

**Trade Policy Review Body**  
**12 and 14 November 2003**

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**TRADE POLICY REVIEW**

**THAILAND**

Minutes of Meeting

Addendum

*Chairperson: H.E. Mrs. Mary Whelan (Ireland)*

This document contains the advance written questions, and replies provided by Thailand.<sup>1</sup>

**Organe d'examen des politiques commerciales**  
**12 et 14 novembre 2003**

**EXAMEN DES POLITIQUES COMMERCIALES**

**THAÏLANDE**

Compte rendu de la réunion

Addendum

*Présidente: S.E. Mme Mary Whelan (Irlande)*

Le présent document contient les questions écrites communiquées à l'avance et les réponses fournies par la Thaïlande.<sup>1</sup>

**Órgano de Examen de las Políticas Comerciales**  
**12 y 14 de noviembre de 2003**

**EXAMEN DE LAS POLÍTICAS COMERCIALES**

**TAILANDIA**

Acta de la reunión

Addendum

*Presidente: Excma. Sra. Mary Whelan (Irlanda)*

En el presente documento figuran las preguntas presentadas anticipadamente por escrito, junto con las respuestas facilitadas por Tailandia.<sup>1</sup>

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<sup>1</sup> In English only./En anglais seulement./En inglés solamente.



**ADVANCE WRITTEN QUESTIONS BY MEMBERS<sup>1</sup> AND  
REPLIES PROVIDED BY THAILAND**

**REPORT BY THE SECRETARIAT**

**SUMMARY OBSERVATIONS**

**(3) Policies and Measures Affecting Trade and Foreign Investment**

**Paragraph 17**

*(United States)* Could the representatives of Thailand please provide information on how it is determined that an industry will receive funding through the Vayupak Fund, as well as a list of industries that have received funding thus far?

**Answer:** Vayupak Fund is a 100-billion baht fund, which will give a higher choice to investors with a guaranteed return of 3 percent per year through its term. Of the 100 billion baht in capital raised for the 10-year flexible fund, 70 billion will come from retail investors and another 30 billion from the Ministry of Finance. The subscription period is from November 11- 19, 2003, with investments focused on listed securities currently held by the ministry, mostly blue-chip companies. This fund is aimed at investors seeking higher returns than bank deposits but wary of taking the risks associated with the equities market.

**I. ECONOMIC ENVIRONMENT**

**(1) Recent Economic Performance**

**(2) Main Economic Developments**

**(i) Macroeconomic policies**

**Paragraph 9**

*(Japan)* Please specifically indicate the allocated budget and the contents of the following policies, which were newly introduced in FY 2002: (a) Reserve Fund; (b) Village Fund; (c) Farm debt moratorium. Please indicate whether Thailand believes that these policies are trade-distorting or not. Should they not be considered as trade-distorting, please provide reasons when referring to the specific articles of Agreement on Agriculture. Please also inform us of why farm debt moratorium is needed, when referring to the specific data regarding the management and indebtedness of farmers.

**Answer:**

**Reserve Fund**

The Thai government established a 58-billion-baht emergency spending program to help jump start the economy in the face of a rapidly deteriorating external environment. The program is aimed directly at creating new jobs, enhancing labor skills and ultimately increasing the country's

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<sup>1</sup> From Australia; Brazil; Canada; China; Colombia; the European Commission; Hong Kong, China; Japan; New Zealand; Norway; Switzerland; Taiwan; and the United States.

competitiveness in the global market. The disbursement for the 58 billion baht reserve fund is 36.8% or 21.35 billion baht.

### **Village Fund**

The Thai Government launched a micro-credit scheme, known as the Village Revolving Fund, in July 2001. The public organization is designed to allocate money to offer loans to rural villages communities to help support rural development and human security at grass root level. As a local funding source, the Village Fund scheme provides a revolving fund of 1 million baht to each of more than 70,000 villages nationwide. The amount, not more than 80,000 million baht, is provided by the Government Savings Bank.

The Village Community Fund has its headquarters in Bangkok or nearby province. Members of the Fund are allowed to seek loans from the revolving fund for use in developing their occupations and finding ways to create and increase income. The money may also be used for public services in each village community. The interest earned from the loans or donations to the fund will be used for public services of the village or urban community involved. From July 2001 to February 2003, the loan facility was allocated and transferred to 74,286 villages.

### **Farm Debt Moratorium**

The debt suspension program for small and resource -poor farmers is one of the Government's urgent policies to ease farmers' debt burden. The Bank for Agriculture and Agricultural Cooperatives (BAAC) has found that farmers joining the Government's three-year debt suspension program have greater potential for saving money. Under the program, about 2.3 million farmers, owing the BACC not more than 100,000 baht, are entitled to benefit from the interest suspension scheme. Of this group of farmers, 51 percent will be given a grace period for both interest and principal payments for 3 years, while 49 percent, who did not join the interest suspension program, will derive other benefits from the scheme to assist in their production restructuring. (As of January 2002, over 2.27 million farmers with about 88.5 billion baht in debt had joined the programme.)

Thailand believes the above measures are not trade distorting but are poverty alleviation and rural development measures to strengthen grass-root economy, especially our farmers who are facing heavy trade distortion in the world agricultural market today.

## **(ii) Structural policies**

### **Paragraph 16**

*(United States) When the Royal Thai Government considers the privatization of various state enterprises, is the question of foreign participation addressed in a uniform way or is it reviewed on a case-by-case basis?*

**Answer:** It is reviewed on a case-by-case basis contingent upon the provision on foreign participation of the law governing the sector in question.

### **Paragraph 17**

*(Switzerland) We would appreciate if the Thai authorities could make additional clarifications on the term "fewer FDI restrictions on establishment" in their statement that "... non-U.S. foreign investors*

*can also enjoy fewer FDI restrictions on establishment in Thailand by applying to the BOI for investment promotion measures". Would it be a correct understanding that they can enjoy the same treatment as it is accorded to U.S. investors according to the 1966 Treaty of Amity and Economic Relations between the United States and Thailand (also of p.30, para.45, positive list of exceptions as regards national treatment)? If this were not the case, what are the differences in treatment?*

**Answer:** This understanding would be incorrect. Non-US foreign investors cannot enjoy the same treatment as US investors under the 1966 Treaty of Amity and Economic Relations. However, Foreign investors, both non-US and US, are imposed with fewer FDI restrictions on establishment of businesses under BOI promotion schemes, such as 100 percent ownership for the manufacturing sector and a majority of services under certain BOI conditions, for example, zoning conditions.

Under BOI promotion, 100 percent foreign ownership is allowed in the manufacturing sector and majority of services while the establishment in others sector must comply with the Foreign Business Act B.E. 2542 (1999). Nevertheless, US investors under the 1966 Treaty of Amity and Economic Relations between the US and Thailand can enjoy almost the same treatment as Thai nationals – fewer restrictions than what stated in the Foreign Business Act B.E. 2542 (1999).

(3) Developments in Trade and Foreign Investment

(4) Foreign Investment Patterns

(5) Outlook

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

(1) Overview

(2) General Constitutional and Institutional Framework

(3) **Structure of Trade Policy Formulation**

(i) **Executive branches of government**

### **Paragraph 7**

*(Japan) The Secretariat Report states that the Department of Trade Negotiations, within the Ministry of Commerce, is mainly responsible for bilateral and multilateral trade negotiations. Please indicate how it conducted the decision-making of trade negotiations within the government, when referring to discussions among ministries, to consultations for NGOs and to the instructions to the Mission in Geneva. Please specifically describe the procedures carried out by the Department of Trade Negotiations for coordinating with the Ministry of Agriculture and Co-operatives, particularly during the agricultural negotiations.*

**Answer:** The DTN is acting as a coordinating authority in formulating Thailand's positions on international trade negotiations at all levels through the International Economic Policy Committee chaired by a Deputy Prime Minister responsible for economic affairs. Ministers of relevant authorities such as Minister of Agriculture and Co-operatives, Minister of Commerce, Minister of Finance and Minister of Industries etc. are Members of the International Economic Policy Committee. The DTN also organizes coordination meetings with the relevant stakeholders both public and private at a technical level occasionally in order to exchange views and formulating initial positions on the

relevant issues. Regarding the instructions to the Mission in Geneva, it is mandated by Minister of Commerce upon recommendations of DTN.

### **Chart II.1**

*(United States) Could the representative of Thailand identify the Deputy Prime Ministers who oversee the following Ministries and entities: Ministry of Information and Communications Technology, Ministry of Public Health, Ministry of Commerce, and Public Relations Department?*

<b>Answer:</b>	DPM Somkid Jatusripitak	–	Ministry of Commerce
	DPM Suwit Khunkitti	–	Ministry of Information and Communications Technology
	DPM Purachai Piumsombun	–	Ministry of Public Health
	DPM Wissanu Krea-Ngam	–	Public Relations Department

### **(4) Trade Policy Objectives**

#### **Paragraph 12**

*(Chinese Taipei) According to this paragraph, Thailand is aiming at integrating itself into the global economy, which involves "pro-actively" supporting free trade in the multilateral arena and includes "advancing the ASEAN free trade arena". We would be grateful if Thailand could elaborate on the balance that it expects to maintain between promoting multilateral and regional trade liberalization.*

**Answer:** We give priority to the Multilateral Trade System (MTS) which will complement the bilateral trade system, and regional trade arrangements. Under the present complex and volatile global environment, Thailand also fully recognizes that trying to embrace globalization individually may not be in our best interest. We are convinced that FTAs can be an effective building block for the MTS.

Under the MTS, we have participated actively in the DDA, with particular interest in areas of Agriculture, NAMA, Rules, and DSU, etc.

### **(5) Trade Laws and Regulations**

#### **Paragraph 14**

*(United States) Could the Thai representative provide an update on the status of the following legislation related to electronic commerce: the Electronic Funds Transfer Bill, the Computer Crimes Bill, the Data Protection Bill, and the Universal Access Bill?*

**Answer:** The ICT laws development project is an initiative to facilitate electronic commerce activities and promote confidence of foreign investors in Thailand. Six ICT laws have been developed (some enacted, others in the drafting phase). The following paragraphs give brief descriptions of the laws.

#### **1. Electronic Transactions Law:**

**Object and Purpose** – To recognize the legal effect of data messages by treating them as the functional equivalent of a writing or evidence in writing with a view to promote electronic transactions to achieve reliability

2. Electronic Signatures Law:

Object and Purpose – To enable reliability of the use of electronic signatures

Current Status – The first two laws, Electronic Transactions Law and Electronic Signatures Law, were combined into one called "Electronic Transactions Act B.E. 2544". The Act was drafted as guided by the Model Law on Electronic Commerce 1996 and Model law on Electronic Signatures 2001 of the United Nations Commission in International Trade Law (UNCITRAL). It came into enforcement on April 3, 2002.

3. Electronic Fund Transfers Bill:

Object and Purpose – To facilitate the electronic fund transfers

Current Status – The National Electronics and Computer Technology Center (NECTEC) in conjunction with the Bank of Thailand (BOT) is currently drafting the Electronic Fund Transfer Bill.

4. Computer Crime Bill:

Object and Purpose – To criminalize the new type of the offences in the borderless virtual world

Current Status – The Bill is currently being considered by the Council of State.

5. Data Protection Bill:

Object and Purpose – To protect rights of privacy in the information society by laying down the general rule to protect personal data of individuals

Current Status – The ICT Minister is deliberating on the draft provisions before submitting it to the Council of Ministers for consideration.

6. National Information Infrastructure Law (By the Constitution Law Section 78 ):

Object and Purpose – To devise an equitable and thorough information infrastructure, enable universal access by promoting more equitable and affordable rights and opportunities to access information and communication services. The purpose of NII law focuses on reducing Thailand's digital divide.

Current Status – The Bill has been approved by the Council of State and is now seeking the approval from the Council of Ministers before further submission to the House of Representatives.

*(United States) Could the Thai representative provide an update on implementation of the digital signature law, which was passed in April 2002?*

**Answers:** In Thailand, digital signature is being used in various areas, especially in financial sector including banking service and e-government initiatives. However, Electronic Transaction Act 2001 does not specify the technology to be used as electronic signature. As a result, people can use letters, characters, numbers, sounds or any other symbols created in electronic form and affixed to data messages in order to establish the association between a person and a data message. (Please see the definition of electronic signature in Section 4.)

In ETA Section 26, an electronic signature is considered to be a reliable electronic signature if it meets the requirements in this section. Using digital signature is considered as reliable electronic signature because its qualifications meet those requirements and will obtain some benefits from legal presumption.

Nowadays, there are two private CAs in Thailand, namely, ThaiDigitalID ([www.thaidigitalid.com](http://www.thaidigitalid.com)) and Acerts ([www.acerts.com](http://www.acerts.com)). Their major customers are financial institutions. Furthermore, there are many companies that are preparing themselves to be private CAs in the near future, such as CAT Telecom Public Company Limited, TOT Corporation and PTT.

For public sector, Government Information Technology Service (GITS), a unit in National Electronics and Computer Technology Center, provides digital signature applications for governmental agencies only. GITS has officially offered their service for almost two years.

**(6) Trade Agreements and Arrangements**

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

**Paragraph 24**

*(Japan) The Secretariat Report states that seven items, including copra, coffee, cut flowers, and potatoes, were still excluded on grounds of sensitivity. Please provide the specific reason why these seven items, including those agricultural products exempted from the Common Effective Preferential Tariff (CEPT) of the ASEAN Free-Trade Area (AFTA), are regarded as sensitive when quoting the relevant statistics.*

**Answer:** Under the CEPT scheme, Thailand has already transferred these seven items from the sensitive list to the inclusion list in 2003, after which tariffs of these 7 products will be 5% by 2010.

**Paragraph 35**

*(Japan) Regarding all the FTA negotiations with Thailand and other partner countries, such as China, India, Australia, the U.S., Peru, Mexico, New Zealand, Korea, etc., please indicate the status of progress in each negotiation, when referring to the conformity of each FTA negotiation with the WTO agreements.*

**Answer:** With regards our FTA negotiations, the latest progress is that we have signed a framework agreement with Bahrain, India, and Peru. In addition, we are currently in negotiations with Australia, which is expected to be finalized by the first half of 2004. We have made a statement of intention to launch FTA negotiations in 2004. ASEAN-China and ASEAN-India framework agreements have been endorsed at high-level summits in both forum. We intend to undertake a joint study on a possible FTA between Thailand and New Zealand.

*(Japan) On trade in services, national treatment is currently granted to US citizens and entities through the Treaty of Amity and Economic Relations between the Kingdom of the Thailand and the United States of America. This measure is a part of the Thailand's MFN exemption list, having an intended duration of 10 years from the entry-into-force of the GATS.*

*Please provide information on the current situations and future plans in view of Thailand's preparation of the scheduled expiration of the above intended duration.*

*Please explain whether the Thailand is thinking of abolishing its bilateral agreements with the U.S.*

**Answer:** We are discussing this matter with our U.S. counterpart.

*(United States)* In addition to the 626 items for which tariffs have already been eliminated, what will be the process by which other tariffs will be eliminated by 2010? Is this agreement with Bahrain available to the public? If so, will Thailand provide us with a copy?

**Answer:** Thailand and Bahrain agreed in principle to reduce the tariff rates to 0-3 percent of 626 products in the Early Harvest list. The tariff rates of 419 items were eliminated on December 29, 2003, while the tariff rates of the remaining 207 items will be reduced to 3 percent in 2005. By 2005, tariff for 40 percent of the remaining items will be eliminated. Consequently, by 2007, another 40 percent of the remaining tariff items will be further eliminated. By 2010, all items except sensitive products will have their tariffs eliminated. When the Agreement is finalized, a copy of the Agreement will be notified to the WTO subject to the final outcomes of discussions on RTA at the Negotiating Group on Rules.

**(7) Trade Disputes and Consultations**

**(8) Foreign Investment Regime**

**(ii) Basic framework**

**Paragraph 42**

*(Canada)* What is the rationale for setting the minimum capital requirement for unrestricted businesses at B 2 million, and in the case of restricted businesses at 25% of the total three-year average expected earnings, but not less than B 3 million? Are these limits reviewed or adjusted annually?

**Answer:** The 2 million Baht minimum capital requirement for unrestricted businesses is according to the law. As for the case of restricted businesses, the minimum capital requirement is set according to the size of the businesses. At the moment, we have no plan to review these requirements.

**Paragraph 43**

*(Canada)* Canada notes that rejections of List 3 applications may be appealed. Are those under List 2 similarly subjected to an appeal? If not, why not?

**Answer:** The decision to reject a List 2 application is made by the Minister of Commerce with the approval of the Council of Ministers. Therefore, it cannot be appealed.

*(Switzerland)* The Swiss Government welcomes the approach of the Thai authorities relating to factors taken into account in assessing license applications for foreign investors. However, wouldn't there be a possibility to create an even more stable and sound economic and legal environment leading to a better predictability for (foreign) investors if the criteria used to assess license applications were defined in laws and regulations in order to avoid abuse of administrative discretion in their application?

**Answer:** We have never failed to create a stable and sound economic and legal environment for investors. However, we are not convinced that administrative discretion goes beyond laws and regulations that are in force.

**Paragraph 45**

*(Chinese Taipei)* As indicated in the report, the Foreign Business Act does not apply where an international treaty requires Thailand to provide national treatment to foreign investors. Such is the case, for example, for US investors under the 1966 Treaty of Amity and Economic Relations between the United States and Thailand. Thailand's MFN Exemptions List (GATS/EL/85, 15/04/1994) contains the measure granting only American citizens and entities national treatment with respect to services sectors stipulated in the relevant articles of the above-mentioned Treaty, subject to a grace-period of ten years, which expires at the end of 2004. It would be appreciated if Thailand could explain how this measure will be dealt with following the completion of this ten-year period.

**Answer:** We are discussing this matter with our U.S. counterpart.

**Paragraph 48**

*(Switzerland)* It is mentioned that Thailand is taking steps to ratify membership of the International Centre for the Settlement of Investment Disputes Between States and Nationals of Other States (the ICSID Convention), signed in 1985. It might be helpful to learn more about the time frame and about how concrete these steps towards ratification are.

**Answer:** The Ministry of Finance is engaged in consultative dialogue with relevant government agencies. The next step would be to provide legal status for ICSID by incorporating it into the national law and subsequently proposing the draft law to Parliament for approval.

**III. TRADE POLICIES AND PRACTICES BY MEASURE**

**(1) Introduction**

**Paragraph 2**

*(Chinese Taipei)* A quarter of all Thailand's tariff lines are unbound and its bound rates often greatly exceed applied MFN rates, thus affording the authorities considerable scope for raising tariffs at any time. Could Thailand please describe the circumstances in which it might find it necessary to raise tariffs?

**Answer:** Normally, we would not raise tariffs. Only in exceptional circumstances such as during the financial crisis, would few tariff lines be raised. These tariff lines are usually confined to luxury items. Nevertheless, this would still always be under the bound rate.

**(2) Measures Directly Affecting Imports**

**(i) Customs procedures**

**Paragraph 10**

*(United States)* Could the representative of Thailand provide information regarding the working hours for the inspection and clearance of imports at Thai airports and ports?

**Answer:** Customs operation at the airport is open 24 hours a day for inspection and clearance while the seaport is open at the request of importers outside normal working hours.

*(United States)* We understand that your government is considering draft legislation to facilitate electronic signature use for customs clearance documents. Could the representative of Thailand provide any information regarding the status of this draft bill?

**Answer:** With regards to electronic signature for customs clearance, relevant agencies including the Customs Department are in the process of considering how the mechanisms of the law can be effectively applied. It is foreseen that the early stages of implementation of this law can commence in the year 2004.

*(United States)* Could Thailand please explain further its efforts to adopt an all e-based trading system? Specifically, what obstacles prevent Thailand from adopting a 100% EDI for customs declarations? In addition, we understand that, even in instances where EDI has been adopted, many procedures still require paper, even when that means printing out a computer screen and signing it. Could Thailand comment on this process and any plans to improve it?

**Answer:** We cannot implement EDI for 100 percent of all transactions due to the fact that a great number of SMEs do not yet have the capacity to implement this system.

