

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) INTRODUCTION

1. Since its previous Trade Policy Review, the general thrust of Thailand's trade and investment policy has remained liberal, and new efforts have been made to improve market access and facilitate trade. Such efforts have been particularly noticeable in customs valuation and foreign direct investment.

2. The tariff is rather complex owing to the multiplicity of rates applicable to each of the 5,505 tariff lines. It remains one of the main instruments of trade policy; with a simple average applied MFN rate of 14.7% in 2003, it affords a relatively high level of protection. Moreover, about a quarter of all tariff lines are unbound and bound rates often considerably exceed applied MFN rates, thus affording the authorities considerable scope to raise (or lower) tariffs at any time, by means of Royal decrees or ministerial regulations and notifications, with cabinet approval. During the period under Review, Thailand raised tariffs in only a few instances. However, it has taken several anti-dumping actions.

3. Import licensing on various items remains opaque and appears in some cases to correspond to quantitative restriction. Most of the import licensing requirements are for national security and health and environment reasons. A number of other non-tariff border measures remain for economic reasons, such as infant industry protection; the effectiveness of these measures is questionable.

4. Thailand has not acceded to the Agreement on Government Procurement. Government procurement continues to be used as an instrument of economic policy, with preferences being accorded to domestic suppliers.

5. The authorities recognize a need to remove impediments to investment rather than relying on tax-based incentives, which have been widely used. Thus, various subsidies tied to exports have been removed and investment incentives have been streamlined. On the other hand, the Government appears to be taking a more proactive approach to industrial policy and the pursuit of competitiveness, with measures apparently targeted at industries, such as agri-industry, automobiles, textiles, electronics, and high-valued services. Most local-content and export-performance requirements, including those attached to incentives for new investments, were abolished during the period under review.

6. While privatization seems behind schedule, considerable progress has been made to corporatize state-owned enterprises in preparation for their eventual privatization.

7. Since 1999, the number of Thai industrial standards based on international standards has increased. Thailand has also introduced various amendments to its laws related to quarantine requirements. Various laws have been introduced to strengthen the protection of intellectual property rights, and the Government has taken actions to enforce IPR protection.

8. The implementation of competition policy appears to be weak; the Office of Trade Competition Commission has made decisions on only three cases since its inauguration in 1999. The apparently weak enforcement of the competition legislation may be attributable to institutional, procedural, legal or resource limitations. However, effective enforcement of the Trade Competition Act could be envisaged through continuous institutional and human resource development as well as experience gained from international cooperation.

9. An efficient capital market capable of mobilizing savings and channelling them into the most productive uses is essential for Thailand's successful economic restructuring and long-term development. Good governance is considered essential for the establishment of such a market. Accordingly, improving corporate governance across sectors has also become a government priority in the face of various corporations' weak balance sheets. Thus, efforts have been made to increase the level of transparency and disclosure, and to enforce accountancy rules.

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Customs procedures

(a) Recent developments

10. Thailand considers improvements to its customs procedures as one of the crucial elements of trade facilitation.¹ Since 1999, the authorities have adopted various measures, such as an EDI (electronic data interchange) system, with a view to expediting customs clearance of imports into Thailand; the authorities indicate that about 85% of declaration forms are currently processed through the EDI system. The time required for the collection of duties and taxes as well as physical inspection averages less than an hour, compared with three to four hours through non-EDI (manual document) processing. Furthermore, in November 2002, the Customs Department introduced an internet-based declaration system mainly for small and medium-sized enterprises. In addition, companies that belong to the BOI's Investor Club Association are eligible to use the raw materials tracking system; customs clearance for raw materials can be done in three hours or less for users of the system.²

11. Thailand is not a contracting party to the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention) and the International Convention on the Harmonization of Frontier Controls on Goods. Nevertheless, the authorities state that the current customs procedures applied to cargo clearance in Thailand are, by and large, consistent with the General Annex of the revised Kyoto Convention. The Customs Department is currently studying the details of these conventions with a view to deciding whether to become party.

(b) Registration

12. All importers except natural persons and government agencies are required to register and receive a customs card. Preferential treatment is provided for companies that meet certain criteria specified under a "gold card" system, which replaced the former "categorized" importer system in 1999. For example, under the new system, gold card holders are exempted from all but random cargo inspection. Gold-card importer qualifications include: being a licensed customs broker, an EDI user, or an EDI-using broker, and a member of the Federation of Thai Industries or the Thai Chamber of Commerce; paid-up registered capital of not less than B 5 million; and being engaged in the import business for not less than three years. Government agencies, state enterprises, and companies granted duty exemptions by the BOI may also be granted gold card holder status. Data provided by the authorities indicate that about a quarter of all imports take place under the gold card system.

