THAILAND

TRADE SUMMARY

The U.S. goods trade deficit with Thailand was $14.3 billion in 2007, the same as in 2006. U.S. goods exports in 2007 were $8.4 billion, up 3.7 percent from the previous year. Corresponding U.S. imports from Thailand were $22.8 billion, up 1.3 percent. Thailand is currently the 27th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Thailand were $1.6 billion in 2006 (latest data available), and U.S. imports were $1.1 billion. Sales of services in Thailand by majority U.S.-owned affiliates were $3.3 billion in 2005 (latest data available), while sales of services in the United States by majority Thailand-owned firms were $3 million.

The stock of U.S. foreign direct investment (FDI) in Thailand was $8.2 billion in 2006 (latest data available), up from $6.6 billion in 2005. U.S. FDI in Thailand is concentrated largely in the manufacturing, finance, and banking sectors.

FREE TRADE AGREEMENT (FTA) NEGOTIATIONS

The U.S. Government began FTA negotiations with Thailand in June 2004, and conducted seven rounds of discussions through 2006. The negotiations were suspended indefinitely following a military-led coup against the Thaksin government in September 2006. The negotiations remained suspended throughout 2007. The United States will continue to monitor and evaluate developments in Thailand following the inauguration of a new government in February 2008 and will determine appropriate next steps for the economic relationship.

IMPORT POLICIES

Thailand's high tariffs remain an impediment to market access in many sectors. The country's average applied MFN tariff rate is 11.4 percent with some tariffs as high as 80 percent. The highest tariff rates apply to imports competing with locally produced goods, including agricultural products, automobiles and automotive parts, motorcycles, alcoholic beverages, fabrics, paper and paperboard products, and restaurant equipment.

Taxation

Thailand's tax administration is complex and nontransparent. Excise taxes are high on some items, such as unleaded gasoline, beer, wine, and distilled spirits. When import duties, excise taxes, and other surcharges are calculated, the cumulative tax burden on most imported spirits is approximately 400 percent.

Agriculture and Food Products

High duties on agriculture and food products in addition to arbitrary management of import licenses and sanitary and phytosanitary (SPS) measures (see section below on Standards, Testing, Labeling, and Certification) remain the primary impediments to U.S. exports of high value fresh and processed foods. U.S. agricultural exports to Thailand totaled $870 million in 2007, while U.S. fish and forestry products exports totaled $98 million. According to U.S. industry estimates, potential exports to Thailand could reach as much as $1.5 billion annually if Thailand’s tariffs and other trade-distorting measures were substantially reduced or eliminated.

Duties on imported consumer-ready food products typically range between 30 percent and 50 percent – the highest among Association of Southeast Asian Nations (ASEAN) members - with some as high as 90 percent. Tariffs on meats, fresh fruits (including citrus fruit and table grapes) and vegetables, fresh cheese, and pulses (*e.g*., dry peas, lentils, and chickpeas) are similarly high, even for products for which there is little domestic production. Frozen french fries, for example, are not produced in Thailand, yet face a 30 percent tariff. U.S. exports of wine face a total tax of nearly 400 percent when import duties, excise taxes, and other surcharges are calculated.

With the exception of wine and spirits, Thailand no longer applies specific duties on most agricultural and food products, and *ad valorem* rates have been reduced in accordance with Thailand's WTO commitments. Nevertheless, import duties on some agricultural and processed food goods have an average tariff rate of 25.4 percent. Moreover, bound duties on many high value fresh and processed food products will remain high, from 30 percent to 40 percent, even after Thailand implements reductions required under its WTO commitments. Tariffs on apples are at 10 percent, while duties on pears and cherries remain as high as 30 percent to 40 percent. U.S. fruit growers estimate lost sales of up to $15 million annually from the combined effect of Thailand's high tariffs.

Thailand’s overall import policy is directed at protecting domestic producers, and the Thai government has implemented nontransparent price controls on some products and maintains significant quantitative restrictions that impede market access. The United States is concerned that access to tariff-rate quotas for agricultural products is often managed in an arbitrary and nontransparent manner. Although Thailand has been relatively open to imports of feed ingredients, including corn, soybeans, and soymeal, in recent years U.S. industry reports that the Thai government has maintained excessively burdensome requirements associated with the issuance of import permits for feed ingredients. In addition, Thailand requires that importers purchase a certain amount of domestically produced product before being granted licenses for imported products.