#### **Paragraph 11**

*(Switzerland)* The report indicates that Thailand is currently not a contracting party to the Kyoto Convention, and that the Customs Department considers the possibility to become a party to the said Convention. Could Thailand indicate within which time frame the Customs Department will have examined all the necessary elements to take a decision?

**Answer:** Thailand is in the process of joining the Kyoto convention, however there are still several conditions which we still have to comply and which members have yet to endorse. According to the accession of revised Kyoto Convention, given the fact that Thailand is not a contracting party to the existing Kyoto Convention and the revised Convention is not yet in effect, Thailand cannot accede to the Convention according to the Protocol for the amendment of the existing Convention. However, most of the current custom procedures applied for cargo clearance are already consistent with the general context of revised Kyoto Convention.

#### **Paragraph 12**

*(United States)* Agricultural industry sources report that the applications for food product registration require detailed and often proprietary business information about the manufacturing process and composition of the food. Is Thailand willing to revise the application for registration to be less invasive?

**Answer:** Thailand has designated 2004 as the "Food Safety Year". For food products, safety requirements are needed to protect the well-being and health of our consumers. These requirements are consistent with WTO principles including that of National Treatment.

#### **Paragraph 13**

*(United States)* The Secretariat's Report states Thailand amended two laws, the General Provision of the Customs Tariff Decree B.E. 2530 (1987) and the Customs Act (No. 17) B.E. 2543 (2000) with a view to implementing the WTO Agreement on Customs Valuation. Can the representative of Thailand explain what is included in the first law and provide a copy? Thailand recently notified the second law along with the Finance Ministerial Regulations No. 132 (B.E.2543) to the WTO

*(G/VAL/N/1/THA/1). The U.S. has various concerns about the notification and posed a series of questions to Thailand (G/VAL/W/128). Could the representative of Thailand advise when we can expect a reply to these questions? Could the representative of Thailand also advise whether there are any other laws or regulations that pertain to the implementation of the WTO Valuation Agreement? If so, could you please provide us with copies?*

**Answer:** We would like to thank the US for the concerns and questions posted to Thailand in the document G/VAL/W/128; however, such concerns and questions have been automatically replied within the context of Thailand's notification on Customs Valuation Checklist of Issues, G/VAL/N/2/THA/1, dated 6 October 2003.

*(United States) During the seminar held in September, the Customs Department acknowledged that some customs officials do not understand the WTO valuation methodology and that implementation procedures are unclear, but Customs is committed to addressing these problems soon. We would appreciate it if the representative of Thailand could explain how these problems will be resolved.*

**Answer:** The difficulties experienced by the Customs Department in implementing WTO Valuation Agreement are due to lack of skills and experiences especially in the first year of the implementation. Additionally, for the suspected invoices, the lack of sufficient valuation database caused some difficulties in valuation assessment or determination. We are currently dealing with this through capacity-building, and training. Admittedly, this effort would be greatly enhanced through greater technical assistance. For example, we received assistance from AusAID in the form of customs valuation training, the course also included a wide range of activities such as study tour to Australia, dispatching expert adviser to the Thai Customs Department, related workshops on compliance and valuation management etc.

*(United States) Could Thailand provide specific examples of how the "clear customs appeal procedures" operate, and what entities are able to utilize the appeal procedures, e.g., the express shipping company, the recipient, or a frequent or infrequent shipper?*

**Answer:** The Customs Act. No. 17 B.E. 2543 provides importers and exporters the right to appeal the tariff appraisal decisions made by the authorities with the Appeals Committee determined by the Director General of the Customs Department within 30 days of the appraisal. For cases involving the importation or exportation in provinces other than Bangkok, the appeal may be launched at the customs checkpoint or with regional customs offices in accordance with the guidelines determined by the Director General of the Customs Department. The duration of the appeals process depends on the completeness of the data, and the readiness of the members of the appeals committee namely, the director general of the Customs Department, as Chairman of the Committee, representatives from the Ministry of Finance, Council of State, and no less than 5, but no more than 7, experts from Customs Department, Civil Service Commission, Ministry of Justice, Office of the Attorney General, Revenue Department, Excise Department and National Police Office that may be designated by the Director General of the Customs Department.

#### **Paragraph 14**

*(United States) U.S. exporters have reported experiencing problems with Thailand's customs valuation for fruits. There have been reports of uneven implementation, with custom officials using special reference prices to determine the value of imported goods rather than the transaction value. On numerous occasions the U.S. government has encouraged Thailand to discontinue this practice, which is inconsistent with the terms of the Customs Valuation Agreement implemented in March 2000, however the agricultural trade continues to report problems.*

*(United States)* What steps is Thailand taking to ensure that the terms of Customs Valuation Agreement are being followed in customs valuation for apples and other fruits? What efforts is Thailand taking to address imports of smuggled apples, which have not paid import duties?

**Answer:** Thailand has always been in compliance with the WTO Transaction Value methodology. To date, the Thai Customs Department has abolished the use of reference price in determining transaction value.

#### **Paragraph 15**

*(Canada)* Would Thailand please explain further the number of levels of "internal appeals", the process and procedures an importer must follow to file an appeal, as well the amount of time it will take for a decision to be rendered?

**Answer:** Importers not satisfied with decisions of Customs authorities concerning valuation, tariff classification can appeal to the Customs Appeal Committee. The Appeal Committee's decision shall become final. However, the appellant can appeal the Appeal Committee's decision within 30 days from the date of notification of the decision. Presently, there is no definite prescribed time limit for the rendering of a decision. Decision processes are based on the completeness of evidence and documents submitted by the appealing party.

*(Canada)* Would Thailand also explain what is meant by the last sentence of paragraph 15, where it is stated that the matter may be raised in the Tax Court "if the State Attorney consider that there is sufficient evidence to warrant consideration of the case"? We note that Article 11 of the Agreement on Customs Valuation provides importers with a right of appeal, without penalty, to a judicial authority. It also allows for an appeal or administrative review within the Customs administration, if so desired. In this light, the last sentence of paragraph 15 is problematic, as it appears to indicate that an importer can file an appeal to the Tax Court only if "the State Attorney considers that there is sufficient evidence to warrant consideration of the case". This is clearly contrary to Article 10 of the Agreement on Customs Valuation which grants an unfettered right of appeal to the importer. We would note that it is good practice for the Customs administrations that make administrative decisions which may impact adversely on their clients or customers to allow those who believe that they have been aggrieved to appeal those administrative decisions. It allows the aggrieved party to be heard and also, importantly, serves to demonstrate that the process is not arbitrary and that a Customs valuation determination can be challenged. An admission that Customs can make a mistake and, more importantly, is willing to correct itself speaks to the issue of fairness and transparency and indicates that there is a provision for an appeal to the judiciary.

**Answer:** We thank Canada for raising this question regarding action of a state attorney in the appeals procedures. We are pleased to respond to Canada that no reference is made in Section 112 of the Customs Act, regarding the intervention of a state attorney, other than the right to appeal which is recognized in the said legislation.

#### **Paragraphs 17-18**

*(United States)* Could the representative of Thailand provide an update on the consideration of non-preferential rules of origin by the committee and subcommittee under the Customs Department? Do these committees include private sector representatives? Will draft regulations be available for comment? Is there any timetable for completion of this effort?

*(Canada)* If Thailand "does not have specific laws, judicial decisions or administrative rulings of general applications relating to non-preferential rules of origin", why would a Committee and a Subcommittee on Rules of Origin, under the Customs Department, need to "review the progress of harmonization, improvement, and simplification of non-preferential rules of origin"?

*(Chinese Taipei)* As indicated in the Report, Thailand does not have specific laws, judicial decisions or administrative rulings of general application relating to non-preferential rules of origin. Thus, a Committee and a Subcommittee on Rules of Origin, under the Customs Department, has been established to review the progress of harmonization, improvement and simplification of non-preferential rules of origin. We would appreciate knowing the following:

- whether the execution of the regime of non-preferential rules of origin in Thailand is solely at the discretion of the said Committee and Subcommittee on Rules of Origin under the Customs Department;
- how the Customs Department performs its duty under the present regime without reference or adherence to specific laws, judicial decisions or administrative rulings of general application relating to non-preferential rules of origin; and
- how Thailand can ensure that execution of the regime of non-preferential rules of origin in such a manner would be in full conformity with the WTO Agreements.

**Answer:** At present, Thailand adheres only to the certification of origin presented by importers. The main objective of the Committee and Subcommittee under the Customs Department is to formulate Thailand's position in the negotiations on Harmonization Work Programme for Non-Preferential Rules of Origin in the WTO. These Committees also include representatives from private sectors in order to be certain that all views are reflected when formulating the position. The Department of Customs is expecting to consider setting up non-preferential rules of origin after the conclusion of the negotiations in the WTO.

## **(ii) Tariffs**

### **Paragraph 19**

*(China)* The average applied MFN tariff rate of Thailand has been reduced since last review. However, Thailand's import tariffs on agricultural products and food still remain the highest among ASEAN countries. At present import of agricultural products, especially processed food, are subject to duties up to 25.4%, and the tariff rates on many fresh and processed food products are as high as 30% to 40%. Does Thailand have any plan to reduce its tariff rates on agricultural products, especially food?

**Answer:** The average high tariff rates on our agricultural products are necessary to improve the level playing field as the major developed countries are still hesitant to eliminate their export subsidies and trade-distorting domestic supports. The agreement on substantial agricultural trade reforms under the DDA will definitely make it possible for Thailand to reduce any tariff rates on agricultural product.

*(New Zealand)* The Secretariat report notes that the Thai tariff is complex, with a multiplicity of rates applied to each tariff line and a high proportion of non-ad valorem tariff lines. Does Thailand have any plans to simplify the operation of its tariff?

**Answer:** Thailand participates actively in the NAMA and agriculture negotiations, we have made it clear that we support simplification of the tariff structure by transforming all non-ad valorem to ad valorem rates. On the issue of a high proportion of non ad valorem tariff lines, it is the result of the change of HS 1996 to HS 2002 which affects in the increased proportion of tariff lines with non-ad valorem duties to the total, not that we have increased the utilization of non-ad valorem.

*(Switzerland) Thailand has four distinct sets of duty rates. According to the report applied (adjusted) rates may be increased above WTO bound rates. The fact that the importer may ask to be taxed at WTO bound rates if the imports originate in a WTO Member country is a source of concern and of potential inconsistency with WTO commitments of Thailand, as for WTO Members bound rates represent the absolute maximum they can levy on imports from WTO Members. In order to comply with Article II:1 a and b GATT, how does Thailand ensure that (in the case of applied rates being above bound rates) only bound duties at the maximum will be levied on imports from WTO Members without it be necessary for the importer to ask to be taxed at WTO bound rates?*

**Answer:** In cases where applied rates are higher than bound WTO rates, the importers who are WTO members are subject to the bound rate.

## **Paragraph 22**

*(Japan) There is a high degree of unpredictability because bound tariff lines cover only about 70% and also because the bound rates themselves are considerably in excess of the applied rates. We thus request Thailand to increase the number of its bound tariff lines. Japan also requests that transport equipment, one of our concerns, the tariff line of which is not bound, be bound through future negotiations. Regarding these matters, please provide the views of the Government of Thailand.*

*(New Zealand) Similarly, Thailand has a high proportion of unbound tariff lines (26.1%), which creates a lack of certainty or predictability for importers and investors. Does Thailand have any plans to increase the scope of its binding coverage?*

*(New Zealand) Could Thailand elaborate on the situation behind the statement in the Secretariat report that a sizeable number of applied rates exceed bound rates? Why is this the case? What steps will Thailand take to reduce to their respective bound rates the number of applied rates that currently exceed WTO bindings?*

*(Switzerland) Which measures does Thailand intend to take to improve the predictability of its tariff?*

**Answer:** Thailand participates actively in the NAMA negotiations, and our delegation has made it clear that we support 100 percent binding of all tariff lines as has been done to agricultural products.

*(United States) Thailand applies significantly higher tariffs on agricultural products than non-agricultural goods. For instance, Thailand's bound rate for the import of fresh or chilled meat products ranges from 30 to 50 percent. Many fruits and nuts are subject to tariffs ranging from 30 to 50 percent. Often, Thailand's bound rates for agricultural products exceed the applied MFN rates, and the MFN rate applied to imports from WTO member nations is significantly higher than the eventual 5 percent preferential rate accorded to ASEAN member nations as part of the ASEAN Free Trade Area (AFTA) under the Common Effective Preferential Tariff (CEPT) scheme. Is Thailand taking any steps to reconcile these differences? Does Thailand plan to implement the plan approved by the Thai Cabinet on July 29, which would lower tariffs on 464 agricultural imports? If so, will Thailand please provide a list of products and the lower import tariffs the plan would institute?*

**Answer:** We have reduced tariff on 464 agriculture products since the 4<sup>th</sup> October 2003 according to cabinet instruction issued on 29 July 2003. The list of products can be access from the customs department website, [www.customs.go.th](http://www.customs.go.th)

#### **Paragraph 24**

*(Canada) We note that non-ad valorem duties account for 23% of all Thai tariff lines and that ad valorem equivalents (AVEs) have been provided for approximately 2/3 of these lines. What is Thailand's position with respect to permanently converting non-ad valorem duties to ad valorem rates? Does the absence of AVEs reflect an absence of imports for those tariff lines (footnote 14)?*

**Answer:** In the area of NAMA and Agriculture negotiations under the DDA, we maintain our position on converting all non-ad valorem to ad valorem rates on a permanent basis.

#### **Paragraph 26**

*(Colombia) We understand that Thailand applies surcharges on out-of-quota maize (corn) and fish meal. We should like to have more information on the surcharges applied.*

*(Japan) The Secretariat Report states that a surcharge is levied on the out-of quota imports of corn and certain fish meals. Regarding such surcharge, please indicate in detail the scheme for every item, by quoting the domestic laws and regulations on which the surcharge is based.*

*(Switzerland) The report indicates that Thailand imposes product specific surcharges. Please give an exhaustive list of the products affected by this measure (with HS numbers and product description and rates of the surcharges) as well as the reasons to take such a measure and its WTO justification.*

**Answer:** We have provided details as indicated in our Schedule of Commitment LXXIX.

#### **Paragraph 27**

*(Colombia) Tariff quotas are applied to many products produced by Colombia, such as milk and cream, potatoes, onions and onion seeds, garlic, coconuts, coffee, peppers, (maize) corn, rice, soya beans, soyabean oil, palm oil, coconut oil, cane sugar, instant coffee, soyabean cake, unmanufactured tobacco, tobacco leaves, and raw silk. We should like to know how long this scheme will remain in place. It should be noted that the out-of-quota tariffs are too high and practically prevent entry into the Thai market.*

*(Japan) According to Table III-1 of the Secretariat Report, the rate of the non-ad valorem tariffs (percentage of all tariff lines) has been increasing i.e. from 21.5% in 1999 to 23.0% in 2003. Please indicate the specific items (at HS 4 digit level) which have benefited from newly-applied non-ad valorem tariffs between 1996 and 2003. What are the reasons for such actions? Please respond by indicating the number of all tariff lines, and tariff lines of non-ad valorem tariffs.*

**Answer:** This was caused by the change in the harmonization system from the year 1996 to 2002, which incorporated fewer tariff lines, resulting in the higher average percentage.

*(Japan) Regarding the minimum access commitments on longans and copra, please explain why the figure zero appears in the "actual imports". Regarding the tariff quotas of: milk and cream, not concentrated, not containing added sugar, pepper, dried; maize for feedstuff; soya bean oil; palm oil; coconut oil; and cane or beet sugar, please explain for each case why the fill-rates are very low. Regarding the tariff quotas of garlic, fresh or chilled, whether or not in powder; coconut, fresh or*

*dried; and rice, please explain for each case why a low percentage of tariff quotas is used. For all these tariff quota items, please indicate the actual out of quota imports between 2000 and 2002.*

*(United States)* Restrictive tariff rate quotas are applied to 23 agricultural imports (e.g., milk and cream, potatoes, rice, soybean oil). In general, both the in-quota and out-quota tariff rates are quite high. For example, in the case of fresh potatoes, the tariff rates for in-quota and out-quota imports are 27 percent and 85 percent, respectively. The tariff has remained high despite Thailand committing in November 2001 to reduce the applied tariff from 30 percent to 15 percent. When does Thailand intend to reduce the applied tariff from 30 to 15 percent as was committed in 2001? Will Thailand provide a schedule for TRQ allocations?

**Answer:** It is necessary for Thailand to maintain TRQ in certain products in order to protect our agriculture from highly subsidized imports for the time being. Thailand is committed to faithfully implement its obligations under the Agreement on Agriculture in full. As a member of the Cairns Group, Thailand has made the proposal in the agriculture negotiations under the DDA to substantially increase TRQ volume as well as reduce out-quota tariff rates particularly tariff peaks. With regards to the schedule for TRQ allocations, we have already notified the Committee on Agriculture.

### **Paragraph 30**

*(United States)* In the aftermath of the financial crisis, in October 1997, the RTG raised tariffs on passenger cars and sport utility vehicles to 80 percent, up from 42 percent and 68 percent, and promised to roll back these tariffs on January 1, 2000. Unfortunately, these tariffs remain in place. Given Thailand's economic recovery, we would encourage a reduction in these tariffs to pre-crisis levels as an initial step towards liberalization.

**Answer:** Thailand has increased tariff, for the government revenue purpose, on automobiles, including passenger cars and utility vehicles into the level of bound rates since the financial crisis period. Although the financial crisis situation had been relieved gradually, we are of the view that to reduce the tariff in this particular sector will depend on the result of the Doha Round negotiations.

### **Paragraph 40**

*(Switzerland)* Please provide the list of products (HS numbers, product description and rates) subject to different rates according to their end-use. Please elaborate on the provisions regarding end-use of these products.

**Answer:** The provisions of end-use tariff reduction has been stipulated in the Notification of the Ministry of Finance Re: Reduction of the Rate of Duty and Exemption duty of Any goods according to Section 12 of the Customs Tariff Decree B.E. 2530, dated 28 December 2001. The tariff reduction is applied to some certain raw materials mostly for producing electrical machineries and equipments, vehicle and parts, and chemical products. For more information please visit [www.customs.go.th](http://www.customs.go.th).

### **Paragraph 41**

*(New Zealand)* New Zealand welcomes Thailand's efforts to unilaterally reduce tariffs since the previous Trade Policy review. Are these reductions part of a broader strategy in preparation for meeting the APEC Bogor Goals of free trade and investment by 2020? Can Thailand explain the rationale behind the decision to increase tariffs on automobiles and motorcycles, meat of bovine animals, oil cake, and packaging material?

**Answer:** Thailand increased tariffs on automobiles and motorcycles at the time of the 1997 financial crisis for the purpose of increasing government revenue.

**(iii) Non-tariff border measures**

**Paragraph 46**

*(Canada) Canada notes that there are no import prohibitions or licensing requirements with respect to products derived through biotechnology. We would be interested in any information that can be provided on this matter.*

**Answer:** Thailand does not currently have policies for the commercial production of GMO products, therefore, importation of GMO seeds and grains are currently prohibited, except for maize and soybean where grains are permissible only for food and feed production and related industries.

*(Colombia) Import licences are required for a large number of Colombian products potentially exportable to the Thai market: yellowfin tunas, milk and cream, including in powdered form, potatoes, onions (Allium cepa) and onion seeds, coffee, tea, peppers, (maize) corn, rice, copra, soya, soya-bean oil and its fractions, palm oil and its fractions, coconut oil, fish meal, residues from the extraction of soya-bean oil, marble, gasoline, kerosene, high-speed diesel, naphtha, liquefied petroleum gas (LPG), potassium permanganate, clenbuterol, salbutamol, caffeine, plastic waste, sawn or trimmed wood, raw silk, silk yarn, pita fibre (fique), articles of apparel, sacks of pita fibre (fique) or textile material, stones for monuments, used engines, chainsaws, passenger cars, coin-operated amusement devices, original sculptures of any material, coated ceramics, gold, medicines and pharmaceuticals. The import licensing system appears to be complex. Does Thailand plan to eliminate import licences?*

*(Japan) The Secretariat Report states that infant industry protection has been the main objective behind import restrictions since the 1970's. Please indicate the definition of "infant industry" in Thailand.*

*(Switzerland) In some cases the conditions attached to import licensing appear to be equivalent to quantitative restrictions. In addition the system of import licensing tends to be opaque and complex. As Article XI GATT stipulates a general prohibition of quantitative restrictions and the Agreement on import licensing (Article 1, para. 3) requires that the rules be neutral in application and administered in a fair and equitable manner, which steps does Thailand intend to take to comply with the relevant WTO provisions?*

**Answer:** We are in the process of revising the list of products subject to import licensing including marbles and passenger cars.

