to the Bank of Thailand Act, also introduced in 2008, further strengthened the autonomy and operational independence of the central bank.<sup>61</sup>

76. Another important legal change was the approval of the Deposit Protection Agency Act, which entered into force in August 2008. Under this Act, the current blanket deposit guarantee system will be replaced by a limited deposit insurance. From 11 August 2011, the insured amount will not exceed B 50 million (some US\$ 1.5 million) and it will be reduced to a maximum of B 1 million (some US\$30,000) by 11 August 2012.<sup>62</sup> The newly established Deposit Protection Agency (DPA) will administer the scheme and collect a premium from all participating financial institutions. The insured financial institutions are commercial banks (including foreign bank branches and subsidiaries), finance companies, and credit foncier companies. The new scheme is expected to improve consumer confidence, reduce the moral hazard of the blanket guarantee system, and diminish the public cost of the deposit insurance.<sup>63</sup>

77. A committee formed by the BOT to assess the results of FSMP Phase I found that the consolidation of financial institutions had led to improved operational and risk management practices, efficiency gains, a wider range of financial services, and a more robust and resilient financial system in Thailand.<sup>64</sup> However, in order to address persistent shortcomings, the committee recommended that the Financial Sector Master Plan Phase II (FSMP Phase II), covering 2010-14, be based on three pillars: reducing operating costs, promoting competition and access to financial services, and strengthening financial infrastructure.<sup>65</sup>

78. Proposed measures under the FSMP Phase II to improve competitiveness in the financial sector focus on allowing existing institutions to expand their business scope and branch networks. Upon assessment of the results of these measures, and subject to the need to fill in any remaining gaps in the financial system, the authorities will consider the possibility of allowing new entrants to the market.<sup>66</sup> As an initial step, Thai commercial banks and foreign bank branches have been authorized to expand the scope of their activities in mutual fund management and venture capital fund management. Also, retail banks are now allowed to upgrade to commercial banks, if they have at

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<sup>60</sup> Section 16 of the FIBA. The Bank of Thailand has granted exceptions to the 25% cap in several occasions.

<sup>61</sup> IMF (2009).

<sup>62</sup> The blanket deposit guarantee scheme was set to end in 2008 but was extended until 2011 to strengthen confidence in the Thai financial system during the global financial crisis.

<sup>63</sup> Federal Reserve Bank of San Francisco (2010).

<sup>64</sup> Bank of Thailand (2009).

<sup>65</sup> Bank of Thailand (2009).

<sup>66</sup> Bank of Thailand (2009).

least B 10 billion of Tier 1 capital and demonstrate good management, adequate risk management systems, and business viability.

79. In order to foster greater participation of foreign service suppliers, existing foreign bank branches will be given the option to upgrade to a subsidiary licence and hence be permitted to have more branches. Furthermore, from 2012 existing foreign bank subsidiaries will be allowed to open up to 20 branches and 20 additional off-premises automatic teller machines (ATMs), provided they meet certain requirements, including a minimum paid-up capital of B 10 billion, good assessment ratings from the BOT, and an adequate risk management system. Under current regulations, foreign bank subsidiaries are allowed to open only four branches in addition to their head office (with off-site ATMs being considered as a branch), and must have a minimum paid-up capital of B 4 billion.

80. Since March 2010, existing foreign bank branches have been permitted to open two additional branches<sup>67</sup>, in the form of physical branches, off-premise ATMs or currency exchange counters, without additional capital requirement.<sup>68</sup> Foreign bank branches are not required to have paid-up capital, but they must maintain no less than B 3 million in assets in Thailand, as mandated by strengthened prudential regulations and in order to facilitate risk-based supervision.

81. With the aim of improving access to financial services for small businesses and the public, the BOT will adopt measures to enhance efficiency in SFIs, encourage commercial banks to participate in micro-finance activities, and expand the types of assets permitted to be used as collaterals. It is estimated that some 10% of the population lack access to mainstream financial services.<sup>69</sup>

82. Domestic banks are allowed to borrow foreign currency cross-border from foreign banks and make cross-border deposits in foreign banks, subject to prudential standards such as those related to their foreign exchange position. Similarly, domestic corporations and retail consumers are free to borrow from foreign banks. In addition, residents investing in securities abroad are allowed to make cross-border deposits in foreign banks as part of their investment. However, other residents making deposits abroad for purposes other than portfolio investment require prior approval from the BOT. The rationale of this measure, along with other applicable foreign exchange regulations, is to prevent excessive capital outflows and to ensure domestic financial stability.

83. During the review period, the Thai financial sector's regulatory and supervisory framework has been enhanced in line with international standards. The Basel II Accord is now fully implemented: Pillar I (Minimum Capital Requirement) was implemented by end-2008, and Pillar III (Market Discipline) and Pillar II (Supervisory Review Process) in 2009 and 2010, respectively. For the implementation of Basel III, the BOT expects to follow the timeframe of the Basel Committee on Banking and Supervision. Some key prudential measures introduced by the BOT in recent years include the consolidated supervision of financial conglomerates, the calculation of risk-weighted assets according to the Internal-Rating Based Approach, the revision of good governance rules to improve their practical implementation as regards the structure of boards of directors and their role and responsibility, and fit and proper criteria.<sup>70</sup> As noted, under the 2008 FIBA the supervisory powers of the BOT have been strengthened, including the legal authority to supervise financial

<sup>67</sup> Previously, foreign banks were limited to a single branch.

<sup>68</sup> BOT Notification No. SorNorSor 1/2553, and WTO document WT/TPR/OV/13, 24 November 2010.

<sup>69</sup> *Bangkok Post*, "BOT pushes liberalization under new plan", 5 November 2009. Viewed at: <http://www.bangkokpost.com/business/economics/26870/bot-pushes-liberalization-under-new-plan> [23 February 2011].

<sup>70</sup> Bank of Thailand (undated c).

conglomerates and take prompt corrective action. This is an important change given the emergence of large banking conglomerates, with substantial ownership of non-bank financial institutions.<sup>71</sup>

84. Notwithstanding the above-mentioned reforms, there seems to be room for improvement in certain areas, such as the role of SFIs, which operate alongside commercial banks but are regulated under separate laws. For example, SFIs are not subject to the BOT's rules governing provisioning and capital requirements, and, unlike commercial banks that have fully implemented the International Accounting Standards 39 (IAS 39) with respect to provisions for bad loans since 2009, the SFIs were granted an extension for compliance until 2012. In addition, SFIs are not required to prepare their accounts to meet with International Financial Reporting Standards and are instead audited by the Auditor General.<sup>72</sup> While the Ministry of Finance has delegated authority to the BOT to examine SFIs, it retains overall supervision. According to the IMF, having a separate regulatory regime for SFIs and granting them special privileges can raise level-playing-field concerns and distort competition. The IMF recommends, therefore, that SFIs be regulated and supervised in the same way as commercial banks.<sup>73</sup>

85. The spread between commercial banks' lending and deposit rates remained substantial during the period under review (Chart IV.4), and among the highest in the region at 4.57 percentage points by end-2010. This is due, in part, to Thai commercial banks' increased attention on maintaining profitability in the difficult financial environment of the past few years.<sup>74</sup>

(b) Insurance

*Market structure*

86. Thailand's insurance sector continued to develop during the review period. Insurance penetration (gross premium/GDP) was about 4.21% as of December 2010, compared with 3.57% in 2007.<sup>75</sup> Total insurance premiums amounted to B 421,042 million. The insurance sector accounted for 11% of the financial sector's overall assets in 2009 (10% in 2007). At end 2010, there were 87 locally incorporated insurance companies (Thai insurance companies), comprising 25 life insurance firms and 62 non-life insurance companies. There were also six licensed branches of foreign insurance companies; one company was a life insurer and five companies were non-life insurers. In addition, there was one life reinsurer and one non-life reinsurer. At end 2010, Thai insurance companies accounted for 77% of the market in premium terms (72% in 2007); branches of foreign insurance companies had a 23% market share.<sup>76</sup>

87. The life-insurance sector is somewhat concentrated, with the top three companies holding 53% of the market (by premium), while the non-life insurance sector remains fragmented, with only three companies holding a market share of more than 7% as of end 2010.<sup>77</sup> Many Thai insurance companies have foreign shareholdings, and in recent years foreign insurance firms, including some of the larger international companies, have taken stakes or increased their participation in domestic insurance companies, partly as a result of legal amendments that have relaxed the limits on foreign

<sup>71</sup> IMF (2009). In general, a bank is allowed to invest in any company for an amount up to 10% of that company's sold shares; prior approval from the BOT is required for investment exceeding this limit.

<sup>72</sup> World Bank (2010b).

<sup>73</sup> IMF (2009).

<sup>74</sup> World Bank (2010b). The high interest rate spread does not take into account the deposit insurance premium (about 0.4% of deposit rates) that banks have to pay to the Deposit Protection Agency.