The Thai government also requires import license fees for meat products of approximately $142 per ton on beef and pork, $286 per ton for poultry, and $142 per ton on offal. U.S. industry has expressed concerns that these fees appear to be higher than necessary to cover the costs of import administration. SPS standards for certain agricultural products also appear to be applied in a nontransparent manner, often without prior notification. Although Thailand agrees in principle to a system-based audit, the Thai government still maintains the requirement of inspecting individual slaughterhouse or farm facilities that export animals and animal products into Thailand. Enforcement of this requirement occurs on a case-by-case basis.

Automotive Sector

Thailand’s import duties and taxes on vehicles are among the highest in ASEAN. In response to the 1997 financial crisis, the Thai government raised tariffs on passenger cars and sport utility vehicles to 80 percent, up from 42 percent and 68 percent, respectively. In November 2007, Thailand implemented a trade agreement with Japan that will phase in over 4 years a reduction of tariffs to 60 percent on Japanese vehicles with engines greater than 3000 cc.

Excise taxes in Thailand are based on various vehicle characteristics, such as engine size, weight, and wheelbase. In July 2004 Thailand revised its excise tax structure, but it remains complex and heavily favors domestically manufactured vehicles. Taxes on passenger vehicles range from 30 percent to 50 percent, while pickup trucks are taxed at a rate of 3 percent. As a result, pickups account for more than 50 percent of total vehicle sales in Thailand.

Textiles

Thailand's tariff rates for U.S. textile exports are high, ranging from 20 percent to 30 percent for most fabrics and 30 percent for most clothing and other made-up textile products. In addition, Thailand applies specific unit duties on more than one-third of all textile tariff lines, which make effective rates even higher. Furthermore, on the Asia-Pacific Economic Cooperation forum website, Thailand's applied tariffs for certain clothing are incorrectly listed as 60 percent. Thailand has not yet addressed the United States' concern that these higher published tariffs are misleading and discourage potential U.S. exporters.

Quantitative Restrictions and Import Licensing

Import licenses are required for at least 26 categories of items, including many raw materials, petroleum, industrial materials, textiles, pharmaceuticals, certain consumer products, and agricultural items. Imports of used motorcycles and parts and gaming machines are prohibited. Imports of certain minerals, arms and ammunition, and art objects require special permits from the relevant ministries.

Customs Barriers

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

In addition, the United States has concerns over the transparency of Thailand's customs regulatory process. To address these, U.S. industry is requesting that Thai Customs publish proposals for changes in customs laws, regulations, and notifications and allow time for comments on these proposals. They have also requested that Thai customs impose a time limit on the issuance of rulings, respond to appeals within an established time period, provide a full explanation of its decisions regarding appeals, establish a reasonable time period at the beginning of an audit or an investigation for their completion, and provide a written report of the findings of the audit or investigation.

In addition, as is the case with some other Thai agencies, Thai customs has an incentive program rewarding officials for identifying violators based on a percentage of the recovered revenues. This practice encourages revenue maximization rather than compliance with legal requirements. Corruption in the Customs Department reportedly remains a serious problem.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Thailand Industrial Standards Institute (TISI) is the national standards organization under the Ministry of Industry. TISI is empowered to provide product certifications according to established Thai standards and is an accredited body for International Standards Organization (ISO) and other certifications in Thailand. The Thai government requires the certification of 60 products in 10 sectors, including agriculture, construction materials, consumer goods, electrical appliances and accessories, polyvinyl chloride pipe, medical equipment, liquefied natural gas containers, surface coatings, and vehicles. In the case of medical equipment, Thailand requires product approval in the country of origin before it can be registered.