**Paragraph 47**

*(United States) The United States encourages the Thai government to review the full range of its policies affecting imported products in considering policy changes. These policies can have a real effect on our exporters. For example, U.S. wine exporters, who face high tariffs and excise taxes, note that RTG requirements for import permits, certification, and label registration add extra costs.*

**Answer:** Excise tax is applied uniformly for domestic and imported wine products.

**Paragraph 49**

*(Switzerland) To prevent the outbreak of BSE (Bovine Spongiform Encephalopathy) in Thailand and for food safety purposes, animal carcasses and products thereof from countries where the disease exists are not admissible into Thailand.*

- a) *Does this import ban include live animals, embryo and semen?*
- b) *On what risk evaluation does this decision base?*
- c) *What are the justifications for these measures on issues where the import ban of Thailand is going further than the recommendations of the competent international health organization (OIE World Organisation for Animal Health)?*

**Answer:** With regards to the issue of BSE, we would like to clarify that we have imposed a ban on live animals from BSE affected countries, while for importation of semen and embryo, we would adhere to guidelines suggested by the international organization with relevant expertise on this matter, namely the OIE.

Furthermore, risk evaluation decisions are based on OIE recommendations.

**Paragraph 50**

*(United States) The United States remains concerned with the regulations for meat import permits, and we have received complaints that the administration seems to be arbitrary and quantitatively restricting rather than on an automatic basis. This is most often the case for sensitive items, and the scientific basis for the policy is unclear.*

*(United States) Meat inspection fees for uncooked meat and offal are higher for imported product than domestic product. This would appear to be in violation of the WTO principle of national treatment. Will Thailand remedy this discrepancy?*

*(United States) Is Thailand addressing the discrepancy between the fees for import permits for uncooked meat and offal versus the fees for domestic product?*

**Answer:** Inspection fees are charged according to the cost of services rendered and does not discriminate between local and imported products. However, for offal, we have already reduced inspection fees from 20 Baht/Kg. to 5Baht/kg.

**Paragraph 51**

*(Switzerland) What is the reason why Thailand has not yet complied with the obligation to notify its relevant import licensing legislation and to provide replies to the import licensing questionnaire under Articles 1.4(a), 8.2(b) and 7.3 of the Agreement on import licensing? When does Thailand intend to fulfill its obligations?*

*(United States) The United States encourages Thailand to notify its relevant licensing legislation and provide replies to the Import Licensing Questionnaire under Articles 1.4(a), 8.2(b) and 7.3 of the Agreement. Thailand's compliance with its WTO obligation would greatly enhance the transparency of Thailand's import licensing system.*

**Answer:** We are in the process of revising our import licensing list.

**(iv) Contingency measures****Paragraph 53**

**(Hong Kong, China)** We note from the Secretariat Report that the safeguard measure involving the imposition of temporary surcharge on steel imports was terminated in July 2002 and replaced by AD measures. In the same year, the number of AD initiations went up to 21, involving mainly steel products and a total of 16 economies. We should be grateful to know whether all the new AD cases against steel products were meant to replace the safeguard measure previously in force. Also, we should be grateful if Thailand could explain the reasons for replacing the safeguard measure by AD duties, and why it considers it appropriate to do so.

**(Chinese Taipei)** As indicated in the Report [p.77], Thailand applied surcharges to some steel products from 29 January 2002. The surcharges were imposed for six months, and ranged from 5% to 25% on the c.i.f. prices of imports. Please would Thailand advise:

- i) whether it has notified the measures to the WTO, in line with the Agreement on Safeguards and, if not, when it intends to notify; and
- ii) whether the imposition of these temporary surcharges was based simply on administrative procedures or on the results of an investigation.

According to Article 2 of the Agreement on Safeguards, no safeguard action against imports from another Member can be taken unless certain conditions are met, e.g. increased imports, serious injury or threat thereof, and causation. Could Thailand please confirm whether its above-mentioned safeguard measure did, in fact, satisfy all the relevant conditions?

Furthermore, in July 2002, the above-mentioned measure was terminated and replaced by anti-dumping measures. Could Thailand please confirm whether the replacement by anti-dumping measures was legitimate, i.e. following a legally stipulated investigation process, and, if so, what was the process?

**Paragraphs 54-55**

**(Chinese Taipei)** The safeguard measure against steel imports was terminated in July 2002 and replaced by anti-dumping duties on six products from 12 WTO Members since May 2003. We also note from the report that the Committee on Dumping and Subsidy published a Notice on 16 July 2003, in which a special measure similar to tariff-rate quota was applied specifically on flat hot-rolled steel. According to the notice, import within quota can be exempted from anti-dumping duties while import out of quota is still subject to anti-dumping duties. The exempted quota for the first year is 47 MTs, which will gradually be reduced to 1 MT for the fifth year. We would like to ask Thailand the following questions:

- i) What is the rationale for imposing such a phase-out tariff quota measure? What are the laws or rules on which the quota system is based? Does the measure comply with the Anti-dumping Agreement?
- ii) Furthermore, does Thailand assume that the injury to its domestic industry will increase during the implementation period and, if not, can it please explain how its measure is consistent with WTO rules?

- iii) *Providing exemption to the original dumping order would seem to indicate that the effect of the original remedy, in the form of anti-dumping duty, has exceeded the necessity to remove the injury to the domestic industry. If this is the case, why does Thailand not consider adopting the lesser-duty principle, as provided for in Article 9 of the Anti-dumping Agreement?*
- iv) *Could Thailand clarify whether it has notified that anti-dumping measure to the WTO in accordance with the Anti-dumping Agreement and, if not, when does it intend to notify?*
- v) *Could Thailand please also provide details of the "quotas" used since the measure entered into force.*

**Answer:** In 2002 many countries used the safeguard measures against the flow of cheap steel imports so the flow of those products was diverted to Thailand. Thailand therefore had to impose the temporary surcharges on some steel products in order to relieve injury to domestic industry which have already been adversely effected by the economic crisis. However, the surcharges have already been terminated.

Thailand did not use the AD measures to replace the surcharges of BOI but the AD measures were imposed pursuant to the investigations initiated by the request of domestic industries and conducted in accordance with Thailand's Antidumping Act B.E. 2542 (1999)

The measure was not the tariff-quota; however, due to the public interest, the Committee on Dumping and Subsidy decided to exempt the AD measures on flat hot-rolled steel imported to produce cold-rolled steel products. Furthermore, the measure was applied in conformity with the WTO AD Agreement. The authorities decided to impose the measures after determination of dumping, injury and causal link.

The lesser duty rules were applied during the investigation. The measures were notified to the WTO AD Committee according to the Document G/ADP/N/105/THA dated 10 October 2003.

**(v) Government procurement and countertrade**

**Paragraph 56**

*(Chinese Taipei) As indicated in the Report, Thailand participates in the WTO Working Group on Transparency in Government Procurement although it is not a signatory to the Government Procurement Agreement. A Thailand cabinet resolution of 1 October 2002 requires that all government agencies maintain their own websites containing procurement information. We have the following questions:*

- i) *Does Thailand plan to become a signatory to the Government Procurement Agreement?*
- ii) *If so, what preparations has Thailand made so far in pursuit of this objective?*
- iii) *Will Thailand consider bringing together all its government procurement information on to a single website?*
- iv) *And finally, are government procurement bidding announcements available in the English language via the Internet?*

**Answer:** We do not have any plan to become a party to the GPA. We are considering the implementation of the single website; however, announcements in English are not presently available.

*(United States) We encourage the RTG to accede to the WTO GPA and also urge Thailand to work constructively in the WTO to support and promote a future multilateral agreement on transparency in government procurement.*

**Answer:** We do not have any plan to become a party to the GPA although we are actively participating in the working group on transparency in government procurement.

#### **Paragraph 62**

*(China) The counter-trade decree issued by Thai Premier's Office in May 2000 stipulates that all procurement contracts by government agencies and state enterprises that involve imports above B 300 million must have a related counter-trade transaction of at least one half of the procurement value. China would like to invite Thailand to clarify the operation of those practices.*

**Answer:** See attachment 1.

*(United States) With respect to Thailand's countertrade program, could the representative of Thailand tell us whether the RTG has analyzed this program to determine whether it has affected the quality of competition and the cost of goods and services procured? Does the government plan to make any changes to this program?*

**Answer:** Countertrade is but one of Thailand's policy options. Under the Office of the Prime Minister Regulation on Countertrade, B.E. 2543 (2000), a countertrade transaction is required on all procurement of foreign goods and services by government agencies and state enterprises with value over 300 million baht. The value for counterpurchase of Thai products is set to at least 50 percent of the import value. To date, 12 counterpurchase agreements have been signed, with the total value of 8,646.38 million baht.

### **(3) Measures Directly Affecting Exports**

#### **(ii) Export taxes, charges, and levies**

#### **Paragraph 64**

*(Japan) Please indicate the specific standard used for selecting the items on which export taxes apply. Please also indicate the specific procedures for modifying the applied rates of export taxes by quoting the relevant domestic laws and regulations. For each item where an export tax is applied, please indicate the results of both quantity and sum in terms of export, as well as the applied rates of export taxes, for every year over the past decade.*

*(Japan) The Secretariat Report states that, according to the authorities, the collection of export taxes is primarily for the purpose of conserving the environment. For each item where export taxes apply, please indicate the specific reason for maintaining the export tax. Please also explain in detail the specific contribution of export taxes to conserve the environment.*

*(New Zealand) Does Thailand consider that the imposition of export duties is the most effective means of conserving the environment for those products affected, and if so, why?*

*(United States)* Thailand levies 5 different taxes on imported wine that amount to an effective 300 percent duty. These taxes include the import duty, excise tax, municipal tax, health tax and value added tax. Additionally, problems with the method of calculation lead to an over-assessment of the net excise tax. The excise tax has risen from 40 percent to 60 percent over the past ten years. Is Thailand aware that a higher excise tax is levied on imported wine than domestic wine? This may be an issue of national treatment. What steps is Thailand taking to address the issue?

**Answer:** Export taxes are currently applied only on a few items, namely hides of bovine animals, wood, sawn wood and articles made of wood for the purpose of animal and environmental protection as well as the conservation of exhaustible natural resources. The measure is considered as one of the most effective means of conserving the environment and scarce resources.

With regards to taxes on wine, Thailand uniformly applies taxes to both domestic and imported wine.

**(iii) Export prohibitions, restrictions, and licensing**

**Paragraph 65**

*(Japan)* Please provide the specific contents of the export license required for rice by quoting the relevant domestic laws and regulations. According to the Secretariat Report, the prevention of domestic shortages and export control are listed as the reasons for the export licensing of rice. Please explain whether this is in conformity with Article XI 2.(a) of the GATT, "Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party". Regarding the export license for shrimp and octopus, which is applied only on exports to the U.S. and the EU, please provide details of the specific request by those countries for establishing the license, as well as the specific standard of reference to authorize it. Regarding such export license for rice, please explain why an export quota has been specially established for the EU and what are the grounds for authorizing it.

**Answer:** The export licensing of rice is required under the Export-Import Act B.E. 2522 for the purpose of monitoring exports and is considered consistent with the WTO rules. In addition, an export quota has been established due to the bilateral agreement on EU Enlargement as well as the compensation to Thailand regarding the dispute case on EU's Reference Price.

Regarding export licensing on shrimp and cuttlefish, we invite Members to visit the Ministry of Commerce's website at [www.moc.go.th](http://www.moc.go.th).

**(iv) Export assistance**

**Paragraph 69**

*(Japan)* Regarding the export finance scheme described on page 54, footnote 43, as well as on pages 53 to 55 in the former Secretariat Report (WT/TPR/S/63), please indicate whether or not there exists any such schemes, which include the agricultural sector as a beneficiary.

**Answer:** This exists but does not apply to the agricultural sector.

**(4) Measures Affecting Production and Trade**

**(i) Taxation**

**Paragraph 74**

*(United States)* We understand that the Thai government is considering reforms to the current excise tax system for motor vehicles. Could the representative of Thailand tell us what the status is of plans for reform of this system?

*(United States)* The United States recommends that the RTG consider a value-based system that would be more transparent and equitable to all manufacturers.

*(United States)* Under Thailand's current excise tax structure based on engine displacement, passenger vehicles are taxed at a rate of 35 percent to 48 percent while pickup trucks are taxed at rate of only 3 percent. The pre-economic crisis excise tax for passenger cars ranged from 5 percent to 18 percent. In addition to the restructuring of the excise tax system, as an initial step towards liberalization, the United States recommends that excise taxes be rolled back to pre-crisis levels.

**Answer:** The revision of this matter is under the consideration of the Minister of Finance.

*(United States)* We would be interested to hear an explanation from the Thai representative of the criteria used to set the excise tax rates for distilled spirits. The excise tax on brandy is 30 percent ad valorem or 190 Thai Baht per liter of pure alcohol, whichever is higher. The excise tax on all other spirits is 45 percent ad valorem or 240 Thai Baht per liter of pure alcohol.

*(United States)* Could the Thai representative provide more information on the January 2003 excise tax reduction for local wines? We are concerned that this measure might not be consistent with Thailand's national treatment obligations. We note that the excise tax on wine is 60 percent, and when import duties, excise taxes, and other surcharges are calculated, imported wines face a total tax of nearly 380 percent.

**Answer:** Thailand applies excise tax in accordance with the principle of National Treatment. With regards to fermented spirit, the excise tax on wine (made of grapes) is 60 percent of value or 100 baht per liter of pure alcohol, whichever is higher. As for fermented spirits made from fruits other than grapes, e.g. mangosteen, these are subject to excise tax of 25 percent of value or 70 baht per liter of pure alcohol, whichever is higher.

**(ii) Investment incentives**

**Paragraph 84**

*(United States)* Regarding reforms undertaken by the BOI to change its investment incentive schemes, this report states that one of the approval criteria for this program is a requirement to generate a value added of at least 20% of sales revenue. Please explain whether this "value added" must be generated domestically?

**Answer:** As one of the approval criteria, the "value added" of each project is not necessarily generated domestically. In fact, the value added is usually derived from subtracting both domestically produced raw materials and imported raw materials from income.

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

**Paragraph 90**

*(China)* In 2000, a new standard of exhausted gas discharged by motorcycle was introduced, which combined standards and inspection procedures of other countries. It is one of most rigid standards in the world, compared with other countries. The implementation of the standard also lacks transparency. China would like to invite Thailand to make explanations on enactment and implementation of this standard.

**Answer:** The main objective of this standard is to preserve the environment and to increase the responsibility of the industry for public safety as well as to keep pace with the sound industrial development. The compulsory standard TIS 1650-1998, which deals with motorcycle engine emission, is based on the European Standard, as appears in the EEC Directive 97/24/EC. It is applied to both domestic and imported motorcycles on a non-discriminatory basis. The regulation is implemented in a clear and transparent on both operation and inspection procedures. For more information, please visit [www.tisi.go.th](http://www.tisi.go.th).

*(Hong Kong, China)* We note that Thailand intends to align its standards in priority areas with relevant international standards by end 2005, covering areas including electrical products and electronic, rubber products, machinery, food labelling, and standards and guides on conformity assessment. We are interested in knowing the extent of Thai industrial standards being aligned with international standards after completion of the process. Are there any plans for further alignment in the next stage?

*(New Zealand)* New Zealand welcomes the increasing number of Thai standards that are based on international standards. What plans does Thailand have in place to further increase the adoption of international standards?

**Answer:** Thailand will align its standards further in addition to the 576 standards that have already been aligned. Furthermore, Thailand will align its standards on IEC 60335s, CISPR and Safety of IT Equipment by the year 2008 deadline. Further information can be accessed at the APEC website.

*(United States)* Could the Thai representative provide an explanation of the RTG ban on large-displacement motorcycle traffic from its tollways. This ban affects large motorcycles that are engineered to be ridden safely at highway speeds.

**Answer:** These standards have been put in place for reasons of ensuring safety on highways.

**Paragraph 93**

*(Switzerland)* The National Accreditation Council of Thailand is signatory of the Multilateral Agreement of the International Accreditation Forum. Countries with accreditation bodies that are signatories of the IAF MLA shall accept certificates issued by certification bodies accredited by other members of the IAF Multilateral Agreement (MLA). Does Thailand, therefore, accept quality management certificates of foreign certification bodies if these bodies are accredited by a signatory of the IAF MLA (e.g. by the Swiss Accreditation Service SAS)?

**Answer:** Thailand does not automatically accept IAF-MLA accreditation. The concerned party must enter into a mutual recognition agreement (MRA) with the Thai Industrial Standards Institute (TISI).

**Paragraph 94**

*(Switzerland) Quality management system certificates required for certain products are accepted provided that such certificates are issued either by a certification body that has been accredited by the National Accreditation Council of Thailand or by a certification body that has been approved by the Industrial Product Standards Council. What are the requirements for an approval by the Industrial Product Standards Council?*

**Answer:** Criteria for Product Certification can be accessed at the TISI website, [www.tisi.go.th](http://www.tisi.go.th)

**Paragraph 95**

*(United States) Could the Thai representative tell us whether the RTG has any plans to revise its current requirements for the import of medical devices into Thailand?*

**Answer:** With regards to revision of import criteria for medical devices, the FDA is currently considering revision of the current requirement to efficiently adapt and cope with the changed environment.

**Paragraph 97**

*(Switzerland) For what specific products is an import license and/or a manufacturing license required? Is the import license granted automatically or non-automatically? Are manufacturing licenses issued by foreign authorities taken as a reference for manufacturing licenses required in Thailand? Are foreign manufacturing licenses even recognized in Thailand if they are based on international standards?*

**Answer:** There are approximately 50 specific products which require import and manufacturing license, of which license is not automatically granted.

*(United States) Could the Thai representative tell us whether the RTG has any plans to modify FDA procedures for licensing food and drug imports?*

**Answer:** FDA is currently taking this into consideration.

*(United States) Could the Thai representative describe any efforts by the RTG to make the process of application for registration of regulated imported products faster and more transparent?*

**Answer:** The FDA has to proceed with caution with regards to application for registration of imported food and pharmaceutical products as this concerns the health of our population. However, we welcome suggestions from other Members on how this process could be improved.

**Paragraph 98**

*(China) In some cases, the SPS measures adopted by Thailand seem to be implemented arbitrarily. For instance, in March 2003, Ministry of Agriculture of Thailand issued a decree to strengthen fruit quarantine. As a result, fruits such as apple and pear as well as mushrooms imported from China were detained in Thailand's ports. In April 2003, Thailand prohibited imports of feather products from China on the grounds of suspected bird flu virus. China would like to have Thailand's justification and implementation of its sanitary and phytosanitary measures.*

**Answer:** On SPS measures affecting importation of apples, pears and mushrooms, we would like to clarify that these standards apply to both imported products as well as domestic products, including those intended for exports.

On the issue of the suspected bird flu virus, we always base our SPS decisions on the recommendations of relevant international organizations, such as Codex and OIE.

**Paragraph 99**

*(Switzerland) For what food products is a health certificate required? What are the requirements to such health certificates?*

**Answer:** See SPS Committee notifications.

*(United States) Please provide a listing of all recent changes or updates to existing sanitary and phytosanitary regulations. What is the status of the requirement that all plants exporting meat to Thailand must receive certification from the Thai government?*

**Answer:** With regards to our policy on inspection of plants exporting meat, we would like to inform that currently there are no plans to amend this, however, we maintain that these measures are carried out uniformly for all plants irrespective of their nationality. Additionally, these regulations are also applied to domestic meat processing plants.