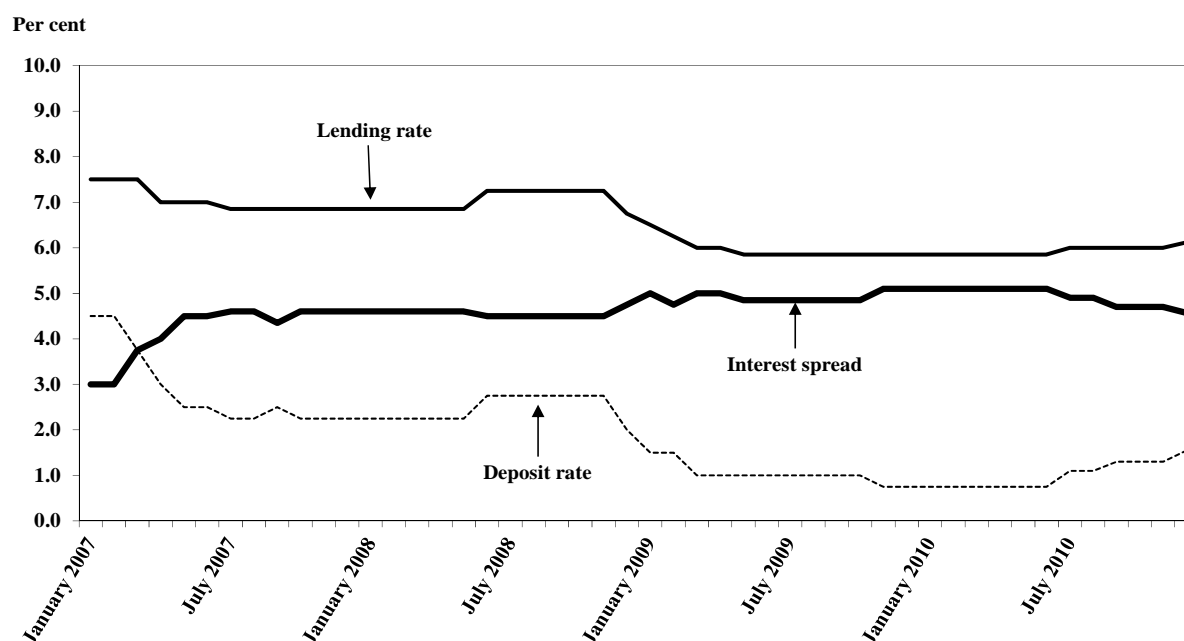
<sup>75</sup> Information provided by the Thai authorities.

<sup>76</sup> Information provided by the Thai authorities.

<sup>77</sup> Information provided by the Thai authorities.

ownership. Out of the 87 locally incorporated insurance companies, 15 life insurers and 34 non-life insurers have foreign participation.

**Chart IV.4**  
**Interest rate spread, 2007-10**



Source: IMF, *International Financial Statistics*.

### Legal framework

88. In order to engage in life or non-life insurance businesses in Thailand, a company must be either a locally incorporated public limited company, or a foreign company branch with separate capital. A licence must be obtained in all cases from the Minister of Finance, with the approval of the Cabinet. Foreigners may acquire up to 25% equity in an existing insurance firm, and this limit may be raised in certain circumstances (see below).

89. Some important changes were introduced to the legal and regulatory framework of the insurance industry during the review period. The Office of the Insurance Commission (OIC) was established as an independent sector regulator in September 2007, under the Insurance Commission Act B.E. 2550 (2007), replacing the Department of Insurance of the Ministry of Commerce. The OIC is responsible for regulating and supervising the activities of all licensed insurance companies (including re-insurance firms) and insurance intermediaries in Thailand. According to the Insurance Commission Act, its main mandate is to safeguard the interests of policyholders against undue loss. The OIC has been placed under the Ministry of Finance.

90. Amendments to the Life Insurance Act B.E. 2535 (1992) and the Non-Life Insurance Act B.E. 2535 (1992) entered into force in February 2008. The main changes included a relaxation of the limit on foreign ownership, the creation of two funds to protect policyholders, new rules for calculating capital funds and liquid assets, provisions on corporate governance, and the requirement that insurance businesses become public companies.

91. The amended Life Insurance Act (No. 2) B.E. 2551 (2008) and the amended Non-Life Insurance Act (No. 2) B.E. 2551 (2008) retain the 25% cap on foreign ownership in insurance companies and the limit on foreign directors at one-fourth of the total number of directors. However, if the OIC deems it appropriate, it may raise the foreign equity limit up to 49% and permit the number of foreign directors to exceed one-fourth (but no more than one-half) of all directors. Moreover, the Minister of Finance, upon recommendation of the OIC, may further relax these limits if an insurance company faces financial trouble that might cause damage to the insured or to the public at large.<sup>78</sup> The relaxation of the limits on foreign participation is considered as part of the second stage of the ongoing liberalization plan for the insurance sector; the authorities have indicated that the third stage (i.e. full market liberalization) will be implemented once Thai insurers have enough capacity to compete internationally. In practice, as of end 2010, three Thai insurance companies had been granted an exception to the limits on foreign ownership: in two, the foreign equity limit was allowed to be increased to 49%, while the third company was authorized to have up to 99.9% foreign ownership. The authorities have indicated that the reason for allowing such increases was to enable all three companies to increase their capital in order to meet capital solvency requirements and strengthen their financial position amidst the recent global financial crisis.

92. A new feature under the amended Acts is the creation of the Life Insurance Fund and the Non-Life Insurance Fund. Both funds were established in 2008 in order to protect policyholders, who are entitled to receive payment of debts arising from the taking of insurance in the event that an insurance company goes bankrupt or has its licence revoked. Insurance companies must contribute to the relevant fund up to 0.5% of their premiums. The exact rates are determined by the OIC on the basis of the premiums earned during the previous six months and the size of the funds.

93. Another change introduced by the amended Acts is that, before 2013, all limited liability life and non-life insurance companies must be registered as public companies, although they may choose whether to be listed on the Stock Exchange of Thailand. The new public companies will be subject to relatively more stringent corporate governance rules. The branches of foreign insurance companies will not be required to become public companies and may keep their current status. In addition, new rules that are being considered would facilitate mergers and promote industry consolidation. However, there have been no changes in the insurance licensing regime since the last Review of Thailand, and there seem to be no plans for issuing new licences in the near future.

94. All licensed life insurance companies must have a minimum capital fund of B 500 million, whereas licensed non-life insurance companies must have a capital fund of no less than B 300 million.<sup>79</sup> In addition, a licensed life insurance company must place a security deposit of at least B 20 million with the Registrar, and a licensed non-life insurance company must place a security deposit of no less than B 3.5 million for each type of non-life insurance inscribed with the Registrar.<sup>80</sup> As of end-April 2011, the total security deposit of the Thai insurance market, including life and non-life insurance, was about B 1,389 billion.<sup>81</sup>

95. A foreign insurance company must obtain a licence from the Minister of Finance, with the approval of the Cabinet, in order to establish a branch office to engage in life or non-life insurance

<sup>78</sup> Section 10 of the amended Life Insurance Act and section 9 of the amended Non-Life Insurance Act.

<sup>79</sup> Notification of the Ministry of Commerce on the Prescription of the Condition for Establishing a Limited Company or a Public Limited Company to Undertake Life Insurance Business or Non-Life Insurance Business B.E. 2538.

<sup>80</sup> Ministerial Regulation (Vol. 5) B.E. 2539 (1996) in accordance with the Life Insurance Act B.E. 2535 (1992), and Ministerial Regulation (Vol. 5) B.E. 2539 (1996) in accordance with the Non-Life Insurance Act B.E. 2535 (1992), respectively.

<sup>81</sup> Information provided by the Thai authorities.

businesses. A foreign branch must place a security deposit in order to obtain a licence. In addition, it must maintain a certain amount of assets in Thailand, as prescribed by OIC notifications, but in no case less than the amount of the capital fund it is required to maintain under the provisions of the Life Insurance Act or the Non-Life Insurance Act. A branch of a foreign insurance company is not allowed to open additional branches.<sup>82</sup>

96. An insurance company that has been granted a life insurance licence is not permitted to engage in the non-life insurance business, and vice versa. This applies to both locally incorporated insurance companies and branches of foreign insurance firms. Premium rates must be approved by the OIC.

97. Insurance companies in Thailand as well as domestic corporations and consumers are allowed to obtain cross-border insurance coverage from foreign firms. Cross-border trade in maritime, aviation, and land transport insurance is allowed, and the foreign insurance firms are not required to establish in Thailand. However, foreign insurance service providers are not allowed to offer or advertise their services directly in the local market.

98. Foreign re-insurance companies may offer services from abroad, without the need to set up locally or operate through a local broker. While there is no legal requirement, the OIC has issued practical guidelines to encourage insurance companies to maintain minimum domestic retention levels for re-insurance. Although there is no mandatory provision, insurance companies have agreed to re-insure at least 10% of premiums on fire policies exceeding sums insured of B 30 million with the Thailand Fire Pool.

99. Life insurance premiums of up to B 100,000 per year (raised from B 50,000 as part of the stimulus package introduced in March 2008) are tax deductible for holders of policies issued by insurance companies operating in Thailand, including locally licensed branches of foreign insurance firms.<sup>83</sup> Only life insurance policies with maturities over ten years are tax deductible. Since 2009, premiums for health and accident insurance contracts attached to life-insurance policies are no longer deductible.

(c) Capital market

*Market structure*

100. Overall, Thai capital markets continued to grow during the review period, albeit with important fluctuations. After a sharp contraction in 2008 due to the global financial crisis, Thailand's main equity market, the Stock Exchange of Thailand (SET), improved its performance significantly in 2009 and 2010. The SET Index increased from 449.9 at end 2008 to 1,032.8 at end 2010. The Market for Alternative Investment (MAI) Index, a secondary market for small and medium-sized enterprises, closed at 272.8 at end 2010. Total market capitalization (SET and MAI) was US\$279.4 billion (up from US\$103.3 billion at end 2008). Local retail investors accounted for 56% of total trading volume, foreign investors for 22%, proprietary trading for 14%, and local institutional investors for 8%.<sup>84</sup>

<sup>82</sup> Section 8 of the amended Life Insurance Act and section 7 of the amended Non-Life Insurance Act.

<sup>83</sup> In its GATS Schedule, Thailand included this measure as a limitation to national treatment on mode 2 (consumption abroad). WTO Document GATS/SC/85/Suppl.3, 26 February 1998.