(c) Customs inspection and valuation procedures

13. Thailand amended two laws, i.e. the General Provision of the Custom Tariff Decree B.E. 2530 (1987) and the Custom Act (No.17) B.E. 2543 (2000), with a view to implementing the

¹ APEC (2002), Chapter 6.

² Board of Investment online information. Available at: <http://www.boi.go.th/english/business/taxation.html>.

WTO Agreement on Customs Valuation; the former entered into force on 17 February 2000 and the latter 8 March 2000. According to the authorities, the new procedures have been applied retroactively since 1 January 2000. However, some of Thailand's trading partners are concerned about the proper implementation of the Agreement.³

14. Under the new procedures, details on invoices and other related documents (including country of origin, quantity, composition of value, and description of goods) are taken into consideration for valuation purposes. Thailand uses the c.i.f. (cost, insurance and freight) prices of imports as the basis for customs valuation. The Customs Department accepts the declared value shown in the invoice as transaction value unless they have reason to believe that this is inappropriate; in the event that transaction value cannot be applied, the Department follows other methods in sequential order; that is, transaction value of identical goods, similar goods, deductive value, computed value, and fallback value method.⁴ The authorities state that, under the new system, the Customs Department no longer applies minimum import prices for customs valuation purposes.

15. Revised rules and regulations regarding appeal provisions entered into force on 1 January 2000.⁵ Where a dispute arises regarding the value of a product or article, the importer may file an appeal to the Customs Department within 30 days of receiving valuation notification from customs officers. The Customs Appeal Committee, established under Section 112 of the Customs Act, is responsible for decisions concerning any valuation discrepancy between Customs and the importer.⁶ If the decision of the Committee is not satisfactory, parties may raise their concerns in the Tax Court, where a judicial process is initiated if the State Attorney considers that there is sufficient evidence to warrant consideration of the case.

16. The Customs Department collects fees for customs services; these include fees for documentation, and charges for attendance at Customs House on holidays or after office hours.

17. Thailand does not require preshipment inspection for imports.

(d) Rules of origin

18. Thailand does not have specific laws, judicial decisions or administrative rulings of general application relating to non-preferential rules of origin. Preferential rules of origin regarding the GSTP are specified in Annex II of the GSTP Agreement. Imports from ASEAN countries are subject to the rules of origin for the ASEAN CEPT Scheme. A certificate of origin is required for GSTP or ASEAN preferential imports.⁷ Thailand has established a Committee and a Subcommittee on Rules of Origin, under the Customs Department, to review the progress of harmonization, improvement, and simplification of non-preferential rules of origin.⁸

³ See, for example, APEC (2003a).

⁴ The Valuation and Standard Formality Group, established in the Customs Department, deals with valuation issues, and the Tax Examination Unit, established in 2002, is in charge of the post-clearance verification process.

⁵ APEC (2002), Chapter 6.

⁶ APEC (2002), Chapter 6.

⁷ For a product to be eligible for ASEAN preferential duties, at least 40% of its content must originate from an ASEAN member state (APEC, 2002, Chapter 11).

⁸ APEC (2002), Chapter 11.

(ii) Tariffs**(a) Main features**

19. Thailand's 2003 tariff schedule, which consists of 5,505 tariff lines at the Harmonized System (HS) 7-digit level, is relatively complex, involving a multiplicity of rates for each tariff line.⁹ The main features of the schedule concerning MFN tariffs are captured by the summary indicators for 1999, 2002, 2003, and the full implementation of the Uruguay Round (and the ITA) reported in Table III.1.

20. Thailand's tariff system is stipulated in the Customs Tariff Decree B.E. 2530 (1987). The Customs Department is responsible for the application of the Harmonized System; the details of tariff classification are decided by the Customs Tariff Group within the Department.

21. During the period under review, there was no fundamental change in Thailand's tariff legislation. Whereas changes to statutory rates require legislative approval¹⁰, applied rates (or adjusted rates) may be modified by the Minister of Finance without Parliament's approval, subject to Cabinet consent, as provided in Section 12 of the Customs Tariff Decree B.E. 2530 (1987); the Minister of Finance, with the approval of the Cabinet, may additionally charge "special duty" for any goods at a rate not exceeding 50% of the rate specified in the Tariff Schedule for such goods.