**Paragraph 100**

*(Japan) The Secretariat Report states that, "A ministerial announcement on genetically modified food products was issued under the Food Act in 2002 and entered into force on 10 May 2003. The announcement stipulated that food products derived from genetically modified or engineered maize and soya in whole or in part must be labelled as such in legible form; the announcement also prohibited labelling such as GM free or non GM food. Please indicate whether or not there are any other food products than maize and soya which must be labelled as such in legible form. Please indicate whether the maize and soya, which must be labelled in legible form, are domestically produced or imported. Please provide a specific list of items, and the conditions of processed foods, which must be labelled in legible form. Are such processed foods as oil or high fructose corn syrup, in which genetically modified or engineered DNA or protein seemed not to exist, out of scope of labeling in legible form? Please indicate the exact amount of the term "a certain amount", which is described on page 63, footnote 74, of the Secretariat Report. If the amount has been established par each item, please provide details item by item. Please also indicate whether or not IP-handling (Identity Preserved Handling System), the system of a clear discrimination between GM and non-GM foods exists at distribution level.*

**Answer:** Only products from maize and soya must be labeled. The maximum threshold has been set at 5 percent.

**(v) Intellectual property rights**

**Paragraph 102**

*(Canada) It is Canada's understanding that Thailand has not yet acceded to certain international treaties relating to certain international treaties relating to intellectual property rights, including the*

*Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty. Is Thailand undertaking the work necessary to accede to these agreements in the near future?*

**Answer:** The RTG is planning to accede to the Paris Convention and the PCT. The RTG is undertaking necessary work in order to comply with the requirements of the two conventions, i.e. preparation of draft amendments to the patent law, and institutional adjustment.

### **Paragraph 103**

*(Japan) The Secretariat Report states that a draft law on the protection of geographical indications is under consideration by Parliament. Please indicate the prospects for the draft law being approved by Parliament.*

**Answer:** The Parliament has recently approved the GI Bill. It is now pending the royal ascent. After the royal ascent, the Law will be published in the Royal Gazette and enter into force soon after.

*(United States) While the United States is in the process of translating the bill, the status of one controversial provision in the final bill is unclear. Is the provision that allows for the names of plant and animal species to be eligible for protection as geographical indications included in the final version? Under the International Union for the Protection of New Varieties of Plants (UPOV), varietal names of plants are considered to be generic terms. In addition, animal breeds/species are also considered generic terms and thus may be freely used. It seems problematic that the Kingdom of Thailand would provide that varietal names and animal species are proprietary and protectable as geographical indications, while these are considered private rights according the TRIPs Agreement. Can Thailand address whether there is a provision in the Geographical Indication Bill that would allow plant varieties and animal breeds to be registered as private intellectual property rights, namely, geographical indications? Can Thailand address how this is consistent with the TRIPs Agreement and with UPOV?*

**Answer:** The names of plant and animal species are not excluded from geographical indications protection as long as they meet other legal requirements i.e. not being generic terms. The TRIPs provision does not refer to UPOV Convention. Therefore, Thailand chose to apply general criteria of protection rather than exclude certain categories of GI. Thailand has already complied with the TRIPs Agreement. Thailand, however, has not yet a member of UPOV.

*(United States) For a geographical indication of a foreign country to enjoy the protection under the GI Bill, it is our understanding that there must be explicit evidence that such geographical indication is protected under the law of such country and has been used continuously until the date of filing an application for registration in Thailand. What is meant by "explicit evidence" that a GI is protected under the law of such country? Would this require that a GI be registered in the home country, if registration is possible? Would a valid US Certification Mark Registration for a GI count as sufficient evidence? What other evidence would suffice? (e.g. court decision in home country?) Must an applicant submit "explicit evidence" that the GI has been used continuously until the date of filing an application" in Thailand? If so, would attesting to this (via affidavit, etc.) be sufficient? If physical evidence is required, would specimens be required?*

**Answer:** "Explicit evidence" includes, for instance, certificate of registration or any thing proving that such GI is protected in that country. Registration is not compulsory. What the law requires is evidences proving that such GIs have been legally protected in their home country. A valid US Certification Mark Registration for a GI would be sufficient but such mark needs to be in line with our GI law as well. An applicant must submit explicit evidence that the GI has been used continuously

until the date of filing an application in Thailand. However, the issue of sufficiency of evidence would be considered on a case-by-case basis.

*(United States) The GI Bill indicates that application for registration of geographical indication shall be in accordance with the rules and procedures prescribed in Ministerial Regulations. Could the United States receive copies of the current drafts of these rules and procedures?*

**Answer:** The draft Ministerial Regulations are being prepared.

*(United States) It appears that during the examination of an application for a GI that no comparison is made for similarity to previously registered trademarks or GI's. Is similarity to existing trademarks or GI's grounds for refusal? Would this be a ground for private rights holders to oppose or seek cancellation of the GI? What are the grounds for opposition? Can a trademark owner oppose registration of the GI? On what basis? Can a trademark owner petition to cancel/amend the GI after registration?*

**Answer:** Similar existing trademarks or GI's does not establish ground for refusal. Opposition rights appear in Section 16 of the GI Bill. There is no specific ground for opposition to GI. Any stakeholders can file the opposition. A trademark owner can make the opposition as long as he is an interested person (stakeholders). He can also petition to cancel/amend the GI after registration. (Please refer to Article 22 of the Thai Geographical Indications Bill.)

#### **Paragraph 104**

*(United States) Does Thailand intend to ratify and implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty? If so, what changes to Thailand's Copyright Act will need to be made in order to implement the Treaties?*

**Answer:** The Ministry of Commerce proposed draft amendments to the Copyright Law in order to comply with internationally recognized norms and standards as set by the relevant international intellectual property treaties. The Ministry of Commerce has already incorporated important elements of the WCT and WPPT into the draft amendments, which is being considered by the Cabinet. The Royal Thai Government does not plan to ratify the two treaties at this stage.

*(United States) The definition of "reproduction" does not appear to cover temporary copies. Please explain how temporary copies are treated under Thailand's Copyright Act.*

**Answer:** The RTG's understanding is that the term "reproduction" covers both situations, i.e. permanent and temporary copies. There has never been any problem interpreting this provision in Thai court.

*(United States) Could the Thai representative provide an update on the status of the legislation to control the production, sale and distribution of optical media?*

**Answer:** The draft optical disc control legislation is currently being considered by the Parliament.

#### **Paragraph 106**

*(United States) We understand Thailand's revised Trademark Act entered into force in June 2000. To more fully understand Thailand's trademark provision the United States requests a copy of the current version of the trademark law consolidated with the amendments passed in 2000. In Section 7 of the Trade Mark Act (no.2) B.E. 2543 (2000), the text indicates that a trademark cannot be*

*registered if it contains "geographical indications as protected under the law governing such." This language suggests that a trademark for goods unrelated to the goods covered by the geographical indication could not contain the geographic reference, even if the reference was accurate as to the origin of the goods. If true, then the Trademark Act provides, in effect, a very wide scope of protection to a geographical indication, even when such use would not be misleading. How does Thailand justify giving GIs a wider scope of rights than trademarks when the use of the geographic term in a trademark would not be misleading and would not be misdescriptive, in light of Articles 22-24 of the TRIPS Agreement?*

**Answer:** The English translation of the Trademark Act is available at [www.ipthailand.org](http://www.ipthailand.org).

Under Section 8, GI cannot be registered; however, a geographical name that is descriptive under Section 7(2) is considered to be non-distinctive, unless the applicant could prove the existence of the secondary meaning under Section 7(3).

It is important to understand that Trademark and GI are different in nature. The explanation could be divided into two cases. When a geographical name describes a true origin of goods, the name would be considered as a non-distinctive mark; but when a geographical name is misleadingly referred to a wrong origin, the name would be considered as a deceptive mark. Yet, there is a possibility to register a geographical name as a trademark when it can be distinctive either through the fanciful use of mark or the secondary meaning. On the other hand, regarding GI, it is a geographical indication using to indicate the true origin of goods and certain link between goods and place.

We could provide GI protection as is because it may, in principle, be extended to cover unfair competition or consumer protection which is not inconsistent with the TRIPS Agreement.

#### **Paragraph 108-109**

*(United States) We have heard of concerns about the long patent pendency rates at the Thailand Department of Intellectual Property. Please describe efforts in the department to address these concerns.*

**Answer:** The Department of Intellectual Property is seeking to contract-out some parts of patent search for novelty and preparation of application to academic institutions in order to speed up registration process.

#### **Paragraph 109, Table III.10**

*(Hong Kong, China) We note from the Secretariat Report that while annual patent applications have remained at more or less the same level, the number of registrations have plummeted sharply in 1999 and revived significantly since 2000. Is there any particular reason for such fluctuation? Could this be the result of a change in policy in the processing of patent applications submitted to the authorities?*

**Answer:** At that time, the patent office experienced manpower shortage. As you may notice, the proportion between patent application and patent granted does not fluctuate much in recent years.

#### **Paragraph 111**

*(Switzerland) Please explain how the Thai legislation ensures that undisclosed test or other data submitted by an applicant to the responsible state agency in the procedure for market authorization of*

*a pharmaceutical or an agricultural chemical product is protected against unfair commercial use by a competitor. Is a second applicant prevented from relying on, or from referring to the original data of the first applicant, when applying subsequently for market authorization for a similar product?*

**Answer:** Article 15 of the Trade Secret Act requires state agencies concerned to maintain trade secrets from being disclosed, deprived of, or used in unfair trade activities, including to protect undisclosed test data or data submitted by an applicant to responsible state agencies in the procedure for market authorization of a pharmaceutical or an agricultural chemical product against unfair commercial use. The implementing regulations are being prepared and expected to be promulgated in early 2004.

As a minimum, the regulations shall contain the following provisions.

- Conditions of request submitted to state agencies for maintenance of trade secrets,
- Details of testing result and information that is qualified as trade secrets,
- Period of time for which trade secrets are to be maintained,
- Method for maintenance of trade secrets, taking into consideration the type of technology and testing result or confidential information, and,
- Duties and responsibilities of state officials in the maintenance of trade secrets.

*(United States) What is the status of the implementation regulations for the Thailand Trade Secret Act? When will these regulations be promulgated?*

**Answer:** The implementation regulations for the Trade Secret Act are being prepared by agencies concerned. It can be expected that they will be promulgated in March or early 2004.

#### **Paragraph 114**

*(Japan) Japan's business industries have pointed out that the registration of a license contract in Thailand could create a barrier for licensees when trying to obtain a license for intellectual property rights from the right holders, seeing as competitors can have access to the detailed contents of the contract. This situation arises because a copy of all contracts is held by the Department of Intellectual Property Rights in Thailand and because the procedure for registration is a burden for applicants. Please explain whether the conditions of registration will be reviewed or not.*

**Answer:** Regarding your concerns on trademark license procedures that it may reveal your contractual content to outsiders, Announcement of Department of Intellectual Property dated June 30, 2000 grants the licensor the right to omit confidential parts of his licensing agreement upon submitting it to the registrar. The registrar, however, still has a duty to review whether the agreement contains clauses that may create confusion to the public, oppose to public policy or unfair competition practices (Sec. 69 of Trademark Act).

Likewise, the content of patent licensing agreement will be subject to unfair competition law as well (Sec. 39 of the Patent Act). Due to the requirement of information law, such agreement can be revealed to the public. In practice, however, patent licensor still holds the right to omit confidential clauses of his agreement upon submitting it to authorities.

### **Paragraph 115**

*(United States) Why is ex officio authority of customs officers to seize suspected infringing goods limited to only trademark infringing goods and not extended to copyright infringing goods?*

**Answer:** According to the current Copyright Act, copyright infringements are compoundable offenses. The enforcement officers cannot act without complaint from the copyright owners. However, in practice, the problem is resolved through coordination and information sharing between customs officers and private rightholders. In addition, the proposed draft amendments to the Copyright Act include a proposal to change copyright violation into a non-compoundable, so that complaint from the copyright owners would no longer be required.

*(United States) Where else, other than border points, do customs officers exercise their jurisdictional authority to inspect and seize suspected infringing goods?*

**Answer:** It is understood that customs officers can only exercise their jurisdictional authority to inspect and seize suspected infringing goods at border points and customs areas as permitted by law.

### **Paragraph 116**

*(Japan) In Thailand, damage suffered by Japanese enterprises for imitations is still serious. In light of such circumstances, according to the Secretariat Report, the Government has taken various actions to promote and enforce the protection of intellectual property rights: the Royal Thai Police, for example, in coordination with the Department of Intellectual Property, started monitoring and raiding shopping centres and factories; and the relevant agencies are enhancing coordination for the protection of intellectual property rights. Please provide details of any plans that intend to take further monitoring and raiding actions to protect IPRs.*

**Answer:** Thailand has adopted an effective system of intellectual property (IP) protection both by modernizing our intellectual property legislation and effective enforcement system.

In order to enhance a more effective system of intellectual property rights (IPRs) protection, the RTG recently taken the following initiatives:

#### **1. Legislative Measures**

Proposed the enactment of Optical Disc Control Bill to the Parliament on 9 October 2003. This legislation once adopted would enable the RTG to effectively control and monitor the production of optical disc. The Bill is being reviewed by the special parliamentary committee.

#### **2. Enforcement Measures**

As a result of the aggressive enforcement efforts of the RTG, the IPRs violations have been reduced substantially, especially VDO-CD. Private sectors reported that the level of piracy has been reduced by 91%.

2.1 In order to control the importation of CDs producing machinery, the Ministry of Commerce requires import license. The importers are also required to be the legitimate right-owners or under licensed by right-owners.

2.2 In order to control the production and distribution of CDs, owners of CDs producing machineries, producers, contractors, importers, sellers or renters of CDs are obliged to report and subject to close monitor by relevant government agencies.

2.3 In order to encourage all officers and individuals to join hands in cracking down copyright violations, the RTG is applying a new incentive scheme of granting rewards and bounties to those involving in the executing of pirated CDs cases.

2.4 Several memorandum of understanding among government agencies and private sectors have been arranged in order to enhance optimum efficiency in carrying out suppression measures both internally and at the borders. Joint action plans were agreed and implemented.

2.5 Seven special operation units, composing of representatives of government agencies and stakeholders, have been set up to make daily inspections of factories and shopping centers. These task forces have been in a non-stop operation mode since May 1, 2003 including weekends and public holiday

*(Japan) With regard to the control of imitations, it is effective to take action at the borders in addition to any domestic monitoring. Please indicate the current actions applied to suspend any imports or exports at the frontier in order to protect from imitations.*

**Answer:** Seize and destroy.

*(United States) Is the coordination between the Royal Thai Police and the Thai Department of Intellectual Property, in the monitoring and raiding of major shopping centers and CD factories, an on-going or intermittent operation?*

**Answer:** The seven task forces composing of representatives of government agencies and stakeholders have been set up to make daily inspections of factories and shopping centers. These task forces have been in a non-stop operation mode since May 1, 2003 including weekends and public holidays.

*(United States) We understand that the Thai government is working hard to get agencies that are involved in the IP enforcement efforts organized and coordinated and that two Memoranda of Understanding (MOU) were signed by the Department of Intellectual Property (DIP) with the private sector and the police, and with the private sector and the Customs Department, respectively. Could the Thai representative tell us what results have been achieved to date due to the establishment of these MOUs?*

**Answer:** As a result of the RTG's aggressive enforcement efforts, IPRs violations have been reduced substantially, especially those that involve VDO-CD. Private sector reported that the level of piracy has been reduced by 91percent.

*(United States) We believe that the organization of the Special Investigation Division (SID) would make n important contribution to an effective sustained campaign against piracy. Could the Thai representative provide an update on the status of the pending legislation regarding the SID?*

**Answer:** Since the proposed legislation for the establishment of the SID has been substantially amended by the Senate, the differences will be resolved by a joint Parliamentary committee.

*(United States)* We understand that the Thai government is stepping up its efforts to address the rapidly growing problem of cable piracy. Is it possible for your government to shut down all unlicensed cable operators and withdraw the licenses of licensed operators who violate the copyright law? Could your government instruct the electric authority to strip the illegal networks?

**Answer:** The Department of Intellectual Property is consulting with the Department of Public Relations on the possibility to amend their regulations so that the competent authority will have the power to refuse the renewal of license to their cable operators if they were found to have violated the Copyright Law.

The Government cannot instruct the electric authority to strip the illegal networks because we are unable to encroach to the private rights of the Thai citizen. However, we can seek cooperation from the electric authority to act as permitted by law.

#### **Table III.11**

*(United States)* Is there an explanation for the apparent inverse relationship between the number of arrests in different years and the number of items/materials seized? For example, it would appear that under the Copyright Act, despite a noted increase in arrests in year 2001 and 2002 from the number of arrests in the year 2000, there was substantially fewer items actually seized each subsequent year. This phenomenon also seems to have occurred under the Trademark Act in years 2000-2001; under the Patent Act in years 1998-1999, and 2000-2001; and under the Cassette Business and Television Devices Act in years 2000 and 2002.

**Answer:** There is no correlation between the number of arrests and the number of items/materials seized. The number of items/materials seized is a matter of fact on a case-by-case basis.

#### **(vi) Involvement of state-owned enterprises in production and trade**

##### **Paragraph 121**

*(United States)* The Government Pharmaceutical Organization (GPO) is not subject to the same requirements faced by the private sector with respect to registration and permitting. The GPO can also produce and market generic formulations of drugs marketed by foreign countries irrespective of safety monitoring program protection. Could the Thai representative tell us whether the RTG has any plans to modify any policies regarding the GPO?

**Answer:** FDA is in the process of modifying policies regarding the GPO.

#### **(vii) Regulation of corporate practices**

##### **Paragraph 124**

*(United States)* We would encourage the RTG to review its price control review mechanisms. Price control determinations are sometimes based on outdated assumptions, such as an exchange rate, but go long periods without review, even upon repeated petition for review by affected parties.

*(United States)* We are also concerned that while in practice few commodities are subject to formal price controls, the RTG may use its potential authority and its control of major suppliers of products and services under state monopoly, such as the petroleum, aviation, and telecom sectors, to influence prices in the local market.

**Answer:** The Price Control Act has just been enacted recently. We do not have any plans to modify the Act at the moment.

#### **Paragraph 126**

*(Japan) The Secretariat Report states on pages 69 to 70, paragraph 126, that subject to Cabinet approval, the Central Commission on Price of Goods and Services has the power to designate any particular goods or services as controlled goods or services, or introduce minimum purchasing prices for these goods and services, and to maintain the prices at a certain level. According to footnote 85 on page 70 of the Secretariat Report, the current list of controlled goods includes such goods as formic acid, chemical fertilizers, pesticides and fungicides. Why are such goods included in the current list of the controlled goods? Regarding such controlled goods, have the maximum and minimum prices already been set up? If so, please indicate the price.*

**Answer:** As formic acid, chemical fertilizers, pesticides and fungicides are the important factors of production for agricultural products, the purpose of including such goods in the list of controlled goods is therefore to prevent the unfair fixing of conditions or trade practices.

The maximum and minimum prices of such controlled goods have not been set up. However, the producers of such controlled goods are required to notify the competent official of the distribution price to ensure its conformity with the cost of production, quality and quantity.

The Central Commission on Prices of Goods and Services will review the exercise of power at least once a year to ensure its conformity with the economic conditions, taking into account the cost of production, expenses incurred in the production, the import, the export, the purchase, the distribution, the appropriate profit rate effects on investment in the light of expansion of production capacity of subsequent stages. The notification of the Commission shall be valid for the specified period, provided that the specified time shall not be longer than one year unless a new notification is issued.