<sup>84</sup> Information provided by the Thai authorities. See also SEC online information at: [http://www.sec.or.th/infocenter/report/Content\\_0000000135.jsp?categoryID=CAT0000122&lang=en](http://www.sec.or.th/infocenter/report/Content_0000000135.jsp?categoryID=CAT0000122&lang=en); and Asia Securities Forum (2010).



101. The SET represents an important source of funds for local companies, in particular for financial institutions, telecommunication companies, and energy groups. In December 2010, there were a total of 540 listed companies (of which 66 were listed on the MAI); 41 securities companies were operating in Thailand, 22 asset management companies, and two venture capital management firms. Securities companies have various ownership structures and setups: some are 100% Thai-owned, some are fully foreign-owned, some have foreign strategic partners, some are joint-ventures between Thai and foreign firms, and some are bank affiliates.

#### *Legal framework*

102. The Securities and Exchange Commission (SEC) is responsible for policy formulation and regulation of the capital market. It is empowered to supervise and develop the primary and secondary markets of Thailand's capital market system as well as securities-related participants and institutions.

103. Currently, only locally incorporated securities companies may apply for a licence to engage in brokerage services, but no new licences have been issued since 1992, making new entry only possible through the acquisition of equity in existing securities firms. However, in 2008 the SEC announced the liberalization of the securities business licensing regime, which will become effective from 1 January 2012 (see below).

104. Foreign brokerage service providers may apply to own 100% of a securities company. However, for other securities businesses, including securities underwriting, securities dealing, investment advisory, and asset management businesses, which are under List 3 of the Foreign Business Act B.E. 2542 (1999), foreign ownership exceeding 49% must be authorized by the Director-General of Business Development in the Ministry of Commerce, with the approval of the Foreign Business Committee. In the case of asset management companies, foreign equity holding is restricted to 49% in the first five years of business or until 31 December 2011, whichever comes earlier. Thereafter, foreign equity holdings exceeding 49% may be approved under the Foreign Business Act B.E. 2542 (1999). Since early 2010, foreign securities companies have been allowed to provide investment advice on foreign securities through local securities firms without the need to apply for a licence in the category of securities/derivative investment advisor. There are no legal nationality requirements for boards of directors of securities and asset management firms. Commercial banks may also engage in securities business (except equity brokerage, equity dealing, and equity underwriting), and are subject to SEC and BOT regulations.

105. The Securities and Exchange Act B.E. 2535 (1992) was amended in February 2008 with the aim of ensuring effective implementation of corporate governance principles, improving transparency and fairness in the capital market, and restructuring the SEC. The amendments entered into effect in March 2008; they include new provisions to protect shareholders' rights, and clearer rules on the duties and responsibilities of companies' board directors and managers. Heavier penalties (imprisonment and fines) are prescribed for fraudulent practices, and employees are urged to inform the SEC of any illegal practices on the part of top management, while securities companies are prohibited from prosecuting whistle-blowers. Other provisions include requiring securities company auditors to report to the company's audit committee any suspicion of activity violating the Securities and Exchange Act, and empowering the SEC to cooperate and provide information to foreign regulators. The SEC has also been given the authority to act in the event that a licensed broker fails, and to bar listed companies' directors and managers that do not meet the required criteria and have "prohibited characteristics".

106. In addition, under the amended Act, the structure of the SEC has been modified with the aim of enhancing its operational efficiency and supervisory functions. Instead of the Minister of Finance,

the Chairman of the SEC Board now has to be an independent appointee. A separate supervisory body, the Management Board, has been established to focus on the issuance of rules and regulations governing operational matters, leaving policy making to the SEC Principal Board.

107. In June 2009, the Capital Market Development Committee (comprising the SEC, the Ministry of Finance, and other organizations related to the securities business) issued its Capital Market Development Master Plan for 2010-2014, which was later approved by the Cabinet. The Plan aims to promote the development of the Thai capital market through reforms in eight areas: (i) abolishing the monopoly of the exchange business and enhancing the international competitiveness of the SET; (ii) liberalizing the securities intermediary business; (iii) reforming the legal framework; (iv) improving the tax system; (v) promoting financial innovation to increase products and asset classes; (vi) establishing a national savings fund for informal-sector workers<sup>85</sup>; (vii) promoting a "culture of savings and investments" through long-term saving schemes; and (viii) further development of the bond market. Regulators hope that the Plan will help expand the capital market's size to 130% of GDP by 2013 (from 86% in 2008), while increasing the investor base and facilitating the use of the capital market as a funding source to support economic growth.<sup>86</sup>

108. In order to promote competition, the authorities plan to end the official monopoly status of the SET, abolish rules that forbid members from trading listed stock outside the Exchange, and withdraw the requirement that trading of listed stocks must be done by members only, so as to enable linkages with other markets. The SET, which recently reorganized its structure into two segments (i.e. exchange business and capital market development), plans to demutualize in 2012. In addition, from 1 January 2012, the SEC will liberalize the licensing regime for the securities business and start issuing new licences. To help prepare market participants for intensified competition, the SEC has given existing securities business licensees wishing to engage in all types of securities-related activities the opportunity to upgrade their licences to a "full service" licence, while those who wish to engage in debt, derivatives or asset management may upgrade their licences to a "boutique service" licence. Moreover, those who chose to engage in a specific category of securities business (i.e. broker, dealer, and underwriter; investment advisor; securities borrowing and lending; or venture capital) may apply for a licence in each category separately.<sup>87</sup> Additionally, brokerage fees have been reduced gradually since 2010, and will be fully negotiable in 2012.

109. In September 2009, the SEC issued new regulations allowing the listing of foreign companies on the SET, provided that they are already listed on a foreign exchange that is a member of the World Federation of Exchanges and whose regulator is a member of the International Organization of Securities Commission (IOSCO). During the review period, the SEC took several measures to enhance product diversification and business flexibility, including the launch of gold futures, expansion of the types of assets in which mutual and private funds may invest, new regulations on trustee businesses, and streamlined procedures for private placement issuance and offering of bonds to institutional investors.<sup>88</sup> Also, the SEC has coordinated with the BOT to relax the regulations on investment in securities abroad and derivatives transactions undertaken by institutional and individual investors in Thailand. As part of a plan for ASEAN capital market integration, in 2009 Thailand

<sup>85</sup> Workers in the informal sector make up approximately 70% of total labour force in Thailand.

<sup>86</sup> *Bangkok Post*, "BoT pushes liberalization under new plan", 5 November 2009. Viewed at: <http://www.bangkokpost.com/business/economics/26870/bot-pushes-liberalization-under-new-plan> [23 February 2011].

<sup>87</sup> SEC, "Securities Business Licensing", *Capital Thailand*, Quarterly Newsletter, Issue No. 17, July 2008. Viewed at: [http://www.sec.or.th/infocenter/report/Content\\_0000000906.jsp?categoryID=CAT0000294&lang=en](http://www.sec.or.th/infocenter/report/Content_0000000906.jsp?categoryID=CAT0000294&lang=en) [13 July 2011].

<sup>88</sup> SEC online information. Viewed at: <http://capital.sec.or.th/webapp/webnews> [23 February 2011].

implemented the "ASEAN and Plus Standards Scheme", which harmonizes information disclosure standards for the offering of debt and equity securities within the ASEAN region.

### (iii) Telecommunications

110. Thailand's telecommunication industry continued to expand during the review period, albeit at a slower pace. After years of strong growth, demand for mobile services has been easing, with market penetration having exceeded 100%; the broadband Internet market has seen vigorous growth in recent years but from a relatively small base, while development in the fixed-line market has been insignificant. Thailand has made progress towards reforming its telecommunications regulatory regime, and the entrance of new operators has increased competition in some sectors of the market. However, delays in implementing reforms have created uncertainty for operators, and certain deregulation issues remain a major challenge, such as restructuring the state-owned telecom companies. Under the Act on Organization to Assign Radio Frequency and Regulate Broadcasting and Telecommunication Services B.E. 2553 (2010) enacted in late 2010, a single regulator was created to oversee the broadcasting and telecommunication industries; the commissioners of the new regulator were in the process of being selected at the time of writing this report.

111. The two state-owned enterprises TOT Public Company Limited (TOT) and CAT Telecom Public Company Limited (CAT Telecom) continue to play a major role in Thailand's telecommunications sector. Historically, TOT held a monopoly over domestic telephony, while CAT had the monopoly over international gateway services. Until the promulgation of the Telecommunications Business Act (B.E. 2544) in 2001, private sector entry into the telecommunication market was possible only through build-transfer-operate (BTO) concessions awarded by the state-owned companies.<sup>89</sup> While the Act terminated the statutory state monopolies by allowing for the issuance of telecommunication licences, it upheld the validity of the BTO agreements signed in the past. In some cases, these agreements stipulate terms and conditions (such as access charges) that are not entirely in line with modern regulatory rules, posing a challenge to the sector regulator to establish a level playing field.<sup>90</sup> Phasing out the concession agreements is another unresolved issue.<sup>91</sup>

#### (a) Market structure

112. The entry of private operators has introduced competition in the telecommunications market, but the degree of competition varies from sector to sector, owing in part to the legacy of the concession agreements.

113. Fixed-line services are divided into two markets: the Bangkok metropolitan area, and the provincial area. TOT operates in both markets, while its private concessionaires are only allowed to provide services in one market each: True Corporation serves the metropolitan area and TT&T serves the provinces. There are no other fixed-line operators. At end 2010, TOT held a 48% market share in the metropolitan area and a 71% market share in the provincial area (46% and 64% in 2007). Demand for fixed-line services has declined, and the overall teledensity dropped to 10.4% in 2010 (from 10.6% in 2007), with significant differences between the metropolitan area (37.3%) and the provincial

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<sup>89</sup> Under the BTO agreements, private concessionaires develop telecommunication infrastructure and then transfer ownership to the Government, in exchange for 25-30 years' exclusive operation of the network, while paying a percentage of revenue to the state operator.