Thailand prohibits motorcycle traffic on its expressways, including large-engine motorcycles that are sufficiently powerful and intended for expressways and do not pose the same safety risk to other travelers as do underpowered motorcycles. Thailand's motorcycle emissions regulations are an amalgamation of standards and tests used elsewhere in the world, resulting in standards that reportedly are among the most stringent in the world. Enforcement of these standards has been nontransparent and even producers utilizing advanced low-emission technology have difficulty meeting these standards.

Thailand's Food and Drug Administration (TFDA) imposes standards, testing, and labeling requirements, and requires certification permits for the importation of all food and pharmaceutical products, as well as certain medical devices. Many U.S. companies have raised concerns that the cost, duration, and complexity of the permitting processes are overly burdensome and are concerned about the periodic demands for disclosure of proprietary information. TFDA has streamlined its procedures somewhat, but U.S. companies still report delays of up to a year. All processed foods must be accompanied by a detailed list of ingredients and a manufacturing process description, disclosure of which could potentially jeopardize an applicant's trade secrets.

In October 2006, Thailand announced a proposed snack food labeling requirement that would have required "traffic light" labeling logos on five categories of snack foods: potato chips, corn chips, extruded snack foods, biscuits/crackers, and assorted wafers. As a result of efforts by the United States, as well as concerns expressed by other countries, the Ministry of Public Health withdrew the proposed requirement on August 30, 2007. This proposal, however, was replaced with a requirement that snack food be labeled with a message stating "Should have less, and exercise for a better health." This new labeling requirement has been in effect since December 2007. The U.S. Government and others continue to raise concerns with the proposal.

GOVERNMENT PROCUREMENT

Thailand is not a signatory to the WTO Agreement on Government Procurement. A specific set of rules, commonly referred to as the Prime Minister's Procurement Regulations, governs public sector procurement for ministries and state-owned enterprises. While these regulations require that nondiscriminatory treatment and open competition be accorded to all potential bidders, state enterprises and ministries typically have their own individual procurement policies and practices. Preferential treatment is provided to domestic suppliers (including subsidiaries of U.S. firms registered as Thai companies) through an automatic 7 percent price advantage over foreign bidders in initial bid round evaluations.

A 2001 "Buy Thai" directive from the Prime Minister's office raised additional concerns about Thai government procurement policies. While Thailand denies that the "Buy Thai" policy discriminates against foreign products, specific language used in government instructions on some procurement tenders explicitly excludes foreign-made, non-Thai products from the bidding process.

Government agencies and state enterprises reserve the right to accept or reject any or all bids at any time and may also modify the technical requirements during the bidding process. The latter provision allows considerable leeway to government agencies and state-owned enterprises in managing tenders, while denying bidders any recourse to challenge procedures. Allegations that changes are made for special considerations frequently surface, including charges of bias on major procurements. Despite an official commitment to transparency in government procurement, U.S. companies and Thai media have reported allegations of irregularities. In addition, some U.S. companies have expressed concerns regarding a Thai government decision to no longer include arbitration clauses in concessions and government contracts.

EXPORT SUBSIDIES

Thailand maintains programs to support trade in certain manufactured products and processed agricultural products, which may constitute export subsidies. These include various tax benefits, import duty reductions, credit at below-market rates on some government-to-government sales of Thai rice (established on a case-by-case basis), and preferential financing for exporters. The Thai government terminated its packing credit programs and export contingent subsidies provided by the Board of Investment and the Industrial Estate Authority of Thailand.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Widespread counterfeiting and piracy continue to plague IPR owners in Thailand. The lack of sustained and coordinated enforcement, and, in particular, the lack of prosecution, remains a substantial problem. U.S. copyright industries reported an estimated annual trade loss of more than $308.5 million in 2006 from IPR infringement in Thailand. An increasing volume of pirated and counterfeited products manufactured in Thailand is exported. In 2007, Thailand was elevated from the Special 301 Watch List, where it had been since 1994, to the Special 301 Priority Watch List, reflecting an overall deterioration in the protection and enforcement of IPR. The United States will continue to raise its serious concerns about the deterioration of IPR protection with the Thai government.