#### **Paragraph 129**

*(Japan) According to the Secretariat Report on page 70, paragraph 129, the Office of Trade Competition Commission has made decisions on three cases, two of which are described but the third is not. Please specifically indicate the case which is not described in the Secretariat Report. With regard to these three cases, please provide any material in English open to the public, if available.*

*(Japan) It is reported that AP Honda is, this year, the objective of a complaint based on the Trade Competition Act. However, it seems that the relevant information has not been provided to AP Honda, the party primarily concerned. Japan is worried about ensuring a fair procedure for the case. Please indicate the current status of proceedings against AP Honda. Please describe how the measures by the Trade Competition Commission against anti-competition actions are open to the public. Please provide in English a list of the measures taken by the Trade Competition Commission.*

*(Japan) According to the authorities, one of the reasons for a weak enforcement of the competition legislation could be the lack of resources, including a lack of funds for such activities as staff-training. Please indicate what measures the Government of Thailand is taking to solve this problem.*

*(Japan) We note that Thailand has been technically assisted in competition policy by Japan and other donors. Please describe how Thailand deals with the dispatching the role between Japan and other donor countries in terms of the category and share of technical assistance by each developed country where referring to its lack of funds.*

**Answer:** The case which is not described in the Secretariat report is unfair trade practice in the motorcycle industry. This case is currently in the course of the legal process. The Thai Trade Competition Commission (T-TCC) will take action according to the Competition Law designation, which are conducted in line with international standard. The result of the T-TCC consideration will be provided to the public where the scope of the law provided via the media. Hence, the detailed information cannot be released to public until the case is finalized.

With regard to the lack of resources and funds of the competition agency, the agency involved (the Department of Internal Trade) has solved the problem by seeking technical assistance from international organization and other competition agencies by developed countries. The technical assistance is requested in term of providing competition experts to organize training programme for staffs and supporting funds for internship program in order to learn experience of other competition agencies from developed countries.

#### **IV. TRADE POLICIES BY SECTOR**

##### **(1) Introduction**

###### **Paragraph 2**

*(Chinese Taipei) As a member of the "Cairns Group", Thailand supports trade liberalization for most farm products, but the high levels of tariff escalation on many processed food products create barriers and deter imports of semi-finished and finished goods. Does Thailand have a plan and a timetable to reduce this tariff escalation?*

**Answer:** Thailand fully supports the Cairns Group's proposal to ensure deep cut to all tariffs and to address the problems associated with tariff peaks and tariff escalation as indicated in Job (02)/112. In addition Thailand also supports the Derbez Text, which addressed the problem of tariff escalation in a concrete manner, as a basis for further DDA negotiations. Thailand is planning to reduce tariff escalation as part of the agreed overall agricultural trade reforms - substantial improvement in market access, substantial reduction in domestic support and elimination of export subsidies - during the implementation period of DDA.

##### **(2) Agriculture**

###### **Paragraph 9**

*(Japan) Please describe in detail how the budget for agriculture, since the Asian economy crisis, has effected the production of agriculture in Thailand, by stating the overall budget amount of the government and of agriculture (or rather of the Ministry of Agriculture and Co-operatives), in addition to the amount of the gross product of agricultural exports and to the amount of agriculture products. Please indicate the items which Thailand regards as important in view of non trade concern, with the tariff rates and the main domestic measures for such items. If many items are regarded as important in such view, please indicate about largest 5 items in order of the amount of agricultural products.*

**Answer:** The budget of Ministry of Agriculture and Cooperative after Asia Economic Crisis has been allocated at 63.8, 65.7, 69.2, 67.7, and 63.4 billion Baht in 1998, 1999, 2000, 2001 and 2002 respectively, while the value of agricultural sector to GNP was recorded at 565, 503, 511 and 532 billion Baht during the same corresponding periods. Information on the value and volume of agricultural exports of Thailand can be found in Document G/AG/W/32/Rev.6 and the following

websites: [www.moc.go.th](http://www.moc.go.th) and [www.customs.go.th](http://www.customs.go.th). Thailand is more concerned with trade distortions in the world agricultural markets as well as restrictive market access to our exports than any non-trade concern. Of course our non-trade concerns are the poverty alleviation and rural development. We are certain that such problems could be solved by comprehensive global agricultural trade reforms.

*(Japan) In 2001, Thailand introduced a new scheme for the compulsory use of domestically - produced raw milk in the context of its school milk project. Please describe the scheme in detail and how the government sectors are involved in the scheme. Please provide Thailand's view as to whether or not this is considered as a newly-established indirect subsidy for dairy farmers.*

**Answer:** Thai government provides a budget for the purchase of pasteurized fresh milk only for Grade 1 – Grade 4 pupils in public schools. Most of them are from poor families and cannot afford to have lunch at school. The objective of the scheme is to address the problem of malnutrition among underprivileged children. Though it was carried out in the form of government procurement, the purchase was made at the current market price. We do not consider such scheme to be an indirect subsidy but rather a scheme to help those children access to proper and nutritious school lunches.

*(Japan) The Ministry of Agriculture and Co-operatives has introduced a standardized farm scheme for livestock and poultry production, and has limited production for exportation only to the accredited farms. Please provide details on the standard for accreditation. Please indicate whether the applicant is limited to Thai nationals only. Will the scheme be also applied to imported agricultural products in the future?*

**Answer:** Ministry of Agriculture and Cooperatives has established criteria for accreditation of livestock and livestock product establishments in general and not those intended solely for export. It is the policy of the Department of Livestock Development to monitor quality of exports that they meet importing countries' requirements. It is therefore necessary to approve the whole system of livestock and livestock production through this registration scheme. The applicants are not limited to Thai nationals. For imported products, information on sanitary measures applied in the exporting countries have to be provided to the Department of Livestock Development to ensure the products are free from certain animal diseases and will not introduce certain diseases into Thailand. Other measures include on-site visits of veterinary authority from the Department of Livestock Development for approval of the establishment before a permit can be issued.

*(Japan) Thailand introduced a 100% inspection for chemical residues in chicken and shrimp for exportation. Will this also be applied to products sold in the domestic market in the future? If so, will imported products be affected?*

**Answer:** Residues monitoring scheme is applied to both domestic and export products. Since the Thai government has declared next year to be the "Food Safety Year" of Thailand, the Department of Livestock Development is working closely with relevant agencies in controlling the residues in agricultural products including meat, fishery products, vegetable and fruits, etc.

According to our national food safety policy, we are in the process of adopting a single standard for products and commodities intended for domestic consumption, for importation and exportation and therefore there is a need to adjust certain standards to achieve the said objective. Nevertheless, we would like to ensure that although we will use necessary and appropriate measures to ensure food safety and quality for our people, these measures will not run counter to WTO principles or cause unnecessary hindrances to international trade.

Information regarding standards for livestock and poultry inspection can be accessed at the following website: [www.acfc.go.th](http://www.acfc.go.th). However, information regarding chicken egg farms and duck farms has not yet been uploaded onto the website, but will be uploaded in due course.

#### **Paragraph 10**

*(Chinese Taipei) The Public Warehouse Organization is responsible for the importation of certain quantities of tea under tariff quota. It would be appreciated if Thailand could provide details of how decisions on quality and pricing are made in practice, to demonstrate that the decision-making process operates purely on a commercial basis?*

**Answer:** 80% of TRQ volume would be annually allocated by the Department of Foreign Trade to the applicants according to their past import performance in the previous three years and 20% to those without past import performance in proportionality.

### **(3) Policies Developments in the Energy Sector**

#### **(ii) Other energy**

#### **Paragraph 20**

*(Japan) The Secretariat Report states that the distribution and sales of electricity remain a state monopoly; there is no third-party access for the time being in the transmission and distribution system, and no retail competition. However, the Government has promoted the participation of the private sector in electricity generation. Please explain whether any privatization in the distribution and sales of electricity or any third-party access, are being planned or not.*

**Answer:** At the moment, Thailand has no plan to privatize the distribution and sales of electricity nor third-party access. Nevertheless it is worth noting that the Energy Industry Act is being drafted in order to establish an independent regulator in energy sector. The drafting process is expected to be finalized in 2005. Under the Act, the regulator will be endowed with the power determine the desirability and the necessity of privatization in the distribution and sales of electricity and third-party access. For more information, please visit the website of Energy Plan and Policy Office: [www.eppo.go.th/power/FF-E/pw-reform-1-main-E.html#4](http://www.eppo.go.th/power/FF-E/pw-reform-1-main-E.html#4)

*(United States) Could the Thai representative provide detailed information on the elements included in the approval process for small and independent power producers?*

**Answer:**

#### **IPP**

- The bidding process is overseen by the Selection Committee comprising officials from Electricity Generating Authority of Thailand (EGAT), National Economic and Social Development Board, Ministry of Finance and Energy Plan and Policy Office.
- The applicant must complete the environmental Impact Analysis (EIA). The EIA must be approved by Ministry of Natural Resources and Environment before proceeding with the concession application.
- Other domestic regulations such as factory law could also be applied in granting a concession to the power producers.

**SPP**

- A small power producer can submit the request any time.
- The Electricity Generating Authority of Thailand, the Metropolitan Electricity Authority and the Provincial Electricity Authority will consider the request based upon (1) the connection and operating standards and (2) safety standards.
- Upon approval, the contract will have to be signed within 1 year.
- The applicant must complete the environmental Impact Analysis (EIA). The EIA must be approved by Ministry of Natural Resources and Environment before proceeding with the concession application.
- Other regulations such as factory law will be applied in granting a concession to power producer.

**(4) Policies Developments in Selected Manufacturing Sectors**

**(i) Textiles and clothing**

**Paragraph 26**

*(United States) We note that in the Uruguay Round Thailand bound its tariffs on clothing (HS Chapters 61 and 62) at no higher than 30% ad valorem, or in some cases, no higher than a specified value per unit. Thailand's current applied tariffs, as published on the APEC Website, on some clothing products in HS subheading 6203-6215 are listed as 60% or more depending on whether a specific unit duty is applied. We would appreciate an explanation of the relationship between the tariffs listed on the APEC website and Thailand's WTO bindings.*

**Answer:** The information regarding Thailand's textiles and clothing tariffs in the APEC website will be updated shortly in order to be in conformity with the WTO Commitment.

**(ii) Steel products**

**Paragraph 31**

*(Switzerland) Paragraph 31 mentions that steel products included in table AIII.2 of the same document must meet mandatory technical regulations. Why must these steel products meet mandatory technical regulations? Are the relevant industrial standards mentioned in table AIII.2 based on international standards? What are the conformity assessment procedures required in order to prove compatibility with these standards?*

**Answer:** The steel products must meet mandatory technical regulations in order to ensure safety and prevent any harmful effects that may befall the public. The technical regulations are based on international standards and applied on a non-discriminatory basis. Further information is available at [www.tisi.go.th](http://www.tisi.go.th).

**(5) Services**

**Paragraph 35**

*(Canada) The WTO Secretariat Report notes that Thailand has taken Article II (MFN) exemptions on telecommunications. Could Thailand please describe the measure(s) pertaining to telecommunications that are inconsistent with Article II and indicate how long these measures are likely to remain in effect?*

**Answer:** Thailand never made a reservation on measures inconsistent with Article II (Most Favored Nations principle) in the telecoms sector.

*(Japan) Except for such service sectors as telecommunications and financial services, the foreign Business Act of Thailand labels juridical persons, those having 50% or more foreign capital participation, as "foreigner". Thus, foreign investors in service sectors, even though majority or full capital ownership are allowed pursuant to the standards of the annex of the above Act, could, in some service sectors, be subject to a sort of discriminatory treatment, as provided for in Thailand's Schedule of Specific Commitments. Please provide an illustration of major existing measures of a discriminatory nature, and the justification thereof in view of national policy objection.*

**Answer:** The entities that have majority foreign ownership are subject to minimum capital requirements and general provisions stipulated in the Foreign Business Act. For further information please visit the website of the Department of Business Development at [www.dbd.go.th](http://www.dbd.go.th)

**(Japan)** Thailand, in its initial offer (TN/S/O/THA), gives a specific example of subsidies for such discriminatory treatment.

Please provide a list of all existing discriminatory subsidies indicating the respective applicability thereof.

**Answer:** The Ministry of Commerce is compiling the information on subsidies in services sector.

*(Japan) Regarding the movement of natural persons supplying services in the category of business visitors, it is understood that foreign natural persons, staying in Thailand for 15 days or longer, are required to obtain a Work Permit. This requirement, however, is not indicated in the Schedule of Specific Commitments of Thailand. Please explain about why such inconsistency exists.*

*Please explain about why such inconsistency exists.*

**Answer:** It is understood that Members are not obliged to schedule such requirements (such as work permit procedures and types of visa required). The Annex on Movement of Natural Persons gives a WTO Member freedom to apply any measures to regulate the entry of natural persons into, or their temporary stay in, its territory including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders. The fact is some Members have a unified entry system, meaning visas and work permits are issued by a single agency, and others do not.

*(Chinese Taipei) As indicated in the Report, in financial services, although new branches are subject to discretionary licensing, certain "grandfathering" provisions allow foreign bank branches operating in Thailand before July 1995 to open up to two more branches (GATS/SC/85/Suppl.3).*

*Presumably, does this regulation apply to all qualified foreign banks operating in Thailand? If this is the case, we would request that the application made by a particular Taiwanese bank be given favorable consideration.*

*In addition, we are interested in knowing what are the relevant regulations governing the procedures and qualifications required for the representative office of a foreign bank to be upgraded to a branch.*

**Answer:** Although the aforementioned branching guideline applies to all qualified foreign banks that were operating in Thailand prior to July 1995, the Financial Sector Master Plan currently being deliberated by the Ministry of Finance also envisions ways in which existing foreign commercial banks will be allowed to open up additional branches. However, because the Plan is not yet completed, it is premature to detail the exact numbers or manners with which foreign commercial banks will be allowed to open additional branches.

In terms of the financial institution licensing guideline, the review and approval criteria for new bank licenses are all based solely on prudential reasons. Going forward, we envision the creation of a committee to review applications for new licenses.

*(United States) Could the Thai representative tell us whether the Royal Thai Government has any plans to liberalize current nationality and equity restrictions that apply to accounting and legal services?*

**Answer:** Legal and accounting services fall under the 39 professions contained in the Annex attached to the Royal Decree Prescribing Works Relating to Occupation and Professional in which an Alien is Prohibited to Engage B.E. 2522 (1979). The Foreign Business Act B.E. 2542 (1999) permits foreign equity participation of up to 49%.

*(United States) Considering the experience and accomplishments of foreign engineers and construction companies and the contribution they can make to the local economy, could the Thai representative tell us whether the Thai government has contemplated relaxing regulations that prohibit or limit the ability of foreigners to participate in construction and engineering in Thailand?*

**Answer:** Apart from civil engineering, which is reserved for Thai nationals within the sense of the Royal Decree already mentioned above, other types of engineering services provided by foreign engineers are allowed. The Foreign Business Act B.E. 2542 (1999) permits foreign equity participation of up to 49%. Full foreign ownership is allowed for construction of public utilities or transport requiring special tools machinery, technology or construction expertise and meets the minimum capital requirement of 500 million baht.

*(United States) From the standpoint that lawyers, architects and other professionals are an integral part of a country's economic infrastructure, could the Thai representative tell us whether the Thai government is considering licensing of qualified foreign professionals, who have much to contribute to a country's efficient growth and development?*

**Answer:** Relevant professional associations are exploring the possibility of licensing of qualified foreign professionals.

**(i) Financial services**

**Paragraph 39**

*(Hong Kong, China) It is noted that foreign equity limits were allowed to be raised from the previous 25% UP TO 100% within a ten-year period starting from 1997. While we appreciate Thailand's effort in liberalizing the market, would Thailand share with us the rationale for limiting the implementation of this liberalization measure to a finite duration?*

**Answer:** Under this guideline, once the 10-year limit is completed, the foreign investor will not be allowed to purchase additional equity until their equity holding falls below 49 percent. In other words, if there is no need for the financial institution to recapitalize, the foreign investor is welcomed to continue to maintain their 100 percent ownership, and therefore it can be said that the Bank of Thailand is not limiting the implementation of this liberalization measure.

*We also note that after the ten-year period, foreign investors will not be allowed to purchase additional equity or participate in equity recapitalization of financial institutions unless their equity holding is less than 49%. Would there be any limit for such further increase of foreign equity? Besides, such allowance has not been so inscribed in the commitments. Would Thailand consider reflecting such liberalization measure in the initial offers, so as to provide certainty for the market?*

**Answer:** This guideline was included in Thailand's schedule of commitments that was tabled in the previous round of WTO negotiations so it may not be necessary for us to include the measure once more in the Doha round.

*(Japan) The Secretariat Report states that foreign equity limits were relaxed in 1997 for ten years in order to allow foreign ownership of up to 100% (previously 25%) in commercial banks. Please confirm whether foreign ownership of 100% when establishing a commercial bank is still allowed.*

*(United States) Could the Thai representative tell us when Thailand plans to implement further liberalization in the financial sector?*

*(United States) The 10-year time limit on 100 percent foreign ownership of banks, finance companies, and securities firms would seem to work against Thailand's objective of attracting foreign investment to its financial sector. Could the Thai representative tell us whether Thailand has considered removing these limits or lengthening them?*

**Answers:** The Financial Sector Master Plan foresees further liberalization of the financial sector following the completion and implementation of such essential infrastructure frameworks such as the Deposit Insurance Act, and authority for regulators to perform prompt corrective action.

The 10-year time limit on 100 percent foreign ownership of banks, finance companies, and securities firms would seem to work against Thailand's objective of attracting foreign investment to its financial sector.

Could the Thai representative tell us whether Thailand has considered removing these limits or lengthening them?

**Answers:** Although the grandfathering of 100 percent foreign ownership of locally-incorporated banks has a 10-year limit, the foreign investor will not be forced to dilute their ownership when the 10-year period is completed. Once the 10-year limit is completed, the foreign investor will not be

allowed to purchase additional equity until their equity holding falls below 49 percent. In other words, if there is no need for the financial institution to recapitalize, the foreign investor is welcomed to continue to maintain their 100 percent ownership.

**Paragraph 46**

*(Canada) Although the Bank of Thailand regulates most of the banking sector (and will apparently increase its regulatory powers under the future Financial Institutions Businesses Act), the Minister of Finance is responsible for licensing locally incorporated banks. Further to comments in paragraph 46 of the Secretariat Report, what amendments to the bank-licensing regime are being considered? Is Thailand considering moving licensing responsibility for local banks to the Bank of Thailand in the future, either through the Financial Institutions Businesses Act, or in the Financial Sector Master Plan?*

**Answer:** The Financial Sector Master Plan, currently being deliberated by the Ministry of Finance concerns amendments to Thailand's financial institutions' licensing regime. The Plan envisions a much more streamlined licensing regime with less duplication in terms of the financial institutions' scope of business. Nevertheless, given the fact that the Financial Sector Master Plan is currently being deliberated by the Ministry of Finance, it will be premature to comment on the specifics of the Plan.

In terms of licensing authority, the draft Financial Institutions Businesses Act that was approved by the lower house of parliament envisions that the authority to license financial institutions will fall under the purview of the Bank of Thailand.

*(Canada) Thailand's GATS Schedule of Specific Commitments for financial services notes that the Minister of Finance, with the consent of the Cabinet, must approve new licenses for foreign bank branches. Can Thailand please indicate what factors the Minister of Finance and Cabinet members consider in reviewing license applications? Is this review based solely on prudential considerations? Is the Thai government also considering giving responsibility for licensing foreign bank branches to the Bank of Thailand in the future?*

**Answer:** The Ministry of Finance will approve new licenses for foreign bank branches based on the Bank of Thailand's analysis and opinion. The review and approval criteria for new bank licenses are all based solely on prudential reasons. For example, in reviewing the applications of new commercial banks, the Bank of Thailand will perform fit and proper scrutiny on qualifications of the applicant's directors, and will also review the applicant's past financial performance and stability. Going forward, we envision the creation of a committee to review applications for new licenses.

**Paragraph 48**

*(Canada) The Secretariat Report notes that a bill is being considered at ministerial level to amend the insurance legislation and allow 49% foreign equity participation, after which majority participation would be considered. Can Thailand please indicate whether it has a time-line for passage of this bill, and if so what is the target date?*

**Answer:** The length of time required depends on the substance of the amendment and workload of the Parliament.

*(Japan) According to the Secretariat Report, proposed legislative amendments, if approved by the Parliament, would raise the limit of foreign equity participation in a joint venture from 25% to 49%*

*as the second stage of liberalization for insurance. Please indicate the current status of progress in the proposed legislative amendments.*

**Answers:** The proposed amendment to the Life Insurance Act and the Non-life Insurance Act has been endorsed in principle at the Ministerial level; pending the submission to the Council of Ministers.