<sup>90</sup> Thailand Development Research Institute (2009).

<sup>91</sup> The authorities have indicated that the current concessions of TOT and CAT will expire in 2018, and will not be renewed.

area (6%).<sup>92</sup> The fact that fixed-line tariff rates have been set well below cost seems to have discouraged investment in the sector and no new fixed-line rollout is expected in the near future.

114. The mobile-phone market has continued to grow, and competition among the major players has been quite intense, resulting in improved services and lower tariffs. In September 2010, the mobile market penetration rate was 104.1% (up from 80.2% in 2007), of which pre-paid subscriptions accounted for almost 94%.<sup>93</sup> The three largest mobile-phone service providers are private concessionaires, i.e. Advance Info Services (AIS), Total Access Communication (DTAC), and True Corporation (True Move), which hold market shares of 42.5%, 32.7%, and 23.3%, respectively.<sup>94</sup> The other two mobile phone providers are Hutch, a CAT's joint-venture, which holds a 1.1% market share, and TOT's Thai Mobile (0.4%), which is currently the sole operator holding a 3G 2.1 GHz licence.<sup>95</sup>

115. At present, private companies operate only second-generation mobile-phone services because the process of 3G licensing has been delayed repeatedly since 2005 due to legal complications. A much-awaited 3G licence auction was to be held in September 2010, but the process was suspended by the Supreme Administrative Court after CAT alleged that the National Telecommunications Commission (NTC) had no authority to allocate the 2.1 GHz frequency spectrum.<sup>96</sup> In the meantime, state-owned operators TOT and CAT have been allowed to undertake "in-band migration" from 2G to 3G using 900 and 850 MHz.<sup>97</sup> The delay in auctioning 3G licences for private operators may constitute an impediment to the industry's development, making Thailand one of the last countries in the region to fully deploy advance wireless technology. The authorities have indicated that a licence auction for 3G (new 2.1 GHz frequency spectrum) will be organized by the new independent regulator, the National Telecommunications and Broadcasting Commission (section (b) below).

116. The internet market is growing rapidly, albeit from a low base. Increasing demand for broadband services and the significant number of new licences issued by the regulator over the past years largely explain this trend. Also, the abolition of CAT's monopoly over the international internet gateway (IIG) in 2006 provided a significant boost to the industry. New entrants in the broadband market are guaranteed access to the local loop. As of December 2010, there were 86 internet service providers (ISPs), and 16 licences had been issued for the provision of IIG services. In mid-2010 there were around 17.4 million internet subscribers (up from 8.4 million in 2007), equivalent to a penetration rate of 26.3%.<sup>98</sup> As regards broadband services, the penetration rate was 3.9% in the third-quarter of 2010.<sup>99</sup> The broadband market is mainly based on ADSL technology, although wireless services are increasing rapidly. TOT holds a 39.1% market share in broadband services, followed by True Internet (29.9%), 3BB (26.8%), and others (4.1%).<sup>100</sup>

<sup>92</sup> Information provided by the Office of the National Broadcasting and Telecommunications Commission (NBTC).

<sup>93</sup> Information provided by the NBTC.

<sup>94</sup> Information provided by the NBTC.

<sup>95</sup> Thai Mobile was a joint venture between TOT and CAT Telecom until mid-2008 when TOT acquired the entire equity stake of the company.

<sup>96</sup> Under Thailand's Constitution (2007), the allocation and assignment of frequencies are to be managed by a new independent body, the National Telecommunications and Broadcasting Commission. The Act establishing the new regulator entered into force on 20 December 2010.

<sup>97</sup> TOT is currently providing 3G services through the mobile virtual network operator (MVNO) business model, and during 2011-12 it plans to roll out 3G network nationwide with 5,320 base stations to support 7.7 million subscribers.

<sup>98</sup> ITU data. Viewed at: <http://internetworldstats.com/asia/th.htm> [1 March 2011].

<sup>99</sup> Information provided by the NBTC.

<sup>100</sup> Information provided by the NBTC.

## (b) Regulatory framework

117. During the review period, Thailand continued to modernize and strengthen its regulatory framework on telecommunications, but there have been long delays and other problems in implementation. The main legal instruments governing the sector are Article 47 of the Constitution of Thailand B.E. 2550 (2007), the Telecommunications Business Act (TBA) B.E. 2544 (2001), the Act on Organization to Assign Radio Frequency and Regulate Broadcasting and Telecommunication Services B.E. 2553 (2010)<sup>101</sup>, and numerous regulations and notifications issued by the former National Telecommunications Commission (NTC), which are in conformity with the 2010 Act. The Act on Organization to Assign Radio Frequency and Regulate Broadcasting and Telecommunication Services B.E. 2553, effective 20 December 2010, repealed the NTC and mandated the creation of the National Broadcasting and Telecommunications Commission (NBTC), as the sole regulatory body responsible for overseeing the broadcasting and telecommunication industries. The Commissioners from the former NTC will remain in office acting as the NBTC until such time as this new body is appointed.

118. Under the TBA, there are three types of licences for the provision of telecommunication services. Type 1 licenses are granted to service providers that do not own their own network (e.g. providers of internet services and resale services)<sup>102</sup>; Type 2 licences are issued to telecommunications operators, whether or not they possess their own networks, who provide services for a limited group of people or services with no significant impact on market competition, the public interest or consumers (i.e. specific radio-communication services such as aeronautical services, and trunk services); and Type 3 licences are granted to telecommunications operators who use their own networks to provide telecommunication services for the general public, or services having a significant impact on competition, the public interest, or requiring special consumer protection (i.e. public network telecommunication services).<sup>103</sup> In order to operate mobile services commercially, a Type 3 licence as well as a spectrum licence must be obtained.<sup>104</sup>

119. The TBA sets out the criteria for obtaining the different types of licences. An applicant for a Type I licence must submit a notification of intention to operate the business for which it has applied for the licence; and must be a juridical person registered under Thai law. An automatic licensing scheme exists for Type 1 licences for services such as internet, resale, international calling card, and store-and-retrieve, as well as for Type 2 licences for international internet gateway (IIG) and national internet exchange (NIX) services. More stringent conditions apply in the case of other Type 2 and Type 3 licences, including restrictions on the participation of foreign services providers.<sup>105</sup> At end 2010, the NTC had granted 86 Type 1 licences for internet services, as well as 107 Type 1 licences, 16 Type 2 licences, and 19 Type 3 licences for other telecommunication services.<sup>106</sup>

120. There is no limit on foreign ownership in Type 1 telecommunication businesses. As regards Type 2 and Type 3 businesses, as a result of amendments made to the TBA in January 2006, the limits

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<sup>101</sup> This Act replaced the Act on Organization to Assign Radio Frequency and to Regulate Broadcasting and Telecommunication Services B.E. 2543 (2000).

<sup>102</sup> In turn, Type 1 licences can be divided into two main categories: (1) Type 1 Telecommunications business licence, which includes: international calling card, electronic fax, store and retrieve value-added services, video conference, and forward calls; and (2) Type I internet service licence, which is granted only to internet service providers, including VoIP providers.

<sup>103</sup> Section 7 of the Telecommunications Business Act B.E. 2544 (2001).

<sup>104</sup> Notification on Criteria and Procedure for Spectrum Licensing for IMT Mobile Phone Services in the Frequency Band of 2.1GHz.

<sup>105</sup> Section 8 of the Telecommunications Business Act B.E. 2544 (2001).

<sup>106</sup> Information provided by the NBTC.

on foreign ownership were increased from 25% to less than 50%, in accordance with the Foreign Business Act B.E. 2542 (1999).

121. These changes as well as other regulatory improvements appear to be in line with Thailand's intention to liberalize the telecommunication sector, as indicated in its multilateral commitments. However, such changes have not yet been incorporated in Thailand's GATS Schedule as indicated by its commitment that upon the passage and entry into force of the necessary new communication acts "...commencing in the year of 2006, Thailand will introduce the market access elements as contained in those acts into the relevant parts of its Schedule of Specific Commitments relating to the supply of public telecommunication services."<sup>107</sup> In this regard, the authorities have noted that the Thai telecommunication sector has undergone significant reforms over the past three years in order to respond to increased demand, technological development, and to enhance administrative efficiency and regulation of the sector. In this context, the Government, through the Ministry of Information and Communication Technology, will be responsible for mapping out the direction for further liberalization of telecommunication services, the results of which will be reflected in Thailand's GATS Schedule.

122. The TBA stipulates that interconnection is mandatory for all licensees who own telecommunication networks, and that interconnection charges, which are negotiated privately, must be transparent, reasonable, fair, and non-discriminatory. The Regulation on the Access and Interconnection of the Telecommunication Networks B.E. 2549 (2006) codified such principles, set criteria and procedures for access to and use of telecommunication networks, and established a committee specifically dedicated to resolve disputes arising from interconnection issues. The authorities have indicated that since 2007 the committee has accepted 15 disputes for consideration; in one instance the dispute led to a petition before the Administrative Court.