Patents, Data, Trade Secrets, and Plant Variety Protection

Thailand's patent regime generally provides adequate protection for most innovations. However, U.S. industry has expressed concerns that the legislation that Thailand enacted to implement its data protection obligations under the TRIPS Agreement does not provide adequate protection of confidential information from disclosure. U.S. industry is also concerned that Thailand does not have a formal patent linkage system to prevent the regulatory approval of copies of pharmaceuticals that are still patented. There has been a recent increase in the number of such copies receiving Thai FDA approval while the original product is still under patent protection.

Thailand's patent office lacks sufficient resources to keep up with the volume of applications, and patent examinations can take more than 5 years, and 8 years to 10 years or more for pharmaceutical patents. While patent filings have increased in recent years, the number of patents issued continues to decrease. The Department of Intellectual Property (DIP) is reportedly subject to a hiring freeze that prevents the employment of more than the current 16 examiners. In January 2008, the National Legislative Assembly approved Thailand's plan to join the Paris Convention and the Patent Cooperation Treaty, but the Thai government is still preparing for accession.

Thailand’s Ministry of Public Health has issued compulsory licenses on certain patented drugs. The United States acknowledges Thailand’s ability to issue compulsory licenses to address public health emergencies, subject to Thailand’s domestic and international legal obligations as a WTO Member. At the same time, the United States has expressed concern regarding a lack of transparency in the process and about the potentially expansive use of compulsory licenses. The United States has urged Thailand to address judiciously the complexities of the relationship between health and intellectual property policy and to do so in ways that recognize the role of intellectual property in the development of new drugs.

On January 30, 2007, the Ministry of Public Health issued implementing regulations for the 2002 Trade Secrets Act. The regulations restrict the government from releasing protected data for a period of 5 years, but do not appear to provide data exclusivity that would prevent unfair commercial use.

Registration of new plant varieties under the Plant Variety Protection Act began in April 2006. Private sector representatives have expressed concern about the implementation and enforcement of the Act, noting the wide availability of counterfeit seeds and other products in Thailand. The United States has urged Thailand to strengthen the 1999 Act to make it consistent with the 1991 International Convention for the Protection of New Varieties of Plants and to accede to this convention.

Copyright

Thailand's copyright law, which was intended to bring Thailand into conformity with international standards under the TRIPS Agreement and the Berne Convention, became effective in March 1995. Thailand enacted optical disc legislation, but it lacks many key elements. U.S. officials continue to press Thailand to address these deficiencies.

The Thai government is in the process of amending the Copyright Law in several ways. A current set of pending amendments deals with collecting societies and creates fair use exceptions for disabled users. Additional amendments proposed but not enacted in 2007 would implement certain provisions of two 1996 World Intellectual Property Organization (WIPO) treaties - the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Thailand has stated that it does not intend to accede to these treaties.

Trademarks and Geographical Indications

The Thai government amended its trademark law in 1992, increasing penalties for infringement and extending protection to service, certification, and collective marks. The Thai government also streamlined trademark application procedures, addressing issues raised by the U.S. Government. Additional amendments designed to bring Thailand's trademark law into compliance with the TRIPS Agreement were enacted in June 2000, broadening the legal definition of a mark. Thailand has been considering joining the Madrid Protocol, but has not yet taken steps to do so.

The Geographical Indications Act was passed by the Thai Parliament in September 2003 and went into effect in April 2004. This legislation allows rights holders to seek protection for indications that identify a good as originating in the territory of a member, or a region, or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographic origin. It is not clear how this law will be applied to U.S. geographical indications (GIs), because it requires explicit evidence that the GI is protected under the law of the foreign country in order to receive protection in Thailand. In addition, the law raises concerns because existence of a similar previously registered trademark does not constitute grounds for refusal of a GI registration in Thailand.

Enforcement

Thailand’s IPR enforcement efforts have been inconsistent. The frequency of raids compromised by leaks from police sources remain a concern. Rights holders complain that seized materials disappear and are used to reward enforcement officials and even the press. Pirates, including those associated with transnational crime syndicates, have responded to intensified levels of enforcement with intimidation against rights holders’ representatives and enforcement authorities.