Generally, the law amendment process is initiated by the implementing authority, i.e. the Department of Insurance. The Minister of Commerce will consider it. Once approved, the law will be submitted to the Council of Ministers. The Council of Ministers may seek legal opinion from the Council of State. If the Council of Ministers endorse the proposed amendment, it will refer to the Parliament. The draft will have to pass three readings in the House of Representative and another three in the Senate. The whole process is completed upon HM the King's royal signature.

*(United States) Could the Thai representative provide a timetable for further liberalization in the insurance sector?*

**Answer:** Thailand has formulated a three-stage policy on insurance sector liberalization.

At the initial stage, began in 1995, Thailand started to open up insurance market to help create a more competitive environment and a better standard of services through the invitation of applications for new insurance licenses, the first time since 1983. This resulted in the approval of 12 new life and 13 new non-life insurers.

Currently, Thailand is at the second stage. The Department of Insurance (DOI), as the insurance supervisory authority is in the process of amending the current Life and Non-life Insurance Acts; facilitating insurance business operations in a more competitive environment, while maintaining soundness and long term viability.

One of the key areas is to propose higher foreign equity participation of up to 49 percent (from 25 percent currently applied). Along with this, the industry's minimum required capital fund would gradually be raised to 500 and 300 million bath for life and non-life insurance companies respectively.

In so doing, Thailand has also encouraged merger among small insurers; whereby laws and regulations are to be reviewed to help strengthen the competitiveness of local insurance companies in transition to a more liberalized insurance market.

The final stage is to remove barriers to market access for foreign insurers, which will be completed with full market liberalization where local and foreign insurance business entities operate in Thailand at a level playing field.

#### **Paragraph 49**

*(Canada) The requirement for all insurance premiums to be approved by the Insurance Commissioner seems overly onerous, and may delay the introduction of new products and hinder competition. Considering recent and planned improvements in prudential regulation by the Department of Insurance, is Thailand considering giving more pricing autonomy to insurance firms? Related to this, and given the Government of Thailand's concerns over consumer protection, does Thailand have an insurance consumer ombudsman service where consumers can independently raise complaints regarding policy premium levels?*

**Answer:** Thai insurance market is not mature in terms of market practitioners and policyholders. Therefore, protection of policyholders' interests and market stabilization are essential for future development.

With regard to pricing, the Department of Insurance (DOI), as the insurance supervisory authority, is doing a feasibility study for the establishment of a Rating Bureau to take care of premium rating.

The DOI has also set up a Complaint Center where policyholders, other interest parties or insurers can file their complaints on insurance related matters. Each party may resort to the arbitration tribunal or the Civil Court if not satisfied with the result of the Complaint Center. Decisions made by the arbitration tribunal bind only the insurance company; the policyholders could have a choice to lodge to the Court if they want to.

#### **Paragraph 50**

*(Canada) Thailand offers tax incentives for citizens holding life insurance policies from locally licensed firms, but not for holders of policies issued by branches of foreign firms. Although Thailand reserves the right in its GATS Schedule of Specific Commitments to maintain this discriminatory measure, and Thailand please indicate whether it has a prudential basis, or whether it is in place simply to promote the growth of domestic firms?*

*(Chinese Taipei) It is noted that life insurance premiums of up to 50,000 Baht annually are tax deductible for holders of insurance policies issued by locally licensed companies. However, similarly favorable treatment does not apply to holders of policies issued by branches of companies incorporated abroad. We would urge Thailand to consider removing this restriction and thus conform to the principle of national treatment.*

**Answer:** Branches, if licensed to operate insurance business in Thailand, are subject to the same treatment as Thai insurance companies; and their acquired rights are guaranteed.

Therefore, life insurance policies sold by a branch of which license is granted by the Thai Government are entitled to the same tax privileges as other locally established life insurers.

*(Canada) Can the Thai government please provide information on any shift of customers away from foreign branches to domestic firms since the tax deductibility of life insurance premiums was increased to B 50,000?*

**Answer:** As there is no such discriminatory treatment, shift of customers away from foreign branches to domestic firms, if any, should be caused by other factors such as consumer preference.

#### **Paragraph 51**

*(Canada) Can Thailand please advise whether the Department of Insurance requirements for domestic retention of reinsurance contracts are consistent with its GATS commitments for National Treatment? If these are prudential measures, can Thailand please explain their prudential basis?*

**Answer:** Insurance firms are risk-taking financial institutions. A reasonable amount of retention should be kept and managed within the country.

The DOI and the General Insurance Association, through this measure, have encouraged insurance companies to utilize their full capacity in risk underwriting depending on business strategy and specialty of each firm.

(ii) **Telecommunications** (See attachment 2)

(iii) **Transportation**

**Paragraph 70**

*(United States) Could Thailand provide any examples when the RTG cabinet approved majority foreign investment for List 2 transportation businesses? What are the procedures for such an approval?*

**Answer:** In practice the Department of Business Development never received any application from foreign services suppliers in the transportation sector.

The procedures for such an approval is to fill out the application form available at the Department of Business Development.

The DBD will propose the application to the Minister of Commerce who will give permission with the approval of the Cabinet. Once the Cabinet approves, the DBD will notify the applicant and issue the license within 15 days.

*(United States) Are there any specific transportation businesses (e.g., trucking/ground freight, maritime, etc.) that are more or less likely to receive cabinet approval for majority foreign investment?*

**Answer:** Not at the moment except for Australian investors in supporting services for maritime transport (CPC 745\*\*) (excluding cargo handling)

**Paragraph 73**

*(Hong Kong, China) We are pleased to note from the Secretariat Report that Thailand is reviewing its bilateral maritime agreements to facilitate removal of its GATS MFN exemptions, and the cargo-sharing clauses in the China and Vietnam agreements were abolished in 1995 and 1999 respectively. We appreciate Thailand's efforts in eliminating the MFN exemptions. With the abolition of the cargo-sharing clauses in the China and Vietnam agreements, would Thailand consider formally terminating the respective two MFN exemptions in its services schedules?*

**Answer:** Thailand is considering taking the cargo-sharing clauses out of the MFN exemption list. Nevertheless, this is the matter that is subject to negotiations.

**Paragraph 79**

*(United States) The United States, European Union, and others have developed CRS Codes of Conduct. Is Thailand using any of these as examples from which it is working?*

**Answer:** The Council of State is deliberating on the CRS Code of Conduct bill to see if it overlaps with the Electronic Transactions Act B.E. 2544 (2001).

*(United States) Has there been a public comment process to allow CRS owner firms to provide input?*

**Answer:** Not at this stage.

*(United States) Could Thailand elaborate further on the draft CRS Code of Conduct?*

**Answer:** The draft code follows the EU and the US regulation on a Code of Conduct for computerised reservation system.

**(iv) Tourism**

**Paragraph 80**

*(United States) Which entity, the Ministry of Tourism and Sports or the Tourism Authority of Thailand (TAT) is responsible for developing and implementing laws and policies related to tourism services?*

**Answer:** The Ministry of Tourism and Sports.

**Paragraph 81**

*(United States) Could Thailand provide further details on the hotel grading system being introduced and how that system has been developed? Have existing foreign-equity hotels been involved in the process? Will this system have investment exclusions (e.g., no foreign investment in hotels below a certain number of "stars")?*

**Answer:** Thailand's hotel grading system was completed in 2002. The grades are assigned according to the hotel's standards of construction, facilities, maintenance and services. There are 5 levels of certification using the symbol of star arranged in an ascending order. One star signifies the basic standard. A five-star hotel is of the highest standard.

**Paragraph 82**

*(United States) Could Thailand elaborate further on the measures now being considered by the Ministry of Tourism and Sports with respect to allowing foreign ownership in travel and guided tour agencies and access for foreign-language tour guides?*

**Answer:** Tour guide is one of the 39 professions reserved for Thais. And foreign ownership in travel and guided tour agencies is subject to Foreign Business Act 1999.

**REPORT BY THE GOVERNMENT**

**I. OVERVIEW**

**II. ECONOMIC ENVIRONMENT**

**(c) Trade Environment**

**Paragraph 14**

*(Canada) Could the Thai Government please elaborate on its strategies to increase exports by 40% to secondary and new markets and, in particular, can it provide some insight into what it hopes will constitute the targeted 20% increase in exports to Canada?*

**Answer:** We are currently employing bilateral trade cooperation strategies, sending trade missions to as well as inviting incoming trade missions from new market destinations. Additionally, we support the establishment of new joint business councils.

#### **Paragraph 22**

*(Canada) Has the Thai government seen the expected recovery of its tourism economy given the reversal of the SARS crisis?*

**Answer:** Thailand sees recovery in the last quarter of the year as the number of incoming tourists from Hong Kong, Singapore, Malaysia, South Korea and Taiwan rise. The number of incoming tourists from Europe particularly German, the UK, the Netherlands and Scandinavian countries is likely to rise towards the end of the year.

### **III. PROGRESS ON ECONOMIC POLICY REFORM**

#### **(c) Fiscal Policy**

#### **Paragraph 36**

*(Canada) Can the Thai Government elaborate on the operation of its "revolving Village Fund"?*

**Answer:** The Thai Government launched a micro-credit scheme, known as the Village and Urban Revolving Fund, in July 2001. The public organization is designed to allocate money to offer loans to rural villages and urban communities. As a local funding source, the Village and Urban Fund scheme provides a revolving fund of 1 million Baht to each of more than 70,000 villages nationwide. The amount, not more than 80,000 million Baht, is provided by the Government Savings Bank.

The Village and Urban Community Fund have its headquarters in Bangkok or nearby province. Members of the Fund are allowed to seek loans from the revolving fund for use in developing their occupations and finding ways to create and increase income. The money may also be used for public services in each village and urban community. The interest earned from the loans or donations to the fund will be used for public services of the village or urban community involved. From July 2001 to February 2003, the loan facility was allocated and transferred to 74,286 villages.

#### **(d) Trade and Investment Policy**

#### **Paragraph 42**

*(United States) Could the representative of Thailand tell us whether the texts of its FTAs are or will be documents that are available to the public? If so, please specify, when and how these documents will be available. If not, could the representative of Thailand provide detailed descriptions of any FTAs that have been concluded and FTAs that are currently under discussion? In particular, for FTAs that have been concluded, if an agreement has been reached with respect to the elimination of tariffs on certain items, but other items are still subject to tariffs, could the representative of Thailand explain the process by which other tariffs will be eliminated?*

**Answer:** The texts of our FTA negotiations are not yet available as they are still at the discussion stage. We have signed a framework agreement with Bahrain, India, Australia, and Peru; and ASEAN as a group has signed a framework agreement with China and India. The key principle we employ in the process of FTAs is to include substantially all the trade as is consistent with Article XXIV of the

GATT 1994. Once these negotiations have been completed, we will submit relevant documents to the WTO.

#### **IV. TRADE POLICY AND TRADE-RELATED POLICY DEVELOPMENTS**

##### **(b) Import System**

##### **Paragraph 55**

*(United States)* Could the representative of Thailand provide a timetable for the completion of the tariff restructuring process?

**Answer:** The restructuring process is expected to be completed by 2004.

##### **(c) Customs procedures**

##### **Paragraph 57**

*(Chinese Taipei)* As indicated in the report of the government, Thailand has introduced clear customs appeal procedures, which cover a variety of customs-related areas, including one described as the quantity of imported goods. We would like to know under what circumstances an importer could appeal against customs determination on the basis of the "quantity of imported goods".

**Answer:** In the case of discrepancy or inconsistency between declared and actual quantity of imported goods.

##### **(e) Agriculture**

##### **Paragraph 60**

*(United States)* It is stated that under the "One Tambon One Product" scheme (OTOP), farmers can produce goods using local materials to sell products for additional income. Could you please provide more information about this program? What type of assistance is provided under the scheme and what are the eligibility criteria for this assistance?

**Answer:** The OTOP scheme has been devised to achieve the objective of assisting local communities, mostly in rural areas, to develop unique products with high marketability using indigenous knowledge, for example, silk, fermented wine, herbal tea, preserved fruit etc. The government will provide technical and marketing assistance and also processing know-how, on a demonstrational basis. At present, 2,516 groups have been established producing 80 different agricultural product items.

##### **Paragraph 61**

*(Japan)* Please provide a list of those agricultural products which are applied under "the Good Agricultural Practice (GAP)" method by using the data of the current productivity and the targeted productivity. Is the standard, which was introduced by the National Bureau of Agricultural Commodity and Food Standards (NBACFS), applied to import products? If so, please describe its conformity with the WTO Agreements with regard to every relevant agreement.

**Answer:** The list of agricultural products applied under "the Good Agricultural Practice (GAP)" is as follows:

All food crops, duck, chicken, swine, dairy cow, honeybee, and organic agricultural products. The standard is currently applied on a voluntary basis for export products.

More information can be accessed from the NBACFS website: [www.acfs.go.th](http://www.acfs.go.th)

**(f) Financial Services**

**Paragraph 74**

*(Canada) Thailand notes that it is planning to liberalize the licensing regime for mutual fund management in the near future. Can Thailand please indicate whether it will provide foreign fund managers with National Treatment regarding this liberalization?*

**Answer:** Yes, under the new licensing regime for mutual fund and foreign fund will be provided with national treatment.

**Paragraph 80**

*(Canada) Life insurance firms in other economies have faced unhealthy pressure on the soundness of their operations due to the need to pay guaranteed rates of return on customer policies when market conditions turn sour and interest rates drop (i.e. the firms' investment and premium income cannot cover the amount needed to pay policyholders). Can Thailand please confirm whether it imposes a required rate of return on life insurance firms? If so, can Thailand please explain the rationale (prudential or other wise) behind this policy?*

**Answer:** The Department of Insurance has taken necessary steps to reduce pressure on negative interest spread to insurance companies.

On the one hand, the interest rates have been decreasing to 2%-6% compared with the range of 4%-6% applied the previous year -- the first reduction from 6% set for life premium calculation. Insurance companies can quote at any rate within the range depending on its business strategy and market situation.

On the other hand, DOI reviewed the investment regulation of the insurance companies with a view to promoting stability, diversification and yield enhancement at an acceptable risk level. For example, new types of investments and financial instruments are allowed/expanded to create greater flexibility in asset management.

**(j) Intellectual Property Rights**

**Paragraph 103-105**

*(United States) While the enforcement efforts of the RTG are to be certainly acknowledged and welcomed in the area of anti-piracy activities against commercial/retail scale copyright infringement, are similar efforts contemplated, with the comparable human and financial resources allocated by the RTG to combat widespread trademark counterfeiting?*

**Answer:** We lend equal importance to the effort to combat copyright and trademark infringements.

**Paragraph 105**

*(Hong Kong, China)* The Government Report indicates that the number of pirated goods confiscated has increased from 2 million pieces in the whole of 2001 to 4 million pieces just in the first six months of this year. Is this the result of increased piracy activities or the concerted efforts of the Thai authorities following the conclusion of a MOU on Enforcement of IPR between 13 government agencies in end 2002?

**Answer:** This is definitely the result of increased anti-piracy efforts by the Thai authorities.

*(United States)* When does the RTG anticipate final enactment and implementation of the proposed draft legislation on Optical Disc Manufacturing Control?

**Answer:** The RTG has made its best effort to propose the draft legislation on Optical Disc law to the Parliament. On 9 September 2003, the Cabinet of Ministers approved the draft bill on CD production control and already submitted the draft legislation to the Parliament. The draft Bill is under the parliamentary process and is expected to be passed in the near future.

**Paragraph 110**

*(Japan)* The Government Report states that Thailand has revised and enacted several laws to comply with the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) and Protection of Plant Varieties Act came into force in December 1999. Regarding the implementation of this Act, please indicate:

- (a) *the name of the plants to be protected as the right of the upbringing person, the number of varieties that have been registered, and the number of those which have been filed by foreign applicants;*
- (b) *the names of the plants that are targeted for protection in the future, and the schedule of the enlargement plan of protection; and*
- (c) *the scope and conditions of the protection of plant varieties.*

**Answer:** It is in fact our policy to make known to the public names of the plants under protection. However, we are at an early stage of implementation of the law in question, which has prevented us from making available such names at this juncture.

**(k) Investment**

**Paragraph 111**

*(Canada)* Canada notes with interest the lack of foreign equity restrictions in the manufacturing sector. Can the Thai Government ever envision a similar situation for its services sectors?

**Answer:** The answer is in the positive. It is a matter of time and sequencing.

**Paragraph 112**

*(Chinese Taipei)* The Board of Investment (BOI) is poised to become more proactive in targeting investors in order to improve both the quality and quantity of investment. It would be appreciated if

*Thailand could inform us of the sectors/industries it intends to attract foreign investment at the present time and details of the related investment incentives it might offered.*

**Answer:** At present, the BOI policies focuses on 5 target industries namely 1) agro-industry, 2) fashion industry, 3) automotive and parts 4) electronics, electrical appliances, and ICT, and 5) value-added services. Details of related investment incentives can be found at our website: [www.boi.go.th](http://www.boi.go.th)

*(Switzerland) You mention that local-content and export requirements as part of investment incentives were abandoned in 2000, and the Secretariat mentions in its report that "most local-content requirements in manufacturing were eliminated". In retrospect, are you of the view that such instruments were of any positive effect, or turned differently, has the effectiveness of economic and investment policy been reduced after abandoning such instruments?*

**Answer:** After most local content requirements have been abolished, there were some impacts on the effectiveness of our economic and investment policy. However, this does enhance our domestic investors to become more competitive and, most of all, majority of foreign investors continue using our local raw materials in their production since they are more cost effective.

## **V. REGIONAL TRADE ARRANGEMENT**

### **Paragraph 120**

*(Canada) In the event that multilateral trade talks do not resume in a timely manner, what does Thailand see for the future of its national trade strategy? Specifically, which existing arrangements will receive the most emphasis or, will Thailand be seeking new arrangements (regionally or bilaterally)?*

*(Switzerland) We note that "Thailand believes that bilateral/regional trade arrangements are complementary to the multilateral trade goals", and that Thailand is expanding the scope of its bilateral and regional agreements either individually or through ASEAN. While we are aware and appreciate that Thailand is an active supporter of the WTO process, is there a view developing in the Thai government, particularly after Cancun, in the sense that the significance and utility of bilateral and regional approaches may be relatively increasing at the expense of the multilateral trading system?*

**Answer:** We see regional approach to trade liberalization as complementary to the multilateral approach and view them as having equal and mutual significance. We are currently engaged in many regional and bilateral negotiations to which we attach equal importance. However, the most developed and advanced regional arrangement that we currently have, in terms of progress in implementation, is the AFTA (ASEAN Free Traded Area).

### **Response to EU Questions**

#### **Government procurement**

*Government procurement is vital for ensuring that the state utilizes government spending as efficiently as possible and that the market is not undesirably curbed. The EC has had good gains from using various tools in this field and should like Thailand to have similar gains. Consequently, the EC should like to pose the following questions:*

- *Taking into account the highly developed nature of the Thai economy and the fact that she already participates in the WTO Working Group on Transparency in Government Procurement, when does Thailand think that she will be joining the GPA?*

**Answer:** Thailand is now in the process of government procurement reform which aims to achieve the international standard of government procurement. The major concern is the implementation of transparency in government procurement as well as the other principles of value for money, accountability and due process, etc.

- *Do the regulations, and in case which, for procurement activities allow for national preferences of Thai products, contractors and consultants?*

**Answer:** Yes.

- *What is the amount of government procurement contracts open annually to foreign bidders and what percentage is this of the total contracts? Further has the Cabinet resolution of October 2002 requiring all government agencies to maintain their own web-sites containing procurement information and implement e-Auction been effectively enforced? What percentage of the agencies have actually been utilising e-Auction and what kind of procurement information was made available on the web-site and for how long?*

**Answer:** There is no information recorded for the amount of government procurement contracts open annually to foreign bidders. The Cabinet resolution of October 2002 requiring all government agencies to maintain their own web-sites containing procurement information and implement e-Auction has been effectively enforced since then. All government agencies in central administration have implemented e-Auction as an alternative procurement method. The procurement information is disclosed through the web-site of [www.gprocurement.or.th](http://www.gprocurement.or.th) since 2001. The procurement information provided includes related law and regulations concerning procurement procedures, advertising for procuring activities of e-auction.