123. A major cause of interconnection disputes relates to the concession contracts. This is because mobile private operators who have a contract with CAT Telecom (the international gateway operator without domestic network) have to pay access charges (B 200 per month per post-paid subscriber and 18% of revenue for pre-paid users) to TOT (owner of its fixed-line network), while TOT's own concessionaires pay no access charges. According to some, this creates an uneven playing field and calls for a revision of the conditions set in the concession contracts to bring them in line with the Interconnection Regulation.<sup>108</sup> The NTC has the authority to determine interconnection rates in dispute cases; accordingly, it has determined such rates in several instances by applying the long-run average incremental cost model (LRAIC) in line with the Notification on Interconnection Rate Calculation Standard (2009). The rates determined by the NTC were 50% to 70% lower than the operators' rates. In addition, the NTC determined reference rates for fixed and mobile services that will apply to all dispute cases submitted to it, with validity until July 2012, unless the new regulator announces otherwise.

124. During the review period, the NTC set interim retail tariff ceilings for all major voice services (fixed-line, mobile, and public phone services) based on a previous cabinet resolution. Reportedly, for some fixed-line services the ceiling rate set was well below cost, a situation that may have discouraged much needed investment in the fixed-line network.<sup>109</sup> The authorities have indicated that the new NBTC may announce the deregulation of the fixed-line tariff in the near future. For mobile services, the rate has not been binding as it accommodates the rates charged by the various service providers. Recently, the NTC decided to apply a new tariff ceiling rate for domestic mobile services based on the rate-of-return method (ROR), which may be introduced in the second half of 2011. The

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<sup>107</sup> WTO document GATS/SC/85/Suppl.2, 11 April 1997.

<sup>108</sup> Thailand Development Research Institute (2009).

<sup>109</sup> Thailand Development Research Institute (2009).

authorities have indicated that when the mobile market becomes more competitive, they may consider moving towards price cap regulation instead. Overall, average telecommunication tariffs to the end-user show a decreasing trend; in particular, the price of broadband internet services declined by about 34% between the first-quarter of 2008 and the fourth-quarter of 2010. During the same period, the price of mobile services decreased on average by 7% to B 0.56 per minute, and the price of the fixed-line service, measured as average revenue per user per month (ARPU), was B 281 in the fourth-quarter of 2010.<sup>110</sup>

125. Under the TBA, the sector's regulator is empowered to take measures to prevent operators from engaging in acts that have the effect of restricting competition in the telecommunication market. The Notification on Measures for the Prevention of Monopoly or Unfair Competition in the Telecommunication Business (2006) stipulates that all licensees and concessionaires are subject to the general competition law, the Trade Competition Act (1999). The Notification also contains provisions that restrict cross-equity holding among telecommunication businesses, prohibit cross-subsidization (except for universal service), and specify trade practices that are considered anti-competitive. According to the competition rules, dominant service providers are those with a market share greater than 25% or those that the NTC declares to be dominant according to specified criteria.<sup>111</sup> A licensee holding more than a 40% market share will be deemed to have significant market power.<sup>112</sup>

126. In order to foster competition in the telecommunication market, the NTC has issued notifications on: market definition and relevant market (December 2008); criteria and procedures on the rights of licensees to erect poles, lay lines, place ducts or install any other equipment for the supply of telecommunication services (March 2009); mergers and acquisitions and cross-subsidization (May 2010); and local loop unbundling (September 2010).

127. During the review period, the NTC established Criteria for the Allocation and Administration of Telecommunication Numbers (October 2008), and Criteria for Mobile Number Portability (August 2009 and December 2010). In December 2010, mobile number portability (MNP) services were launched.<sup>113</sup> The authorities plan to publish a new Telecommunications Numbering Plan, covering numbers for new telecommunication technologies (e.g. ENUM IPV6), numbers for short message services (e.g. SMS), and numbers for technical use (e.g. Engineering Service Centre) in order to prevent resource scarcity.

128. The sector's regulator has the authority to require a licence holder to provide universal service, provided that this obligation does not pose an undue investment burden on the licensee and is the same for operators providing the same type of services.<sup>114</sup> According to the regulations governing

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<sup>110</sup> Information provided by the Thai authorities.

<sup>111</sup> The criteria used for determining dominant service providers are: overall business size; control of necessary infrastructure; technological advantages or superiority; buyer's bargaining power; constraints on market expansion; product and service diversification; ease of access to sources of funds; economies of scope; economies of scale; ease of market entry of new entrants; competitiveness; and degree of vertical integration. These factors are taken into consideration when a licensee holds 25% to 40% market share.

<sup>112</sup> The telecommunication company AIS has been declared as having significant market power; whereas DTAC has been declared to have a significant market share.

<sup>113</sup> Each mobile operator was allowed to provide MNP services on customers' request (not exceeding 300 ported numbers per day per operator, as of August 2011) in limited areas (5 in Bangkok and 10 in major provinces).

<sup>114</sup> Section 17 of the TBA and Act on Organization to Assign Radio Frequency and Regulate the Broadcasting and Telecommunication Services B.E. 2553 (2010).

the universal service obligation (USO)<sup>115</sup>, Type 2 licensees having their own network and all Type 3 licensees are required to contribute to USO by providing services (e.g. installation of fixed lines, internet services networks or public phones in rural areas and public institutions, such as schools and hospitals), or otherwise contribute 4% of their gross revenue. The Act on Organization to Assign Radio Frequency and Regulate the Broadcasting and Telecommunication Services B.E. 2553 (2010) mandates the regulator to develop a USO plan in accordance with government policy. The Act also sets the purpose of the Telecommunications Development Fund, the sources of its budget and the duties of the Fund Management Committee. To determine the percentage amount of the USO levy, the regulator considers criteria such as the objectives and targets for the universal service policy, their anticipated costs, and the earnings of network carriers. Traditionally, TOT and CAT Telecom have been the only operators providing USO instead of paying the 4% contribution.<sup>116</sup>

129. The regulator is responsible for the administration of the Telecommunications Development Fund. Rules for the management and allocation of the Fund's resources were published in 2006<sup>117</sup>, and the Office of the Telecommunications Development Fund was established in 2009. The Fund is financed from three sources: the USO fees paid by the telecommunication operators (74.5%), allocations from the NBTC's income (18.2%), and the Fund's interest income (7.1%). In 2010, the Fund's resources amounted to B 547 million, most of which were allocated to R&D projects (49.5%), followed by projects related to public service obligations (PSOs) (20.8%),<sup>118</sup> USO projects (17.7%), and human resources development (12.1%).<sup>119</sup> Under the Act on Organization to Assign Radio Frequency and Regulate Broadcasting and Telecommunications B.E. 2553 (2010), the Telecommunications Development Fund was transformed into the Public Fund for Research and Development in Broadcasting and Telecommunication.

130. Satellite communications are deemed a priority activity under the Board of Investment, and as such are eligible for tax and non-tax incentives in accordance with the relevant laws and regulations of related government agencies.

#### **(iv) Transport**

131. During the past decade Thailand has made important investments to improve and expand its transport networks and international links in order to become a regional transport hub. In the air transport sector, the Suvarnabhumi Airport serving Bangkok, with a capacity of 45 million passengers per year, was completed in 2006. In terms of maritime transport and port services, the Laem Chabang deep-sea port has been expanded and there are plans for further expansion in order to lift its capacity to 18 million TEUs and transform it into the main gateway port of the Greater Mekong Sub Region. Plans for large-scale road and rail projects are also being considered to expand the land transport network.

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<sup>115</sup> Notification on Criteria and Procedures for the Provision of Universal Basic Telecommunications and Social Services B.E. 2548 (2005), Notification on Criteria and Procedures for the Provision of Universal Basic Telecommunications and Social Services (No. 2) B.E. 2552 (2009), and Notification on the Operating Plan 2010 for the Provision of Universal Basic Telecommunications and Social Services B.E. 2553 (2010).

<sup>116</sup> For example, TOT offers free internet access to all schools, allowing them to log on for the cost of local telephone connection (Economist Intelligence Unit, 2010c).

<sup>117</sup> Regulation on the Management and Allocation of the Telecommunications Development Fund B.E. 2549 (2006).

<sup>118</sup> PSOs are projects for public telecommunication access for disadvantage people or people with disabilities, which are undertaken in cooperation with non-telecommunication-related organizations, such as universities and hospitals.

<sup>119</sup> Information provided by the Thai authorities.



132. The overall quality of Thailand's transport infrastructure has been upgraded during the review period, but there is still room for improving logistics efficiency. According to the World Bank's Logistic Performance Index (LPI), which is a comprehensive measure of a country's trade logistic performance<sup>120</sup>, in 2010 Thailand ranked 35<sup>th</sup> (out of 155 countries), behind Singapore (2<sup>nd</sup>) and Malaysia (29<sup>th</sup>), but ahead of all other ASEAN countries.<sup>121</sup> In terms of the quality of transport infrastructure (ports, railways, and roads) and logistic services, Thailand ranked 36<sup>th</sup> and 39<sup>th</sup>, respectively. Although the Government's policy is to encourage private sector participation in infrastructure development, the regulatory framework for the provision and management of infrastructure services is complex and significant restrictions on foreign investment remain in all transport subsectors.

(a) Air transport

133. During the period under review, Thailand's air transportation industry faced several challenges, including the global financial crisis, oil price and exchange rate fluctuations, and domestic political unrest, all of which negatively affected air traffic volume and passenger movements. However, supported by the recovery of the global economy, particularly in Asia's emerging countries, the implementation of liberal air services agreements with other ASEAN countries, and the Government's proactive air transport policies, the Thai aviation industry started to recover in 2010.