Table III.1
Structure of MFN tariffs in Thailand
(Per cent)

	1999	2002	2003	U.R. ^a
1. Bound tariff lines (% of all tariff lines) ^b	71.6	72.1	72.1	72.1
2. Duty free tariff lines (% of all tariff lines)	3.5	4.0	4.0	2.6
3. Non- <i>ad valorem</i> tariffs (% of all tariff lines)	21.5	23.1	23.0	25.5 ^c
4. Tariff quotas (% of all tariff lines)	0.9	1.0	1.0	1.0
5. Non- <i>ad valorem</i> tariffs with no AVEs (% of all tariff lines)	20.8	22.1	22.0	25.5 ^c
6. Simple average bound rate	33.1	29.6	28.4	27.1
Agricultural products (HS01-24)	38.6	34.3	33.1	31.8
Industrial products (HS25-97)	32.0	28.4	27.2	25.9
WTO agricultural products	41.5	37.0	35.7	34.4
WTO non-agricultural products	31.4	27.8	26.6	25.4
Textiles and clothing	51.9	38.4	33.6	28.9
7. "Nuisance" bound rates (% of all tariff lines) ^d	0.1	0.2	0.2	0.2

Table III.1 (cont'd)

⁹ Thailand's 2003 tariff schedule is based on HS Nomenclature 2002. The Thai tariff schedule has four distinct sets of rates: (i) statutory rates, (ii) applied (adjusted) rates, (iii) WTO bound rates, and (iv) concession rates (these include CEPT (AFTA) rates, AISP (ASEAN Integrated System of Preferences) rates, and GSTP (Global System of Trade Preferences) rates). Applied (adjusted) rates may be increased above WTO bound rates; however, if the imports originate in a WTO Member country, the importer may ask to be taxed at WTO bound rates. If a customs territory is eligible for more than one concession rate, the lowest one applies. If the concession rate for a tariff line is higher than the statutory or applied rate, the latter applies. Under a tariff line, there may be multiple temporary rates for a particular year; for the purposes of this Report, the Secretariat used an average of rates in each line for the calculation of tariff averages for each year.

¹⁰ There has been no change to statutory rates since the previous Review of Thailand.

	1999	2002	2003	U.R. ^a
8. Simple average applied rate	17.0	15.0	14.7	..
Agricultural products (HS01-24)	32.7	26.0	25.4	..
Industrial products (HS25-97)	14.6	13.1	12.9	..
WTO agricultural products	33.1	26.3	25.7	..
WTO non-agricultural products	14.7	13.1	13.0	..
Textiles and clothing	24.7	22.5	21.7	..
9. Domestic tariff "spikes" (% of all tariff lines) ^c	3.6	1.6	1.6	..
10. International tariff "spikes" (% of all tariff lines) ^f	45.5	43.6	43.5	..
11. Overall standard deviation (SD) of tariff rates	16.3	13.6	13.2	..
12. "Nuisance" applied rates (% of all tariff lines) ^d	7.1	16.1	16.2	..

.. Not available.

a Final bound calculations are based on the 2003 tariff schedule. Including ITA.

b Representing fully bound rates. Partially bound rates also exist, representing 1.8% for 2003 and 2002, and 1.6% for 1999.

c Based on fully and partially bound lines only.

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

e Domestic tariff spikes are defined as those exceeding three times the overall simple applied rate (indicator 8).

f International tariff spikes are defined as those exceeding 15%.

Note: Excludes in-quota rates and includes AVEs provided by the authorities for specific rates, as available. The *ad valorem* part of alternate rates are taken into account for the calculations. The 1999 tariff is based on 8-digit HS96 nomenclature; the 2002 and 2003 tariff is based on 7-digit HS02 nomenclature.

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

(b) MFN tariff bindings

22. Currently, 26.1% of Thailand's HS seven-digit tariff lines are unbound.¹¹ These lines involve salt, mineral fuels, fertilizers, pulp of wood, transport equipment, rubber products, and iron and steel. In agriculture (WTO definition), all tariff lines are bound. With about a quarter of all tariff lines unbound, and bound rates often considerably in excess of applied MFN rates, tariffs can be changed at any time, up to the statutory/bound rates, with the consent of only the Cabinet; this imparts a high degree of unpredictability to the tariff. In 2003, a sizable number of applied rates exceeded bound rates; the lower of bound and applied rates are applicable to imports from WTO Members.