- *What kind of competition law will be applicable for public services?*

**Answer:** There is no provision under the current Competition Act 1999 which addresses government procurement.

- *Finally, does the state agencies and enterprises of Thailand currently carry out counter-trade policy. If so, please indicate under which regulation and according to which offset definition as well as the percentage of the contracts that are yearly subject to counter-trade and for which total amount.*

**Answer:** Countertrade is but one of Thailand's policy options. Under the Office of the Prime Minister Regulation on Countertrade, B.E. 2543 (2000), a countertrade transaction is required on all procurement of foreign goods and services by government agencies and state enterprises with value over 300 million Baht. The value for counterpurchase of Thai products is set to at least 50 percent of the imported price. To date, 12 counterpurchase agreements have been signed, the total value of which is 8,646.38 million Baht.

- *Do the regulations, and in case which, for procurement activities allow for national preferences of Thai products, contractors and consultants?*

**Answer:** The Cabinet resolution for government procurement requires local preference for industrial products specified by the Ministry of Industry. If such local products are not available, government agencies can procure the products freely.

- *What is the amount of government procurement contracts open annually to foreign bidders and what percentage is this of the total contracts? Further has the Cabinet resolution of October 2002 requiring all government agencies to maintain their own web-sites containing procurement information and implement e-Auction been effectively enforced? What percentage of the agencies have actually been utilising e-Auction and what kind of procurement information was made available on the web-site and for how long?*

**Answer:** Public sector reform in FY 2002 has resulted in major changes to government structures and responsibilities, in this process public procurement management has been transferred to the Ministry of Finance, which plans to develop a Public Procurement Management Master Plan by the end of 2003. This will be used as a framework to improve government procurement as a whole.

We have taken steps to improve efficiency with the aim of increasing transparency and open and effective competition. In the area of e-Auction, a Cabinet resolution required that all government agencies maintain their own websites containing procurement information. These agencies must purchase at least one product list using e-Auction by December 2002.

#### **Telecommunication services**

- *When will the Royal Thai Government decide on the setting up of the National Telecommunications Commission (NTC) and what is the precise path to achieving full liberalization in 2006?*
- *Will Thailand's NTC have the power, under the Telecommunications Business Act 2001, to redress all anti-competitive practices or is this task left to overall competition rules and regulator and what are the next steps foreseen for the establishment of the new regulator?*
- *What is the link between those interconnection rules foreseen in the Telecommunication Business Act 2001? And will there be a systematic regulation of dominant suppliers for interconnection under these rules or under the Telecommunications Business Act 2001?*

**Answer:** See attachment 2.

#### **Financial service**

- *Could Thailand kindly explain the criteria used by the Ministry of Commerce to derogate to the caps on foreign shareholding for non-brokerage securities activities? And when will the foreign investment cap be raised again to 49% And why is there still a cap on foreign ownership at all?*
- *In various service sectors Thailand refers to the Foreign Business Act of 1999. Does Thailand currently have plans to ease the current restrictions set out by the law and to revisit the list corresponding to the various business activities?*

**Answer:** Under the Foreign Business Act of 1999, the list corresponding to the various business activities under the Foreign Business Act of 1999 will be revised annually.

### **Transportation and distribution**

*Liberalisation of transportation and distribution is extremely vital for an economy as a whole. It is one of the nerves of a strong trading economy, simply because intensive competition will result in lower transport cost to the benefit of all sectors in the economy. In this light, the EC should like to ask the following questions:*

- *How many people work in the distribution sector, what has been the evolution in the last years and how much of the FDI attracted by the country in the last years has been in the distribution sector?*

**Answer:** No systematic compilation of statistics is available. On top of that Thailand has a huge informal retailing sector. But based on the Office of Labour Standard Development of Labour Protection and Welfare, in 2002 there were 152,175 registered business establishments in wholesale and retail trade, repair of motor vehicles (segments of distribution) employing a total of 1,377,611 people.

The past years have seen the rising business activities in modern trade and logistics and distribution management especially third party logistics services provided by both local and foreign firms.

Based on the Board of Investment Database, the Board last year approved 3 projects worth 720 million Baht.

- *What is Thailand's assessment of the effects of the distribution sector in her overall economic growth, employment and social development, and also in other economic sectors like construction, transport, computer services, education and professional training?*

**Answer:** There is rising awareness. Universities and other educational institutions have developed a course on logistics and distribution management which has proven very popular.

The Government is allocating a budget for infrastructural development such as the setting up of Central Distribution Center, Truck Terminal, Logistics Database House and Bar Code and Tracking System.

- *Thailand is undertaking reform of its airport activities (under AOT). Can Thailand give information as to the timetable and extent of the foreseen privatisation? Are the reforms in this area foreseen to cover ground-handling services and airport management operations? And in relation to the former question: What are the current conditions for foreign companies that want to set up dedicated (independent third party) ground handling operations in Thailand?*

**Answer:** Airports of Thailand (AOT) is planning a partial privatization by selling 30 percent stake in an initial public offering (IPO) scheduled in February and April 2004 to raise up to 15 billion bath (375 million USD).

- *Does Thailand have a cargo sharing agreements or measures in place for international maritime transport.*

**Answer:** Thailand is about to set up a national shipping liner.

- *Thailand has announced that the port sector is being reorganised and privatised. Will this imply that the restrictions and limitations placed on foreign ownership by the Foreign Business Act are also revisited?*

**Answer:** They may be revised.

- *How are the auxiliary activities as maritime agency services and customs clearance services affected by these reform plans?*
- *What is the existing, recently implemented and planned legislation applicable to retailing services?*

**Answer:** At present, Thailand does not have specific legislation that deals directly with retail services. However, there are other related laws, such as the Town Planning Act B.E. 2518 (1975) and the Competition Act. The Town Planning Department has implemented a regulation on zoning to curb the expansion of large stores in congested areas.

- *Thailand is in the process of implementing a 'Cosmetics Act' that will provide further requirements on labelling and presentation of health certificates. What will these requirements be and for what products will these have economic effect?*

**Answer:** The requirement is for the text to be translated into Thai. The label must be factual and not misleading about the qualities of the cosmetics, which will ensure safety of the consumer as well as genuineness of the product. Further details can be accessed from: [www.fda.moph.go.th/fda-net/html/product/cosmetic/cosmetic/page/index-en.htm](http://www.fda.moph.go.th/fda-net/html/product/cosmetic/cosmetic/page/index-en.htm)

### **Tourism**

The EC understands that tourism is of some importance for Thailand's economy. Consequently, the EC should like to ask the following questions:

- *How many people work in the tourism sector and what has been the evolution in the last years? And what is Thailand's assessment of the effect of the tourism sector in overall economic growth and employment, and in particular in other economic sectors like construction, transport, computer services, education and professional training?*

**Answer:** No systematic compilation of statistics is available. But based on the Office of Labour Standard Development of Labour Protection and Welfare, in 2002 there were 25,003 registered business establishments in hotels and restaurants (a segment of tourism industry) employing a total of 405,291 people. The Tourist Authority of Thailand estimates the total employment at 1,473,898 for the whole sector (including segments like transport for tourist purposes, travel agencies etc.).

- *Does Thailand have plans to promote the tourism sector i.e. plans for improving professional education and training related to the tourism sector and what measures would they include to ensure non-discrimination of foreign service suppliers?*
- *What legislation is applicable to tour managers and tourist guides and what does it entail? Does Thailand have plans about reducing or eliminating discrimination of foreign service suppliers in these fields?*

**Answer:** The Travel Agency Business and Guide Act B.E. 2535 (1992).

*It is important that tourism is carried out in a sustainable manner, in order to ensure that the very fundament for tourism itself is not eroded or disrupted. In this light, the EC should like to ask:*

- *What is Thailand's approach to the regulation of tourism-related aspects of general interests such as environment, wildlife, urban planning, etc?*
- *What is Thailand's viewpoint about the tourism sector and promotion of local cultures, development of water supply and sanitation services, and public security?*

**Answer:** Thailand has not yet had a coherent package of legislations on tourism. The issues related to public security, health and sanitation and environmental related issues are addressed in different laws to ensure that tourism development meets the needs of visiting tourists and local hosts.

### **Trade in goods**

*It is vital to ensure a stable and not excessively high tariff regime in order to ensure that trade and development is not disrupted by shocks and that the evolution and reform of economic sectors is not undesirably halted due to protection of truly short-term interests of a few industries. The information collected by the EC on Thailand's tariff regime gives the following impression. Thailand's MFN tariffs are high by regional standards with average MFN tariff rate at 27.2% for industrial goods and at 33.1% for agricultural goods. Currently 26.1% of the tariffs are unbound and the bound rates often considerably higher than applied rates, which implies a high degree of unpredictability in tariffs. Some products are subject to high tariff peaks. In many cases actual paid tariffs seem to be extenuated with high excise duties applied to both domestic and imported goods.*

- *How does Thailand assess the impact of the comparably high average tariffs on her development?*
- *How does Thailand assess the impact of her tariff peaks on her development and the stability of trade? Further, what is her assessment of the impact of very often rapid changes in her applied tariffs which have sometimes been more than doubled for some products?*
- *When is Thailand planning to increase the number of bound tariff lines and lower its MFN tariff protection?*

**Answer:** See answers to (2) Measures directly affecting Imports (ii) Tariffs, Paragraph 19 and 22.

*During the last TPR of Thailand **WTO members took particular interest in Thailand's "import price uplifts" and their elimination in the course of Thailand's adoption of the Customs Valuation Agreement.***

- *Could Thailand give details as to the current status and application of import price "uplifts" on i.e. completely-built-up vehicles?*

**Answer:** See answers to (2) Measures directly affecting Imports (i) Customs procedures, Paragraph 14.

- *The report from the Government of Thailand states, that Thailand has also adopted clear customs appeal procedures which cover a variety of customs-related areas, including valuation, tariff classification, amount of duty payable, origin of goods and quantity of imported goods. Could Thailand provide information as to the workings and establishment of Thailand's appeal procedures?*

**Answer:** See answers to (2) Measures directly affecting Imports (i) Customs procedures, Paragraph 13.

*Thailand's import licensing procedures appear cumbersome. The report of the WTO Secretariat appear to validate the EC impression that Thailand has not notified its relevant licensing legislation nor provided replies to the Import Licensing Questionnaire under Articles 1.4(a) and 7.3 of the Agreement.*

- *When is Thailand planning to notify the relevant information to the WTO?*
- *How does Thailand assess the impact of its cumbersome import licensing procedures on its own development?*
- *The EC understands that licensing requirements based on infant industry protection are applied to various goods such as polished marble and granite construction stone and used vehicles for the transport of 30 or more persons. Considering that the current Thai legislation applicable dates back to 1978 and that Thailand's domestic industry is complaining about the measures, when is Thailand planning to eliminate the non-automatic licensing requirements i.e. for polished marble and granite?*

**Answer:** See answers to (2) Measures directly affecting Imports (iii) Non-tariff border measures, Paragraph 46.

*Thailand has been a strong advocate for eliminating subsidies. The report of the WTO Secretariat addresses the Thai utilisation of "tax cards" which domestic products are eligible for if they are exported and which can be used by the holders for payment of taxes and duties.*

- *Can Thailand provide further explanation of tax cards and this program's relationship with the rules and obligations under the WTO and is the programme to be included in its Subsidy Notification based on Article 25 SCM Agreement?*

**Answer:** Tax rebate rates for the tax card or the so- called tax certificates are calculated from imported duties of physical inputs incorporated in exported products which complies with Annex I(1) and Annex II in SCM Agreement.

### **Thailand's trade strategy**

*Bilateral, regional and global trade liberalisation are all vital tools for promoting prosperity, growth and development to the benefits of the world at large. The EC considers that the WTO and multilateral liberalisation is the most certain way for promoting global interests for industrialised countries and developing countries at large.*

- *How does Thailand judge the relative importance and weight of bilateral/FTA policies and further development of the WTO system in terms of its own trade and development needs?*

**Answer:** See Thailand Trade Policy Review Presentation section on Free Trade Agreements.

*Though Thailand is a developing country, a number of other developing countries are much worse off than Thailand, who has enjoyed the benefits of global trade on a more or less rapid and safe path of development.*

- *How does Thailand judge the possibilities for these less developed countries to participate in global trade and to benefit from the same development as Thailand?*
- *How does Thailand perceive the differences between the developing needs of these countries and those of a country as Thailand and how does Thailand believe that the different needs could be most optimally dealt with in regional as well as global trade arrangements?*

**Answer:** We are very much concerned with the situation in other less developed countries; as such we remain supportive of the initiatives to operationalize special treatment for these countries. However, this must be implemented in compliance with WTO principles of enabling clause namely generalized, non-reciprocal and non-discriminatory basis.

### **Response to Brazil's Questions**

#### **I) INTELLECTUAL PROPERTY**

1. *What products are eligible for geographical indications protection?*

**Answer:** All products.

2. *Did Thailand undertake any evaluation of the economic impact of extending the protection of article 23 of the TRIPS Agreement to products other than wines and spirits?*

**Answer:** Yes, we did.

#### **II) TECHNICAL BARRIERS**

1. *How is the standardization system organized in Thailand? To what extent does the Thai government participate in the standardization process?*

**Answer:** Please see attachment – Country Paper of Thailand (Standardization/Conformity Assessment Infrastructure, and TBT Related Issues)

2. *Are there any products which, under Thai technical regulations, are subject to specific environmental requisites as regards manufacturing processes?*

**Answer:** The list of compulsory standards re: environment is as follows:

- |     |     |   |
|-----|-----|---|
| 2.1 | TIS | 341-2543 (2000) Motorcycle exhaust muffler  |
| 2.2 | TIS | 1295-2541 (1998) Heavy duty diesel engined vehicles: safety requirements; emission from engine, level 3 |
| 2.3 | TIS | 1650-2541 (1998) Motorcycles: safety requirements; emission from engines, level 4                       |
| 2.4 | TIS | 1870-2542 (1999) Gasoline engined vehicles: safety requirements; emission from engine, level 6          |

- 2.5 TIS 1875-2542 (1999) Light duty diesel engined vehicles: safety requirements; emission from engine, level 5
- 2.6 TIS 2066-2544 (2001) Showers: environment requirements; water –savings
- 2.7 TIS 2067-2544 (2001) Faucets for sanitary wares: environment requirements; water – savings
- 2.8 TIS 2134-2545 (2002) Room air conditioners: environment requirements; energy efficiency (to be enforced in the near future).

3. *How is the accreditation system organized in Thailand? How does the central government participate in the certification process? To what extent Supplier's Declaration of Conformity (SDoC) is used as a conformity assessment procedure?*

**Answer:** Information on Thailand's accreditation system can be found on the Thai Industrial Standards Institute website at [www.tisi.go.th/nac/nac2\\_e.html](http://www.tisi.go.th/nac/nac2_e.html).

Suppliers' Declaration of Conformity (SdoC) is not used as a conformity assessment procedure in Thailand as the product liability law has not been established yet.

### III) MARKET ACCESS

1. *On page 23 of the Secretariat Report it is mentioned that there are some "non-tariff incentives" under the AICO Agreement. What are those incentives?*

**Answer:** Exporting companies under the AICO scheme will not be subject to quota or import licensing of importing countries'.

2. *On page 32 of the Secretariat Report it is stated that there are a number of non-tariff border measures for "infant industry" protection. Could further information be provided regarding those measures?*

**Answer:** Thailand has no intention to impose further non-tariff border measures for "infant industry" protection. As for the only remaining problem on marbles, the Department of Foreign Trade will hold a meeting next week to consider the matter, including the liberalization of markets for marbles and granite.

3. *On page 36 of the Secretariat Report it is mentioned that 26.1% of Thai's HS seven-digit tariff lines are not bound. Those lines comprise salt, mineral fuels, fertilizers, pulp of wood, transport equipment, rubber products, iron and steel. Many of them are important inputs for agriculture and industry. Have the applied tariffs on those products changed often in the recent years?*

**Answer:** The applied tariffs for the above-mentioned products have not changed often in recent years. More details on Thailand's tariff rates can be downloaded from the WTO IDB database.

4. *Are there any criteria for determining whether a product should have an "ad valorem" or a "non-ad valorem" tariff?*

**Answer:** Whether an "ad valorem" or a "non-ad valorem" tariff is being collected is specified in the Customs Tariff Decree B.E. 2530 (1987).

#### IV) SERVICES

1. *What is the status of the current negotiation process in ASEAN mutual recognition arrangements for professional services?*

**Answer:** ASEAN has agreed to finalize the MRA's for architecture and engineering professions by August 2004. It is also in the process of expanding the coverage of ARA's to other areas and has agreed to complete ARA's for qualifications in all major professional services by 2008 as recommended by the High Level Task Force.

2. *ASEAN members are increasingly pursuing bilateral negotiation with non-member states and other regional inter-governmental organizations. In which of these agreements trade in services is negotiated?*

**Answer:** Trade in services negotiation is included in most agreements. The degree of commitment made, however, is subject to the negotiating parties' discretion.

#### V) GOVERNMENT PROCUREMENT

1. *Concessions are treated in the government procurement universe? Are foreign companies allowed to participate in bids concerned with concessions?*

**Answer:** The Cabinet resolution for government procurement requires local preference for industrial products specified by the Ministry of Industry. If such local products are not available, government agencies can procure the products freely.

2. *Does Thailand use the Built Operate Transfer (BOT), or similar contracts, as a purchasing method? Are Built Operate Transfer (BOT), or similar contracts, included in the coverage of trade agreements Thailand is negotiating or already takes part?*

**Answer:** As specified in the Regulations of the Prime Minister's Office on Procurement, both concession and Built Operate Transfer are not to be included in the coverage of trade agreements in government procurement.

3. *How is sub-central government procurement treated in international agreements Thailand is negotiating or already takes part?*

**Answer:** There is no particular sub-central government agency responsible for international agreements in government procurement. Both central and provincial administrations in Thailand are under the same regulations of the Prime Minister's Office on Procurement. That is, they are to be treated similarly in international agreements Thailand is negotiating or has already taken part.

4. *How is treated public enterprises procurement in international agreements Thailand is negotiating or already takes part?*

**Answer:** Public enterprises are allowed to set their own regulations concerning procurement activities, including those under international agreements.

5. *Relating to paragraph 62 of the Secretariat Report, what kind of countertrade is used?*

**Answer:** Please refer to the answer to EC's question on GPA.

6. *Are there any eco-labeling or eco-audit offsets in the Thailand government procurement regulations and laws in the central and sub-central level that may be used in government procurement? If affirmative, please indicate its legal provisions and examples of their use.*

**Answer:** Currently no.

7. *Regarding paragraph 57 of the Secretariat Report, are there different deadlines for tendering and delivery in e-Auctions?*

**Answer:** Currently no.

8. *How do challenge procedures work for foreign companies allowed to participate in Thailand bids?*

**Answer:** The Cabinet resolution for government procurement requires local preference for industrial products specified by the Ministry of Industry. If such local products are not available, government agencies can procure the products freely.

## **VI) IMPORT PROHIBITIONS, RESTRICTIONS AND LICENSING**

1. *Please provide further information on the way the "gold card" system, mentioned in page 33, works. What are the criteria companies have to meet in order to be granted such a preferential treatment? What kind of treatment is granted to importers non-participant of the "gold card" system?*

**Answer:** Among the necessary qualifications for "gold card" applicants are a legal person status, a paid up registered capital of at least 5 million Baht, and a minimum of three-year experience in imports or exports. Detailed information can be found on the Thai Customs Department website at [www.customs.go.th/TaxPrivilege/TaxPrivilege6/TaxPrivilege6.jsp](http://www.customs.go.th/TaxPrivilege/TaxPrivilege6/TaxPrivilege6.jsp)

2. *Is there any kind of register required from Thai importers as regards import licensing?*

**Answer:** Normally, no registration is required, except for importers of certain products such as food, drugs, live animal, and petroleum and related products.