134. At present (mid-2011), there are ten airline companies providing domestic and international scheduled air transport services in Thailand. These are Thai Airways International Public Company Limited, in which the Government holds a 51% share; Bangkok Airways; Orient Thai Airline; Thai Air Asia (a Thai-Malaysian joint venture); Nok Air (a subsidiary of Thai Airways); K-Mile Air; Siam General Aviation; Business Air Centre; Jet Asia Airways; and Happy Air Traveller. A total of 52 companies have been granted a licence by the Ministry of Transport to provide domestic transport services: 21 operate scheduled air services and 31 operate charter services. Thai Airways International continues to benefit from the regulations that require civil servants and officers from governmental agencies to use its services, provided that its ticket price does not exceed the ticket price of other airlines by more than 25%. During the review period, this figure was reduced from 30%.

135. The Ministry of Transport (MOT) is responsible for formulating policies for the transport system, including air, sea, and road transport services. The Ministry's policy on air transport focuses on the development of airports and the promotion of the aviation industry in order to make Thailand a regional aviation hub and aircraft repair centre, seeking to benefit from the rapid growth in air passengers and cargo traffic in the Asia-Pacific region. The Department of Civil Aviation of the Ministry of Transport is the industry's regulator; its functions include implementing sectoral regulations, promoting and developing national civil aviation, coordinating with domestic and international organizations, overseeing the national airports under its jurisdiction, and operating 28 regional airports. The public company Airports of Thailand (AOT), in which the Ministry of Finance holds a 70% stake, manages and operates the six main international airports (see below).

136. The main legal instruments governing the air transport sector are the Air Navigation Act B.E. 2497 (1954) and its amendments, the Foreign Business Act B.E. 2542 (1999), and the Declaration of the Revolutionary Council No. 58 B.E. 2515 (1972). The latter empowers the Minister of Transport to impose any conditions necessary to ensure safety in relation to air navigation

<sup>120</sup> The LPI encompasses a range of trade logistics activities, including transport, warehousing, cargo consolidation, border clearance, in-country distribution and payment systems by public and private agents.

<sup>121</sup> The Philippines ranked 44<sup>th</sup>, Viet Nam 53<sup>rd</sup>, Indonesia 75<sup>th</sup>, Lao PDR 118<sup>th</sup>, Cambodia 129<sup>th</sup> and Myanmar 133<sup>rd</sup>. World Bank (2010a).

activities. Under the Air Navigation Act, in order to register a commercial aircraft and obtain an operating licence, a company must be registered under Thai law and have its main office in Thailand, at least 51% of its shares must belong to Thai nationals, and the majority of the board of directors must be of Thai nationality.<sup>122</sup> In addition, the company must comply with safety conditions (i.e. obtain a certificate of airworthiness), meet minimum insurance requirements, and submit a feasibility study showing that the proposed services will benefit the public and respond to market demand.

137. Under the Foreign Business Act, foreigners are prohibited from operating domestic air routes. However, foreign carriers are allowed to operate international air services in Thailand subject to reciprocity. Thailand implements a "gradual open-skies policy". At present, it maintains 99 bilateral air services agreements, most of which offer 5<sup>th</sup> freedom traffic rights, allowing for unrestricted flights between Thailand and the contracting partner. Thailand is also a signatory of a number of regional air services agreements through which air traffic rights have been liberalized, notably the ASEAN Multilateral Agreement on Air Services (effective 13 October 2009), the ASEAN Multilateral Agreement on the Full Liberalisation of Air Freight Services (13 October 2009), and the ASEAN Multilateral Agreement on the Full Liberalisation of Passenger Air Services, signed on 12 November 2010 (not yet in force as of June 2011).

138. There are 38 airports and aerodromes in Thailand. The Civil Aviation Department manages 28 public airports, mostly serving domestic routes. The AOT operates the six main international airports, which are responsible for over 90% of Thailand's air traffic.<sup>123</sup> There are also three private airports owned and operated by Bangkok Airways, one of which, the Samui airport, opened for international flights in September 2007. In fiscal year 2010, AOT's six international airports handled 385,769 flights, serving 57.4 million passengers and 1.33 million tonnes of cargo and postal parcels. The Suvarnabhumi Airport, the country's main airport in Bangkok, accounted for 74% of total passenger movements and 95% of the total cargo and postal parcels. In 2010, it served 98 scheduled airlines (92 foreign airlines and 6 Thai airlines), including 85 mixed passenger-cargo carriers and 13 cargo carriers.<sup>124</sup> AOT holds stakes in a number of companies that conduct airport-related activities, such as warehouse services, aviation refuelling services, air catering, duty-free shops, and hotels.

139. Travel agencies and airline companies are free to use the computer reservations system (CRS) of their choice. Currently, there are three CRS providers operating in Thailand, i.e. Amadeus, Abacus and Galileo. Sabre distributes airline tickets through Abacus.

140. The authorities have indicated that there are no regulations obtaining national airlines to have their planes repaired and maintained in domestic facilities. However, restrictions apply in certain cases for the establishment of foreign maintenance, repair, and overhaul (MRO) providers in Thailand under the Air Navigation B.E. 2497 (1954). Manufacture and repair of aircraft are deemed priority activities and therefore benefit from the BOI's tax and non-tax incentives.<sup>125</sup>

141. Airline companies and commercial airports may apply to the Board of Investment for tax and non-tax investment incentives. Under BOI Announcement No. 10/2552 (2009), air transport services are among the "priority activities" for investment promotion, and thus eligible for tax benefits such as

<sup>122</sup> Section 31 of the Air Navigation Act B.E. 2497 (1954), as amended by the Air Navigation Act (No. 10) B.E. 2542 (1999).

<sup>123</sup> The six main international airports are: Don Mueang, Chiang Mai, Hat Yai, Phuket, Chiang Rai, and Suvarnabhumi. Other international airports are U-Tapao, Krabi, Samui and Udon Thani.

<sup>124</sup> AOT (2010).

<sup>125</sup> Economist Intelligence Unit online information. Viewed at: <http://country.eiu.com/article.aspx?articleid=1027808487 &Country=Thailand&topic> [11 March 2011].

an exemption of import duty on machinery and an eight-year corporate income tax exemption, regardless of location, as well as other privileges that might apply on a zone basis. Non-tax benefits include permission to bring in foreign workers, own land, and take or remit foreign currency abroad.

(b) Maritime transport and ports

142. About 89% of Thailand's international trade in volume terms is carried by maritime transport. (65.9% in value terms).<sup>126</sup> In 2009, the value of import and export cargoes carried by sea amounted to B 6,456 billion, and their volume was equivalent to 182.4 million tonnes.<sup>127</sup>

143. According to the Thai authorities there were 483 Thai-flagged vessels with a total capacity of 4.4 million deadweight tonnes (DWT) in 2010 (497 vessels with a capacity of 3.69 million DWT in 2007).<sup>128</sup> In 2010, UNCTAD ranked Thailand's maritime fleet 35<sup>th</sup> among the countries with the largest controlled fleet in terms of tonnage (both under national flag and foreign flag), accounting for 0.33% of world tonnage.<sup>129</sup> Thailand's merchant fleet is privately owned, with the exception of the Thai Maritime Navigation Company Ltd. (TMN), a 100% government-owned shipping company. In turn, TMN has a 30% equity stake in TMN Line, which runs its business with two ocean-going vessels. The Ministry of Transport is considering cessation of TMN business operations due to its unsatisfactory performance.

144. The main laws governing maritime transport are the Thai Vessels Act B.E. 2481 (as amended by the Act B.E. 2540), the Navigation in Thai Waters Act B.E. 2456 (as amended by the Act B.E. 2540), the Maritime Promotion Act B.E. 2521 (as amended in 2005), and the Multimodal Transport Act B.E. 2548 (2005). The Marine Department, under the Ministry of Transport, is responsible for the promotion and development of maritime transport; it is also in charge of law enforcement, navigation safety, ship registration and inspection, maintenance of navigation channels, providing pilot services for seagoing vessels, and minimizing the environmental impact caused by navigation and port activity.

145. According to the Thai Vessels Act B.E. 2481 (1938), two categories of ships may be registered under the Thai flag: international shipping, and domestic shipping. International shipping is open to Thai and foreign maritime transport operators. In order to provide international shipping services under the Thai flag, operators must: be at least 51% Thai-owned; be registered for flying the Thai flag; meet national safety and marine environmental requirements; and be registered as a maritime transport operator with the Marine Department. Thai-flagged international shipping vessels are not allowed to engage in domestic shipping within Thai territorial waters, unless at least 70% of their shares are in Thai hands.

146. For national security reasons, domestic shipping is restricted to Thai vessels owned by Thai nationals or companies incorporated under Thai law with at least 70% Thai equity (Thai Vessels Act). All vessels engaged in domestic shipping must be registered under the Thai flag at the Marine Department; they may also engage in international shipping provided they meet the relevant safety and international standards. Foreign vessels may be allowed to provide domestic shipping services for a period of one year under certain conditions (e.g. when the number of domestic vessels is insufficient to meet demand and cannot be efficiently replaced by other transport means) and subject

<sup>126</sup> Information provided by the Thai authorities.

<sup>127</sup> Information provided by the Thai authorities.

<sup>128</sup> Information provided by the Thai authorities.

<sup>129</sup> According to UNCTAD data, Thailand's maritime fleet comprised 298 Thai-flagged vessels (over 1,000 gross tonnes) and 45 vessels under foreign flag, with a combined tonnage of 3.8 million DWT. UNCTAD (2010a).

to case-by-case approval by the Minister of Transport (Thai Vessels Act). The number of foreign vessels authorized to provide domestic shipping services dropped from 15 in 2007 to 8 in 2010.<sup>130</sup>

147. Although there are generally no restrictions on access to cargoes to and from Thailand, the domestic shipping industry continues to receive protection through a cargo reservation policy. A Ministerial Notification of the Ministry of Transport requires that goods imported directly or indirectly by government agencies or public enterprises must be transported by Thai-flagged vessels on designated shipping routes where such vessels are available for services.<sup>131</sup>

148. The Government actively promotes the maritime transport industry through fiscal and financial incentives. Maritime transport services are classified as a priority activity and eligible for tax and non-tax benefits under the BOI. Additionally, for companies incorporated in Thailand and engaging in international maritime transport the following items are not included in the calculation of their taxable income: (i) revenue from ocean freight using Thai vessels; (ii) revenue from selling old vessels in order to purchase new vessels within a year; and (iii) dividends from Thai companies that provide shipping services with Thai vessels.