The Ministry of Commerce has the lead in promoting interagency cooperation on IPR enforcement issues. In August 2006, the Ministry concluded a memorandum of understanding (MOU) between enforcement authorities, retail establishments, and rights holders to better coordinate operations. While the MOU is an important step, the United States is not aware of any instances in which retail landlords have been held liable for overt sales of counterfeit and pirate goods on their premises.

The Department of Special Investigations (DSI) was established in 2004 and assumed an IPR enforcement role, focusing on significant infringing production, warehousing, and trafficking operations, as well as those activities associated with organized crime. In January 2006, the threshold for cases to be referred to DSI was lowered to 500,000 baht ($13,400), promising stronger investigative action into more cases. However, DSI has been embroiled in internal political issues for the past year and has not taken effective action against IPR crimes in this period.

The Thai government established a specialized intellectual property court in 1997 that has improved judicial procedures and imposed tougher penalties. Criminal cases generally are disposed of within 6 months to 12 months from the time of a raid to the rendering of a conviction. However, courts frequently hand down light sentences that are not considered a deterrent to criminal behavior. Of nearly 2,000 cases brought before the IP court in 2007, only 17 involved the imposition of prison sentences. Over the past year, rights holders and even the Royal Thai Police have complained that the IP court is increasingly unwilling to issue search warrants and civil search orders. For many rights holders, this is the primary obstacle to enforcement.

U.S. copyright industries continue to express serious concerns over the rapid and unchecked growth of optical media piracy in Thailand. In August 2005, the Optical Disc Manufacturing Control Act went into force. This Act was designed to enhance the authority and capabilities of the Thai government to act against operators of illicit optical disc factories and to control the production materials and machines of legal producers. U.S. copyright industries are concerned that the Act is deficient in several respects, including that penalties are not high enough to deter piracy, and that the Thai government's enforcement and oversight powers are not sufficiently strengthened. Although the Thai government has conducted enforcement activities under the Optical Disc Act, its efforts do not appear to have produced any meaningful results.

Cable piracy continues to be a major problem throughout Thailand, as pirate providers expand their presence in the provinces. The Thai government passed new broadcasting legislation in December 2007. The U.S. Government will monitor the impact of this new law on the cable piracy issue.

Book publishers have raised concerns that the existing copyright law is being interpreted in a manner that allows extensive book piracy to go unchecked, especially illegal photocopying. According to U.S. industry, annual losses are estimated at approximately $30 million. The Thai government has initiated a public awareness campaign to address this issue, but so far the impact has been limited.

Trademark infringement remains a serious problem. U.S. companies with an established presence in Thailand and a record of sustained cooperation with Thai law enforcement officials have had some success in defending trademarks, but the process remains time consuming and costly. Penalties for trademark violations are insufficiently high to have a deterrent effect.

SERVICES BARRIERS

Telecommunications Services

Thailand has made substantial progress toward reforming its telecommunications regulatory regime, but several controversial issues remain unresolved and significant obstacles to foreign investment in this sector remain in place. While Thailand is still working to liberalize its basic telecommunications services, new technologies such as mobile telephony and broadband Internet services are beginning to transform the telecommunications sector. However, insufficient regulatory structure is in place to allow the technologies to develop.

The 1997 Constitution delegated frequency allocation to the National Telecommunications Commission (NTC) and a National Broadcast Commission (NBC). The NTC began operations in November 2004, but the NBC was never created. The new constitution (enacted on August 24, 2007) mandates that there will now be one independent state agency, provisionally named the National Telecommunications and Broadcasting Commission (NTBC), to allocate the frequencies for radio and television, and telecommunications. The timeframe to set up the NTBC and how frequencies will be allocated remain unclear. Other unresolved issues in the telecommunications sector, include the phasing out of the "concession" system, the privatization of TOT and CAT Telecom, and the revision of its GATS schedule to reflect its 1998 commitments, including with respect to improvements in foreign equity participation and regulatory oversight.

Financial Services

After the 1997 to 1998 financial crisis, the Thai government liberalized foreign firms' access to the financial sector on a case-by-case basis. However, significant restrictions remain on foreign participation in the sector. For example while foreigners have been allowed to engage in brokerage services since 1997, foreign firms are allowed to own shares greater than 49 percent in Thai securities firms only on a case-by-case basis.