3. *Are any licensing fees levied to cover administrative expenses related to processing of documents? If that is the case, what are the values?*

**Answer:** The fees range from 50 to 100 baht.

## **VII) INVESTMENTS AND POLICY MEASURES**

1. *The Report by the Government, on page 20, paragraph 111, states that "Thailand's investment regime is among the most liberal in the region. The Board of Investment (BOI) imposes no foreign equity restrictions in the manufacturing sector. The law governing foreign direct investment in Thailand, Alien Business Law, has been revised. The Foreign Business Act B.E. 2542 (1999) is currently in effect and allows more foreign participation in a wider range of activities such as brokerage services, wholesale and retail trade, construction, non-silk textile, garments, footwear, hotel, beverage production, and auction business." Are there any other sector allowed? How far is the participation allowed for the sectors listed?*

**Answer:** As stated in the Government Report, Thailand's investment regime is among the most liberal in the region. We welcome foreign investors in all sectors with some exceptions as listed in the annex of the Foreign Business Act B.E. 2542 (1999), due to reasons such as national safety, security, preservation of arts and culture, tradition, folk handicraft, or natural resources and environment. Foreign equity for most sectors is limited to 49 percent while others such as banking and transportation have lower limits. For more information, please visit the website of the Department of Business Development at [www.dbd.go.th](http://www.dbd.go.th).

2. *According to paragraph 17, page 7, of the Secretariat Report, "The 1966 Treaty of Amity and Economic Relations Between the United States and Thailand provides national treatment to each other's investors in the establishment, acquisition, and the right to do business, except in some major services sectors." What major services sectors are excepted?*

**Answer:** The United States and Thailand reserve the right to provide national treatment for each other's investors from establishing or acquiring interests, or doing businesses in the following six services sectors:

- Communications
- Transport
- Fiduciary functions
- Banking involving depository functions
- The exploitation of land or other natural resources
- Domestic trade in indigenous agricultural products

## **OTHER ADDITIONAL QUESTIONS**

### **Fish Products**

*(Norway) As a major exporter of fish and fish products, Thailand would benefit from stable and predictable market access conditions for these products. Still, Thailand maintains high tariffs for several fish and fish products, and several of the tariff lines are unbound. When can we expect Thailand to bind all of their tariff lines in the WTO?*

**Answer:** All fish and fish products, except awabi and shark's fin, are subject to WTO bound rates of 5 per cent.

Furthermore, as of January 1, 2002, Thailand's applied tariff rates (MFN) of fish and crustaceans, molluscs, and other aquatic invertebrates in Chapter 03, except for awabi and shark's fin, are reduced to 0-5 percent as follows

- (1) For items 0303.41, 0303.42, 0303.43, 0303.44, 0303.45, 0303.46, 0303.49, 0303.71, the tariffs rates are 0 percent.
- (2) Other items in chapter 3, except awabi and shark's fin, the tariff rates of 5 percent are applied.

In the NAMA negotiations, our delegation has supported the proposal for a 100 percent binding of tariff lines.

### **Services: Maritime Sector**

#### ***(Norway)***

1. *Conditions and possible restriction on participation by foreign registered vessels in transports of cargoes owned or financed by government agencies*

**Answer:** According to the Mercantile Marine Promotion Act B.E. 2521, all imported government cargoes are required to be transported by Thai flag vessels in specific trade routes where Thai vessels are available for service. However, importers can request to be exempted from such provision if, at the time the imported cargoes are ready to be shipped at the port of loading, no Thai vessel is available. This means that they can engage foreign vessels to carry the government cargoes with the permission of the Thai authority. In practice, a large number of importers have been granted exemption from such provision each year due to limited services of the Thai merchant fleet in certain trade routes.

2. *Measures with respect to taxation that stimulates the use of Thai flag vessels.*

**Answer:** All existing tax measures are intended to promote the expansion of the Thai merchant fleet. Such measures primarily focus on tax privileges given to Thai ship operators who wish to acquire new ships registered under Thai flag. One measure to promote the use of Thai flag vessels is the packing credit given to Thai exporters who engage Thai flag vessels to transport their cargoes. Nevertheless, the effectiveness of this measure is limited by the capacity and capability of the Thai merchant fleet itself.

3. *Which bilateral agreements that contain cargo sharing clauses?*

**Answer:** Thailand has concluded bilateral maritime agreements with several countries. Only the agreements concluded with the People's Republic of China and Vietnam contain cargo-sharing clauses. Nevertheless, such clauses were abolished in 1995 and 1999 respectively in compliance with the GATS/WTO.

### **Skimmed Milk Powder**

***(Australia)*** *Thailand has notified the WTO that it intends to remove the local content scheme for milk at the end of 2003 (G/C/W/459 of 18 March 2003 refers). This scheme had the effect of making dairy manufacturers purchase local raw milk in preference to imported liquid milk or skimmed milk powder (SMP). How will Thailand allocate the skimmed milk powder quota from 2004 onwards once the link between the use of local raw milk and the SMP quota allocation is abolished.*

**Answer:** The local content scheme for milk will be abolished by the end of 2003. From 2004 onwards the import quota for milk products will be determined solely on the basis of domestic demand with the WTO-bound TRQ volume as the minimum level.

## ATTACHMENT 1

### WRITTEN QUESTIONS FROM CHINA

#### Trade Policies and Practices by Measure

**Question 2:** *China would like to invite Thailand to clarify the operation of those practices.*

**Answer:**

#### 1. Procedure of Counterpurchase Execution

1.1 Towards the new fiscal year, government and state agencies forward notification of their intended projects (a value in excess of Baht 300 million) to the Department of Foreign Trade, Ministry of Commerce. The Department of Foreign Trade is acting in the capacity of the Secretary to the Countertrade Committee.

1.2 The Department of Foreign Trade submits a list of intended projects to the Countertrade Committee. The Committee will decide whether particular exceptions or changes will be made in the implementation of Countertrade measures as well as deciding the proportion of Counterpurchase to be required.

1.3 The Department informs the relevant government or state agency of the Committee's decision. Letter of Undertaking for Counterpurchase (LOU), as required in the tender documents is also forwarded to relevant government authority for future bidding process.

1.4 The concerned government agency announces to companies for tender big. The counterpurchase requirement, including the proportion of counter-purchase to be required from part of the tender documents.

1.5 The concerned government agency informs the Department of Foreign Trade of the bidding outcome. Upon the receipt of a Letter of Award for the main contract and the LOU, the successful bidder must contact the Department to finalize the Counterpurchase Agreement.

1.6 The Department negotiates with the successful bidder before the Counterpurchase Agreement is signed. In case where they lack of their own in-house facility, trading firm will normally take up this counterpurchase obligations.

1.7 After the signing of Counterpurchase Agreement, the Department gives notification to the concerned government or state agency, so the main contract can be subsequently signed.

1.8 The successful supplier or the designated trading firm must fulfill its counterpurchase commitments by exporting Thai products to foreign destinations (in line with the conditions set forth in the counterpurchase Agreement). In order to show evidence of fulfilment of the counterpurchase, it is required to submit Commercial Invoice, Bill of Lading, and Credit Advice to the Department.

1.9 The Department examines all these submitted documents. If the documents meet the counterpurchase conditions, then the counterpurchase amount will be deducted to the value where goods are exported. In return, the Department notifies both the supplier and the trading firm of the outstanding balance.

1.10 The Department reports progress on each Counterpurchase Agreement to the Countertrade committee.

## **2. Entering of Counterpurchase Agreement**

2.1 The Department of Foreign Trade will proceed the Counterpurchase Agreement negotiations with the company selected and the assigned company in case where there is the assignment for execution of the Agreement.

2.2 The detailed information of the counterpurchase shall consist of:

- Value of products for counterpurchase in which the evaluation will be based on the CIF value of imported products and service as a proportion stated by the Committee.
- A List of products for counterpurchase selected from the DFT's list of covered products for counterpurchase by the contractor of the Assignee.
- A Bank Guarantee issued by a commercial bank operating in Thailand to the value of 5% of the counterpurchase value, in which the Contractor or the Assignee shall furnish to the DFT the mentioned Bank Guarantee at the time of signing of the Agreement to insure its implementation.
- A Penalty. In case where the Contractor or the Assignee fails to complete an execution of the Agreement, according to the Bank Guarantee; there will be a fine of 5% of the value of counterpurchase obligation that are unfulfilled.
- Validity of the Counterpurchase Agreement. The Agreement will be terminated 2 months prior to the expiration of the Underlying Agreement.

2.3 Signing of the Counterpurchase Agreement

- Time and date to sign the Counterpurchase Agreement will be determined by the DFT.
- The signer of the Agreement shall be authorized for signing. In case where the signer does not have an authority for signing, submission of a Power of Attorney is required.
- In case where the Contractor assigns rights of the Agreement execution to the Assignee, the Assignee needs to sign an acceptance of the assignment at the same date which the Contractor Signs the Agreement.
- The Contractor and the Assignee in case of the assignment shall each side provide a witness at time of signing of the Agreement needs to sign an acceptance of the assignment at the same date which the Contractor signs the Agreement.
- The Contractor and the Assignee in case of the assignment shall each side provide a witness at time of signing of the Agreement.
- Mandatory documents required at the date of signing are:

- 1) Company Registration (not more than 3 months, and has to be certified by the Royal Thai Embassy or Thai Counsellor in the country where the company registered)
- 2) Guarantee of signing authority, or Power of Attorney
- 3) Bank Guarantee issued by a commercial bank operating in Thailand.

### **3. Export of products under the Counterpurchase Agreement**

3.1 Following the signing of the Counterpurchase Agreement, the Contractor or the Assignee shall carry on the export of Thai products within the conditions and timeframe stated in the Agreement.

3.2 Subsequent to the export of products of each consignment, certain export documents to show evidence of fulfillment of the counterpurchase are submitted to the DFT, which are Commercial Invoice, Bill of Lading, and Credit note or Credit Advice by an issuing bank confirming payment of such counterpurchase.

3.3 The DFT will then examine such documents. If the conditions set forth in the Agreement are fulfilled, the DFT will debit the account at the value of the date of export, and inform the deduction as well as the remaining amount to the Contractor or the Assignee.

3.4 As soon as the Contractor or the Assignee has completed the obligation under the Agreement, the DFT shall inform the bank issuing the Bank Guarantee and release the Bank Guarantee to the bank.

## ATTACHMENT 2

### TELECOMMUNICATIONS

#### Concession conversion

*(USA) Could the Thai representative provide an update on progress in the establishment of the NTC and conversion of existing telecommunications concessions?*

**Answer:** Currently all concession contracts are in effect. The conversion process moves slowly because the agreement on the terms and conditions cannot be reached. In addition, market players are waiting for a clearer policy direction from the National Telecommunications Commission (NTC).

#### NTC and the regulatory framework

*(USA) Could the Thai representative tell us whether there is a plan to deal with important issues such as licensing, interconnection, competition, tariff-rebalancing and standards-making before the NTC is formed*

*(Canada) Could Thailand please clarify whether it has committed to the regulatory principles of the Reference Paper on telecommunications. If so, how does Thailand plan to implement these Principles? If not, does Thailand have any intention of making these additional commitments?*

*Canada understands that, despite the Master plan, there have been delays in the establishment of an independent regulator. Is the National Telecommunications Commission (NTC) currently acting in its capacity as an independent regulator for the Telecommunications sector? If not, when does Thailand expect the NTC to assume this Role? Can WTO Members provide any assistance to expedite this process?*

*Under the Telecommunications Business Act B.E. 2544 (2001), the NTC is empowered to establish a regulatory framework for promoting "free and fair" competition in the telecommunications sector. This framework is to include rules and regulations on competitive practices, licensing, operation conditions, fees, tariff structures and consumer rights. Could Thailand outline its plans for addressing these issues? Has the NTC begun its work in this respect?*

*We understand that a number of these issues have also been addressed by study groups established by the Posts and Telegraph Department (PTD) of the Ministry of Transport and Communications. One study group is drafting rules and procedures on Interconnection for ministerial approval. Other study groups are to address licensing, competition policy, universal services, pricing and consumer protection. Could Thailand update us on how the study groups have been addressing these issues in a Telecommunications context? How will the work of the study groups relate to the NTC's Mandate to establish a regulatory framework?*

*(EU) When will the Royal Thai Government decide on the setting up of the National Telecommunications Commission (NTC) and what is the precise path to achieving full liberalization in 2006?*

*Will Thailand's NTC have the power, under the Telecommunications Business Act 2001, to redress all anti-competitive practices or is this task left to overall competition rules and regulator and what are the next steps foreseen for the establishment of the new regulator?*

*What is the link between those interconnection rules foreseen in the Telecommunication Business Act 2001? And will there be a systematic regulation of dominant suppliers for interconnection under these rules or under the Telecommunications Business Act 2001?*

**Answer:**

On regulatory framework:

- The setting up of rules and regulations including competition is under the purview of the NTC. A concrete regulatory framework will not be created until NTC comes into existence.
- However, the Post and Telegraph Department, which will become the NTC's Secretariat Office, has set up 6 study groups since March 2002 to come up with a set of recommendations.
- The study groups will look into the following issues: pricing, interconnection, licensing, universal service and consumer protection, competition, and (spectrum) resources management.
- The study group on interconnection is the group most active in drawing up general guidelines which could be further recommended to the NTC.
- Thailand recognizes the legitimate objective of the regulatory principles described in the reference paper. The NTC will set up rules and regulations in line with the Telecommunication Business Act, and consistent with principles in the reference paper to the greatest extent as possible.

On NTC

- The Selection Committee has prescribed the selection criteria and procedure and opened for application during October 2003. The deadline for application is November 10, 2003. The Selection Committee will process all the applications immediately with a view to submit the result within the first quarter of the year 2004. Fourteen candidates will be nominated. Seven of them will be selected members of the NTC.

**TOT and CAT privatization**

*(USA) Could the Thai representative tell whether any limits will be set on foreign participation in the privatization of the corporatized TOT and CAT?*

*(Canada) Could Thailand provide an update on its privatization program, particularly as it relates to the Communications Authority of Thailand (CAT) and the Telephone Organization of Thailand Corporation Public Company Limited (TOT)? We understand that the plan for the corporatization and subsequent privatization for these two organizations has been delayed mainly due to delays in establishing an independent regulator. When does Thailand estimate that the corporatization of CAT and the privatization of both CAT and TOT will be complete? How will this delay affect Thailand's plan for full liberalization of basic telecommunication by 2006?*

**Answer:** Ministry of Finance, as the major shareholder of TOT and CAT after their corporatization, is exploring on the ways in which TOT and CAT should be privatized. This includes the issue of

public and foreign equity participation, the timeframe of corporatization, and the roles of TOT and CAT after privatization. Although Thailand cannot give the exact timeline, TOT and CAT intend to offer shares to the public within the first half of the year 2004.

### **Telecommunication liberalization**

*(USA) We encourage the Thai government to accelerate its progress towards compliance with its WTO telecom commitments. Could the Thai representative describe what steps will be taken to achieve full liberalization in 2006?*

*(Canada) Canada notes that Thailand has not taken commitments in any of the following sub-sectors of telecommunications services (2C of the Sectoral Classification List):*

- *Packet-switched data transmission services*
- *Circuit-switched data transmission services*
- *Private leased circuit services*
- *Electronic mail*
- *Voice mail*
- *Electronic data interchange (EDI)*
- *Enhanced/value-added facsimile services, incl. Store and forward store and retrieve*
- *Code and protocol conversion*

*Are there any specific concerns that are making it difficult for Thailand to make Commitments in these areas? Does Thailand anticipate making further services Commitments for telecommunications services in the current round of GATS Negotiations?*

*Canada is pleased to see that Thailand has offered broad sector coverage for computer and related services in its September 15, 2003 services offer as it has made at least partial commitments in all of the computer and related services sub-sectors of the Sectoral Classification List. Canada notes, however, that Thailand has remained unbound for mode 1 of all of these sub-sectors. Canada prefers to see Members take full Commitments for the cross-border supply of all computer and related services. Are there any specific concerns that have prompted Thailand to leave mode 1 unbound? Would Thailand consider making commitments for mode 1 for computer and related services?*

*(Hong Kong, China) It is noted that foreign equity cap allowed under the Telecommunications Business Act has been dramatically changed from 49 % to 25% and then Back to 49 % within two years. We consider that this uncertainty is not Conducive to foreign investment, and look forward to the full liberalization of basic telecommunications in 2006. We note however that the planned Privatization of the state monopolies by 1999, which is part of the plan, has been delayed and the precise path to achieving the full liberalization is yet to be specified. Would Thailand share with us the progress of the Implementation of the liberalization plan? Besides, would Thailand Consider reflection the liberalization Plan in more details in the initial offers, in a bid to ensure more certainty for the market?*

*(Norway) The secretariat's report paragraph 59 mentions the Master plan for Telecommunications Development from 1997 which stipulates gradual liberalization of the telecom market, targeting full competition in 2006. The Plan stipulates for instance the removal of state monopolies, the conversion of existing concessions to foreign Participants to licenses and the establishment of an independent regulator. This is also reflected in Thailand's GATS commitment on telecommunication services. According to the report, the Telephone Organization of Thailand (TOT) and the Communications Authority of Thailand (CAT) have recently been corporatized. Private operators have been allowed to provide services in joint ventures of under build-transfer-operate (BTO) Contracts with TOT or CAT what is the current timetable for the liberalization of the Telecommunication market in Thailand and when will the concession contracts for private operators be converted into licenses?*

*Thailand has scheduled foreign equity caps for telecommunication services. An Equity cap prevents a fair competitive environment. When will the equity cap be abolished making it possible for foreign companies to hold a larger share of the company's capital?*

**Answer:**

- In practice, Thailand telecommunications development plan dated back in 1997 no longer serves as policy guidelines. This is due to the fact that the market situation has departed from the assumptions used when Thailand formulated the plan. However, many elements in the 1997 development plan are still valid such as the removal of state monopolies, the conversion of concession contracts, and the establishment of an independent regulator.
- The Post and Telegraph Department, the interim regulator, is currently working on the drafting of a new telecommunications development framework.
- Thailand is committed to liberalize the telecommunication market within 2006. Precise steps toward the 2006 milestone will be more concrete once the NTC is established.

**Telecommunication Business Act**

*(USA) We understand that amendments to the Telecommunications Business Act passed a first reading in Parliament in September. Could the Thai representative tell us when these amendments are expected to be enacted?*

**Answer:** The passage of the proposed amendment is expected before the end of the current parliamentary session in November 2003.

**INTERNET AND E-COMMERCE**

*(CANADA) Canada is pleased to see increased competition amongst Internet Service Providers in Thailand. Canada also commends Thailand on its sale of 51 % of the equity of the Company Internet Thailand. Canada notes, however, that Internet penetration is low Due to regulatory constraints. Does Thailand plan to loosen those regulatory Constraints? If so, what steps does Thailand intend to take, and what expected timeline for that process?*

*We understand that Thailand has recently passed legislation that aims to create a legal framework for "electronic transactions" and "electronic signatures" and is meant to apply to all kinds of e-commerce*

*(Electronic Transaction Act 2001). Could Thailand please elaborate on the areas addressed by this law? What has Thailand's experience been in relation to its implementation?*

**Answer:** Thailand does plan to relax the equity limits in internet service provider (ISP) business. Rules and requirements relevant to this shall be instructed by the NTC.

Whether CAT will divest its interests in internet service providers is a business decision.

## **POSTAL SERVICES**

*(Canada) Could the Thai representative please explain how Thailand will ensure the independence of the postal regulator?*

**Answer:** The Postal Committee established at the same time as the Thailand Post Co., Ltd. is the regulator of postal services in Thailand. The Committee is under the supervision the Ministry of Information and Communication Technology.

*Could the Thai representative tell us whether the postal regulator will have authority to regulate express delivery services, including those provided by the corporatized Thailand Post? If so, please explain the extent of that authority.*

**Answer:** The Postal Committee is the regulator of postal services. The provisions of the Postal Act B.E. 2477 cover basic postal (letters and postcards) and personal information. Any enterprises providing express delivery services not related to personal information provide by the Act (such as parcel post) fall outside the purview of the Postal Committee.

*Could the Thai representative tell us whether the corporatization process changes regulations governing express delivery services and Thailand Post's activities in this sector, and if so, how?*

**Answer:** After the corporatization, Thailand Post Co., Ltd. is subject to the Postal Act B.E. 2477. Former rules and regulations still apply. The company is still regarded as a state enterprise.

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