149. Import duties were reduced in 2006 from 10% to 1% on tankers (of 1,000 GRT or less), and from 35% to 10% on cargo vessels. The authorities are also considering extending import duties exemptions to machinery and materials. Moreover, the EXIM Bank provides import financing with competitive-interest-rate loans (for a total of B 18,000 million) to Thai ship owners for the acquisition of new or second-hand vessels engaging in international trade.

150. Under the Thai vessels Act, the Government applies minimum national crew requirements in order to provide work opportunities for Thai nationals. In the case of Thai vessels engaged in international shipping, the required proportion of Thai seafarers was reduced from 75% to 50% during the review period. With regard to domestic shipping, all crew must be Thai nationals.

151. The Multimodal Transport Act (2005) requires all multimodal transport operators (MTOs) to register in Thailand in order to provide services. There are three types of registration: (i) a limited company or public limited company incorporated under Thai law with its head office in Thailand; (ii) an MTO registered in a foreign country recognized by Thailand under a treaty or international agreement, who must appoint an agent or set up a branch office in Thailand; and (iii) a foreign MTO who must appoint a Type 1 MTO to be its agent, even if it already has a branch office in Thailand. Alleged lack of clarity in the law on the treatment of foreign shipping firms and severe penalties for non-compliance reportedly caused uncertainty and led international shipping companies to incorporate in Thailand or appoint an agent so as to avoid risks.<sup>132</sup>

152. Thailand is not a party to the United Nations Liner Code of Conduct. The cargo-sharing clauses in the maritime transport agreements between Thailand and the People's Republic of China and between Thailand and Viet Nam were abolished in 1995 and 1999, respectively.

153. The Port Authority of Thailand (PAT), a state enterprise under the supervision of the Ministry of Transport, manages Thailand's five main public ports located in Bangkok and the provinces.<sup>133</sup>

<sup>130</sup> Information provided by the Thai authorities.

<sup>131</sup> Information provided by the Thai authorities. See also Marine Department online information. Viewed at: [http://www.md.go.th/eng\\_page/int\\_aff/APEC%20IAP%20Transport\\_Services\\_Maritime.pdf](http://www.md.go.th/eng_page/int_aff/APEC%20IAP%20Transport_Services_Maritime.pdf) [14 March 2011].

<sup>132</sup> USTR (2010a). See also Ministry of Commerce of China (undated).

<sup>133</sup> These are Bangkok port, Laem Chabang port, Chiang Saen port, Chiang Khong port and Ranong port. In addition, the Map Ta Put industrial port is managed by the Estate Authority of Thailand. The ports of

Under the Port Authority of Thailand Act B.E. 2494 (1951), as amended by the Act B.E. 2543 (2000), the PAT is empowered to manage and monitor the operation of the ports under its control. It is also responsible for promoting port development, maintaining cooperation and coordination with relevant government agencies and international ports, and providing a full range of port services, including dredging and maintenance of the bar channels and basins, supervising stevedoring, handling, moving, storage, and delivery of cargoes to consignees.

154. Ships of all nationalities calling at Thailand's ports receive MFN treatment and port access on a first-come first-served basis. A 0% VAT rate applies to domestic and foreign shipping companies providing maritime transport services to and from Thailand. Generally, port fees on export cargo are collected at lower rates than those applied on import cargo. The authorities have indicated that the reason for this is that export cargo usually involves less use of port facilities and services.

155. For years, the Thai's Government stated policy has been to promote private domestic and foreign participation in port services, either by operating existing facilities or by investing in and operating new or additional port facilities.<sup>134</sup> Under the Foreign Business Act B.E. 2542, a port operator must be either a Thai national or a juridical person incorporated under the Thai law with at least 51% Thai equity. Private port operators are also required to obtain the relevant permits from the Marine Department for the construction, safety, and operation of the port, according to the Navigation in Thai Waters Act and other regulations. The authorities have indicated that 121 operators have been authorized to operate ports or terminals that can accommodate vessels of 500 GRT or more. The privatization of the PAT itself has also been under consideration for some years, but there has been no breakthrough during the period under review.

156. In line with the Government's privatization policy, in 2004 a 30-year concession was awarded to a private consortium to operate container terminals at Thailand's main deep-sea port in Laem Chabang (some 110 km south-east of Bangkok). The Government is keen to promote the use of Laem Chabang port in order to reduce congestion at Bangkok port. In 2010, 5.06 million TEUs<sup>135</sup> went through Laem Chabang (a 10% increase from 2009), while traffic at Bangkok port was 1.45 million TEUs. For 2011, the Laem Chabang port is expected to handle 5.5 million TEUs and the Bangkok port 1.34 TEUs.<sup>136</sup> The PAT authorities have recently contracted out a study on the development of phase III of the Laem Chabang port, with the aim of raising its capacity to 18 million TEUs and transforming it into the main gateway port of the Greater Mekong Sub-Region. The PAT is also preparing the launch of the single rail transfer operator (SRTO) at Laem Chabang port. The SRTO will enable the transport of containers by rail between Laem Chabang and Lad Krabang in Bangkok, with a single operator providing handling and lifting services. A rail transfer terminal with a capacity of 2 million TEUs per year is also being constructed at Laem Chabang. The aim is to have an efficient railway connection to replace trucking services and decrease logistic costs.

157. Investment in certain port-related facilities and services, such as loading and unloading facilities for sea transport, container yards or inland container depots, and tug boat services are classified as priority activities and may receive tax and other benefits under the BOI scheme.

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Trang, Satun and Surat, which were built by the Marine Department, have been transferred to the Department of Treasury to conduct a bidding process for the selection of a port management operator.

<sup>134</sup> APEC (2010); and Marine Department online information. Viewed at: [http://www.md.go.th/eng\\_page/int\\_aff/APEC%20IAP%20Transport\\_Services\\_Maritime.pdf](http://www.md.go.th/eng_page/int_aff/APEC%20IAP%20Transport_Services_Maritime.pdf) [14 March 2011].

<sup>135</sup> TEU means twenty-foot equivalent unit.

<sup>136</sup> Information provided by the Thai authorities.

(c) Road and rail transport

158. Thailand's highway network is fairly extensive, with 51,750 km (including 450 km of motorways and expressways), most of which are asphalt roads. There are also some 150,000 km of rural roads.<sup>137</sup> The Department of Highways of the Ministry of Transport is responsible for promoting the development of the national highways network, as well as carrying out construction and maintenance. In order to reduce logistic costs, which have been estimated at 20% of GDP, and increase Thailand's regional competitiveness, in 2007 the Government programmed large-scale investments in the country's road network, including constructing intercity motorways, widening highways to four lanes, and strengthening road connections with neighbouring countries. Nevertheless, the process of upgrading the national highway network has been slow due to budgetary constraints and lack of private sector interest; it has been suggested that an improved policy environment would be needed to enhance private investment in road infrastructure.<sup>138</sup>

159. The main laws regulating road transport are the Land Transport Act B.E. 2522 (1979), the Motor Vehicle Act B.E. 2522 (1979), and the Foreign Business Act B.E. 2542 (1999). Thailand is also a signatory of bilateral road transport agreements concerning perishable goods in transit with Laos and Malaysia, and of regional agreements, such as the ASEAN Framework Agreement on the Facilitation of Goods in Transit (1998) and the ASEAN Framework Agreement for the Facilitation of Inter-State Transport (2008).

160. Under the Land Transport Act B.E. 2522 and the Ministerial Regulation on International Transport Operation B.E. 2549 (2006), an applicant for a licence to provide international road transport services must have a domestic transport licence, and be a registered ordinary partnership, a limited company, or a public limited company. If the company headquarters of the applicant is located outside Thailand, the applicant must have a branch office or a representative office registered under Thai law and located in Thailand. Foreign operators wishing to apply for a licence to provide international transport services must also comply with the Foreign Business Act. Capacity and routes available for Thai and foreign operators are determined on the basis of international agreements.<sup>139</sup>

161. An applicant for a licence to provide domestic road transport services must either be a Thai national or a company incorporated under Thai law with its head office located in Thailand. Moreover, not less than half of the directors of the company must be Thai nationals and at least 51% of the capital must belong to Thai nationals in the cases of a limited company and 50% for a public company. The Government may grant permission for specific foreign investment in road transport prior authorization by the Minister of Commerce with the approval of the Cabinet.

162. Thailand is actively engaged in the Greater Mekong Subregion (GMS) Cooperation Programme, which aims at improving physical infrastructure and transport connectivity among the countries of the subregion.<sup>140</sup> The GMS Plan of Action (2008-12) includes projects to upgrade subregional economic corridors and the GMS Highway Expansion Project. The Government of Thailand plans to improve the sections of the East-West Economic Corridor and the Southern Economic Corridor that lie within Thailand.

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<sup>137</sup> ADB online information, "Thailand Country Report on the 13<sup>th</sup> Meeting of the GMS Subregional Transport Forum", 27 October 2009. Viewed at: <http://www.adb.org/Documents/Events/Mekong/Proceedings/STF13-Appendix3.5.pdf>.

<sup>138</sup> ADB (2010b).