Under the 1962 Commercial Banking Act, foreigners were only allowed to hold a maximum of 25 percent of the equity in Thai banks, but in practice Thai regulators have waived the foreign shareholding ceiling with respect to most local banks due to their need for funds. The new Financial Institutions Act will increase the statutory percentage to 49 percent, effective August 2008. The Financial Sector Master Plan (FSMP I), which took effect in early 2004 and was completed in the first quarter of 2007, called for the consolidation of financial institutions and encouraged mergers under the single presence rule.

Foreign banks currently operating in Thailand are disadvantaged in their ability to compete. Most notably, they are limited to one branch and are not permitted to operate off-site ATM machines, which are considered as branches. Foreign banks must maintain minimum capital funds of 125 million baht ($3.1 million) invested in government, state-enterprise securities, or deposited directly with the Bank of Thailand. Expatriate management personnel are limited to six professionals in full branches although exceptions are often granted.

Professional Services

Foreigners cannot be licensed as Certified Public Accountants and, therefore, cannot practice accounting in Thailand. Foreign accountants may only serve as business consultants.

Transport Services and Communication Services, including Express Delivery Services

The Multimodal Transport Act passed in July 2005 introduced uncertainty with respect to the treatment of operations and foreign shipping companies. Political difficulties throughout 2006 and 2007 delayed approval of implementing regulations and, therefore, the full impact of the law remains unclear. While the text of the law itself appears to require foreign shipping companies performing multimodal services in Thailand to either incorporate in Thailand or appoint a Thai agent (as opposed to operating out of their branch offices in Thailand as they have done to date), the draft ministerial regulations implementing the law provide that the law shall not apply to foreign shipping companies transporting goods under bills of lading governed by international convention. Given the lack of clarity and the severe penalties for noncompliance (including a retroactive fine of 50,000 baht per contract), international shipping firms have sought to mitigate their risk by either incorporating in Thailand, appointing an agent, or passing the attendant costs on to customers.

Thailand's Postal Act (1934) gives the government a monopoly on handling letters and postcards, loosely defined to include nearly any kind of document. Private express companies must pay postal "fines" and penalties for delivery of documents in Thailand that amount to an average of 37 baht per item and in the aggregate amount to several hundred thousand dollars per year.

The 49 percent limit on foreign ownership in land transport (trucking) is hampering investment in express delivery services. Express delivery firms prefer to control items throughout the supply of the service, including both air and ground based operations, in order to speed the movement of goods.

Healthcare Services

Thai government policy is highly restrictive in the healthcare services sector (*e.g.*, hospital, dental, physician services), particularly regarding the lack of transparency relating to foreign ownership and management of hospitals and treatment facilities. Thailand has offered no medical services commitments in the current GATS negotiations.

Retail Services

The National Legislative Assembly considered, but did not pass, a draft retail act intended to regulate retail business. In 2006, the Thai government requested major foreign and domestic retailers to voluntarily freeze their expansion plans while regulations were drawn up to protect smaller retailers. In October 2006, the Thai government issued guidelines under the Trade Competition Act (1999) to prevent retailers from engaging in "unfair practices" such as: pricing goods lower than costs; requesting discounts from suppliers; charging high introduction fees for new products; and returning products to the supplier without valid reasons.

Advertising

Current Thai law prohibits all advertising on pay television. In late 2007 the National Legislative Assembly passed the Alcohol Control Act, which limits advertising for alcohol products in the media. The Ministry of Public Health will detail the restrictions at a later date. There are no regulations on foreign participation in the advertising sector.

INVESTMENT BARRIERS

The Foreign Business Act (FBA) lays out the overall framework governing foreign investment and employment in Thailand. Although the FBA prohibits majority foreign ownership of investment in most sectors, Thailand makes an exception for U.S. investors pursuant to the Treaty of Amity and Economic Relations (AER). Under the AER, Thailand may discriminate against U.S. investors only in the following sectors: communications, transportation, fiduciary functions, banking involving depository functions, the exploitation of land or other natural resources, and domestic trade in indigenous agricultural products. Moreover, Thailand's obligation to accord national treatment to U.S. investors in all other sectors does not extend to "the practice of professions, or callings reserved for [Thai] nationals."

The FBA's prohibitions on foreign investment generally do not affect projects established by Board of Investment promotion privileges or export businesses authorized under the Industrial Estate Authority of Thailand law.

In 2007, the National Legislative Assembly considered amendments to the Foreign Business Act. The draft amendments proposed to alter the definition of a foreign enterprise. Under current law, an enterprise's status as foreign or domestic is determined based on share ownership. The FBA amendments would have taken account of voting rights and management control, such that an enterprise could be considered "foreign" even if a majority of shares were owned by Thai nationals. Although most U.S. investments are protected under the AER or have obtained investment privileges through the Board of

Investment, the United States has expressed serious concerns to the Thai government about the restrictions that the proposed FBA amendments would impose on certain investments in Thailand. This includes the implications that these amendments would have for Thailand's international legal obligations and for the investment environment in Thailand. The 2007 legislative session ended without action on the proposed amendments.

ELECTRONIC COMMERCE

Thailand lacks a complete legal framework to support electronic commerce, and the business community has been unable to fully take advantage of electronic commerce opportunities. In January 2007 a Royal Decree on Electronic Transactions in the Public Sector came into effect to provide proper policy and standards for electronic transactions in the public sector. In July 2007, the Act on Computer-related Crime was enacted to criminalize offenses against computer systems and data. Awaiting cabinet approval are three royal decrees on security measures for reliable electronic transactions, regulations for e-payment service providers, and regulations for a certification authority. A draft law on data protection has been under review for over a year and another to amend the Electronic Transaction Act to fulfill the legal status of electronic documents is still awaiting approval.

OTHER BARRIERS

Several government firms are protected from foreign competition in Thailand. In the pharmaceutical sector, the Government Pharmaceutical Organization (GPO) is not subject to requirements faced by the private sector on registration. In addition, it is exempt from complying with the requirements of the safety monitoring period (SMP) when producing and marketing generic formulations of drugs marketed in foreign countries. Other manufacturers are subject to a mandatory 2 years to 4 year SMP for all new chemical entities registered and approved for marketing in Thailand. During the SMP, only doctors in hospitals and clinics can prescribe the product and the product may not be included on the National List of Essential Drugs. This and other Thai government requirements limiting government hospitals' procurement and dispensing of drugs not on the national list of essential drugs significantly constrain the availability of many imported products.

The Thai government retains authority to set *de facto* price ceilings for 33 goods and two services, including staple agricultural outputs, liquefied petroleum gas, medicines, sound recordings, and student uniforms. Under the 1999 "Act Relating to Price of Merchandise and Service" a government committee headed by the Minister of Commerce has the authority to "Prescribe the purchase price or distribution price of merchandise or service…", "prescribe maximum profit per unit…" and set the terms and conditions – including maximum permissible volumes – of any goods and service in the Kingdom. The law was amended in 1999 with the advent of a competition law and was meant to be phased out. However, with several critical aspects of competition law still undefined, the old law continues in place with no termination under consideration by the Thai government. Price control review mechanisms are nontransparent. Price control determinations are sometimes based on outdated assumptions, including with respect to exchange rates, and go for long periods without review, even upon repeated petition for review by affected parties. Only sugar currently is subject to a retail price ceiling. In practice, the Thai government also uses its control of major suppliers of products and services under state monopoly, such as the petroleum, aviation, and telecommunications sectors, to influence prices in the local market.

The Thai government has made some efforts to counter corruption. The new Thai Constitution of 2007 contains provisions to combat corruption, including enhancement of the status and powers of the Office of the Counter Corruption Commission (OCCC), which is independent from other branches of government. Persons holding high political office and members of their immediate families are required to disclose their assets and liabilities before assuming and upon leaving office. Moreover, a law regulating the bidding process for government contracts both clarifies actionable anticorruption offenses and increases penalties for violations. Nonetheless, counter-corruption mechanisms continue to be employed unevenly. The lack of transparency in administrative procedures also fosters corruption in Thailand