<sup>139</sup> APEC (2010), "Transport Services: Road".

<sup>140</sup> Cambodia, the People's Republic of China, Lao People's Democratic Republic (Lao PDR), Myanmar, Thailand, and Viet Nam.

163. Thailand's railway network comprises 4,042 km of lines, stretching from Bangkok to the north, northeast, east, and south of the country. The State Railway of Thailand (SRT), a state enterprise, is in charge of the operation, development, and maintenance of the national railways. Within the framework of its 30-year Master Plan (2002-31), the SRT has completed a track-upgrading programme on 1,539 km, increasing speed and axle loads. Another 586 are to be upgraded in the next phase. There are plans to expand the length of double tracking, developing high-speed train lines, and constructing new lines, some of which could link to the Lao PDR and Viet Nam. The Government also intends to implement measures aimed at encouraging a shift from road to rail.<sup>141</sup>

164. Interconnecting GMS countries' railway networks is another objective of the GMS Cooperation Programme. A strategic framework for connecting and integrating the national railway systems was endorsed by the GMS Ministerial Conference in August 2010. The GMS countries have also concluded a Cross-border Transport Agreement (CBTA) to streamline regulations and reduce non-physical barriers to the cross-border transport of goods and people within the GMS.

#### (v) Tourism

165. Tourism continues to play a crucial role in Thailand's socio-economic development, accounting for about 7% of GDP.<sup>142</sup> It is a major source of foreign exchange, investment, job creation, wages, and government revenue. Despite serious setbacks due to the global economic crisis (2008-09) and internal political tensions (November 2008 and April-May 2010), the hotels and restaurants subsector grew at an average annual rate of 3.5% between 2007 and 2010, and contributed 4.7% to GDP in 2010 (4.9% in 2007). In terms of job creation, hotels and restaurants accounted for 6.9% of total employment in 2009 (Table I.2). Travel and passenger transportation services represented 68.4% of Thailand's trade services receipts in 2010, slightly above the 67.9% registered in 2007 (Table I.4).

166. International tourist arrivals totalled 15.9 million in 2010 (13.8 million in 2006). By origin, 51.2% of tourists were from East Asia (with Malaysia and China providing most visitors), followed by Europe (27.8%), South Asia (6.2%), the Americas (5.3%), Oceania (4.9%), and the Middle East (3.5%).<sup>143</sup> The hotel room occupancy rate, which had picked up to around 65% in early 2010, fell to 35% in May 2010 as a result of domestic political unrest. Tourist arrivals recovered as of July 2010, and the average room occupancy rate increased to 50% at end 2010.<sup>144</sup>

167. The main laws governing the tourism sector are the Tourism Authority of Thailand Act B.E. 2522 (1979); the Foreign Business Act B.E. 2542 (1999); the Tourism Industry Council of Thailand Act B.E. 2544 (2001); the National Tourism Policy Act B.E. 2551 (2008); the Tourism Business and Guides Act B.E. 2551 (2008); the Hotel Act B.E. 2547 (2004); and other laws and regulations regarding the operation of restaurant, hotels, and other tourism-related services.

168. The Committee for National Tourism Policy, chaired by the Prime Minister, is responsible for formulating tourism policies and plans, including the designation of areas for tourism development. The main objective of the National Tourism Development Plan 2012-2016, approved in February 2011, is to place Thailand among the top five destinations in Asia, by increasing the international competitiveness of its tourism industry, thus generating more income and distributing wealth on a sustainable basis. The Plan seeks to increase tourism income by at least 5% in five years.

<sup>141</sup> Asian Development Bank (2010).

<sup>142</sup> World Bank (2010b).

<sup>143</sup> Department of Tourism online information. Viewed at: <http://www.tourism.go.th/2010/th/statistics/tourism.php> [June 2011].

<sup>144</sup> Information provided by the Thai authorities.

In order to achieve this aim, five strategies have been set out: (i) to develop infrastructure and logistics for domestic and international tourism; (ii) to develop and rehabilitate tourist sites in a sustainable manner; (iii) to develop new tourism products and services; (iv) to improve Thailand's international image as a tourist destination; and (v) to encourage participation of the public sector, the civil society, and local organizations in tourism management.<sup>145</sup>

169. The Ministry of Tourism and Sports (MOTS) is the main agency responsible for the promotion, support, and development of Thailand's tourism industry. The Department of Tourism of the MOTS is in charge of setting standards for tourist attractions, tourism products, and services; issuing permits for tourism business operators and guides; inspecting and controlling tourism businesses; and compiling statistics on the tourism industry. The Thai Tourism Development Fund, created under the National Tourism Policy Act B.E. 2551 (2008) to provide funds for tourism development, capacity building, development of management skills, marketing, and tourism resource conservation, is managed by a committee chaired by the Permanent Secretary of the MOTS. The Tourism Council of Thailand represents the tourism industry and acts as a coordinator between the public and private sectors. Its aims include the promotion of the tourism industry and the standardization of its products and services, the conservation of Thai cultural, historical, and tourist attractions, and the dissemination of tourist information (Tourism Council of Thailand Act B.E. 2544).

170. The Tourism Authority of Thailand (TAT) is responsible for marketing strategies, campaigning, and promotional schemes. TAT has prioritized promoting long-term sustainable tourism, by seeking a balance between economic, social, and environmental goals. In recent years, the TAT has actively promoted Thailand as a high-quality destination, targeting new markets and offering new niche products, such as health and medical tourism, agri-tourism, Thai cookery courses, and international conventions and exhibitions. Health tourism has been particularly successful: Thailand is emerging as a major destination for medical and health care tourism (especially for Middle East countries) due to its well established medical industry, which provides high quality and cost-effective treatment. The country is also becoming better known for its spas and other well-being services. Currently, Thailand holds 38% of the world market share of patients travelling internationally for medical and wellness care, with over 920,000 medical tourists annually.<sup>146</sup>

171. Among the new markets deemed to have strong growth potential for inbound tourism are Indonesia, the Philippines and VietNam, as well as Russia, Eastern Europe, and the Middle East.<sup>147</sup> China, which was Thailand's second tourist source in 2010, after Malaysia, is expected to become the top source of visitor arrivals in the coming years. Thailand is also seeking to become a hub for tourists travelling to other countries in the subregion. Hence, the TAT has signed an agreement with the national tourism boards of Laos, Cambodia, and Myanmar to promote tourism jointly in overseas markets. Implementation of this agreement is currently under the responsibility of the MOTS.

172. The BOI provides tax and non-tax incentives to hotels with more than 100 rooms. However, projects located in zones 1 and 2 are only eligible for non-tax incentives, whereas those located in zone 3 (except 18 least developed provinces) receive only import-duty exemption on machinery. Other tourism-related projects such as convention halls, exhibition centres, dedicated health centres, retirement homes, ocean marina services, amusement parks, cultural centres, aquariums, and tour boat renting services are also eligible for different types of tax and non-tax investment incentives under the

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<sup>145</sup> Foreign Office (2011).

<sup>146</sup> Press release, United Arab Emirates, "Tourism Authority of Thailand to launch inaugural Medical Health and Wellness Road Show", 21 September 2010. Viewed at: <http://www.ameinfo.com/242532.html> [23 March 2011].

<sup>147</sup> Tourist arrivals from the Middle East grew by 23% in 2009-10.



BOI.<sup>148</sup> Incentives apply to domestic and foreign investors. In addition to these incentives, efforts to promote tourism have been backed by Government investment in infrastructure projects such as airports and roads (section (iv) above).

173. Under the Hotel Act B.E. 2547, the operation of a hotel business requires a licence and business registration issued by the district office responsible for the area where the hotel is located. Foreigners wishing to establish a hotel business in Thailand must abide by the Foreign Business Act B.E. 2542 (1999). The limit on foreign equity participation in hotels is set at 49%. However, majority foreign ownership is possible, upon approval under the Foreign Business Act. So far, many international hotel chains have set up operations in Thailand.

174. Under the Tourism Business and Guides Act B.E. 2551 (2008), in order to provide travel agency and tour operator services, a licence must be obtained from the Bureau of Tourism Business and Guide Registration, at the department of Tourism of the MOTS. Companies must be incorporated under Thai law, have no less than 51% Thai capital, and half of the board of directors must be Thai nationals, in order to apply for a tourism business licence.

175. The provision of tourist guide services is reserved for Thai nationals under the Tourism Business and Guides Act B.E. 2551 (2008). The person must be trained and pass the exam conducted by universities providing tourism and tour guide training courses, and register as a tour guide with the Bureau of Tourism Business and Guide Registration at the Department of Tourism. Due to the shortages of guides speaking foreign languages, the MOTS is considering the possibility of allowing foreign language speaking tour leaders to work as interpreters in Thai territory in the company of local guides. According to the authorities, there is no discrimination between domestic and foreign service suppliers as long as foreigners wishing to undertake tourism business in Thailand obtain a licence from the Bureau of Tourism Business and Guide Registration.<sup>149</sup>

176. Under the Immigration Control Act 1979 and Announcements of the Interior Ministry (dated 1 October 2002, 20 December 2002, 18 October 2004 and 6 May 2005), nationals from 42 designated countries or territories may travel to Thailand for tourism purposes without a visa and are allowed to stay for a maximum of 30 days on each visit.<sup>150</sup>

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<sup>148</sup> BOI online information. Viewed at: [http://www.boi.go.th/english/about/eligible\\_activities.asp](http://www.boi.go.th/english/about/eligible_activities.asp) [23 March 2011].

<sup>149</sup> APEC (2010), "Tourism and Travel Related Services".

<sup>150</sup> For the list of countries see MFA online information. Viewed at: <http://www.mfa.go.th>.



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