(c) Duty-free items

23. About 4% of Thai tariff lines (at HS 7-digit level) bear a zero rate. This proportion is equal to that at Uruguay Round full implementation.¹²

(d) Non-*ad valorem* duties

24. Non-*ad valorem* duties account for 23.0% (1,268 lines) of all Thai tariff lines (21.5% in 1999), at the HS 7-digit level. Non-*ad valorem* duties consist of specific duties and alternative

¹¹ Unbound tariff lines are defined here as lines that are neither fully nor partially bound.

¹² Current applied MFN tariffs reflect Thailand's scheduled reductions under the WTO Agreement and its voluntary tariff reductions; they also reflect the results of the Information Technology Agreement (ITA). In June 2002, applied MFN rates for a number of raw materials (HS chapters 1, 4-6, 12, 13, 17, 19, 25, 27, 32, 39, 47, 48, 51, 68, 70-76, 78, 80, and 81) were voluntarily reduced. With certain exceptions, Thailand's agricultural tariff reductions under the Uruguay Round were to be completed by 2004 and industrial tariff reductions by 2000 (except for textiles and clothing, which was to be completed by 2004), and tariff reductions under the ITA by 2005.

duties.¹³ The authorities maintain that such duties are generally intended to provide consistent levels of protection to domestic products facing fluctuations in import prices.

25. Thailand's non-*ad valorem* duties apply mainly to agricultural and food products, plastic and rubber, pulp and paper, textiles, leather products, and articles of stone (Chart III.1). Non-*ad valorem* duties are indicated clearly in Thailand's tariff schedule and the Thai authorities have ensured the transparency of roughly two thirds of specific duties by providing estimates of their AVEs.¹⁴ These official estimates show that three of the top 25 tariff lines entailed non-*ad valorem* duties with AVEs that ranged from 140.3% (palm oil) to 81.0% (certain ethyl alcohol), indicating that specific duties can result in high *ad valorem* equivalents. The simple average of all specific tariff rates with available AVEs is 13.5%; the simple average of purely *ad valorem* tariff rates is 12.3%. It should be noted that every method of calculating AVEs is subject to bias and that AVEs can vary widely depending on the import price of the product involved; this tends to be partly determined by exchange rate changes. As a result of overall increase in Thai import prices during the period under review (1999-03), real protection for some products subject to specific duties may have decreased.¹⁵

(e) Special duties (or import surcharges)

26. Certain product-specific surcharges continue to be imposed by Thailand; for example, a surcharge is levied on out-of-quota imports of corn and certain fish-meals (see Table III.3). Details of import surcharges currently imposed by Thailand were not available to the Secretariat.

(f) Tariff quotas

27. In 2003, tariff quotas covered 1.0% of all tariff lines (at HS 7-digit level).¹⁶ About 60% of the out-of-quota rates were *ad valorem*, compared with about 75% of the in-quota rates. The simple average in-quota MFN tariff rate is estimated to be 22.6%; the corresponding average out-of-quota MFN tariff is 40.3% (including AVEs of specific duties). Tariff quotas do not apply to imports from ASEAN countries, which may, in principle, supply unlimited quantities at preferential AFTA rates, unless they are excluded from the AFTA scheme; this is the case, for example, with palm oil. As of 1 January 2000, all products were, in principle, to be included into the AFTA scheme, with maximum duties of 20%. Import licences are required in order to apply for tariff quotas; quota allocations may not be transferred.¹⁷ Quotas are underfilled, for several products (Table III.2).

28. Since 1996, all importers of soybean meal face an in-quota rate of 5%, subject to future changes; however, it would appear that import licences continue to be issued only to selected animal and poultry producers.

¹³ An alternative duty involves either an *ad valorem* or specific rate; the higher of the two is applied.

¹⁴ The lack of estimates for the remaining one third of specific duties is seemingly due in some instances to the absence of imports; this may suggest that the specific rates in question may be prohibitive. The most recent estimates of AVEs available were for 2002.

¹⁵ For example, average import price was 149.45 (1995=100) in the fourth quarter of 1999 and 184.6 in the same quarter of 2002. (BOT online data. Available at: <http://www.bot.or.th/BOTHomepage/databank/EconData/Econ&Finance/download/tab45.xls>).

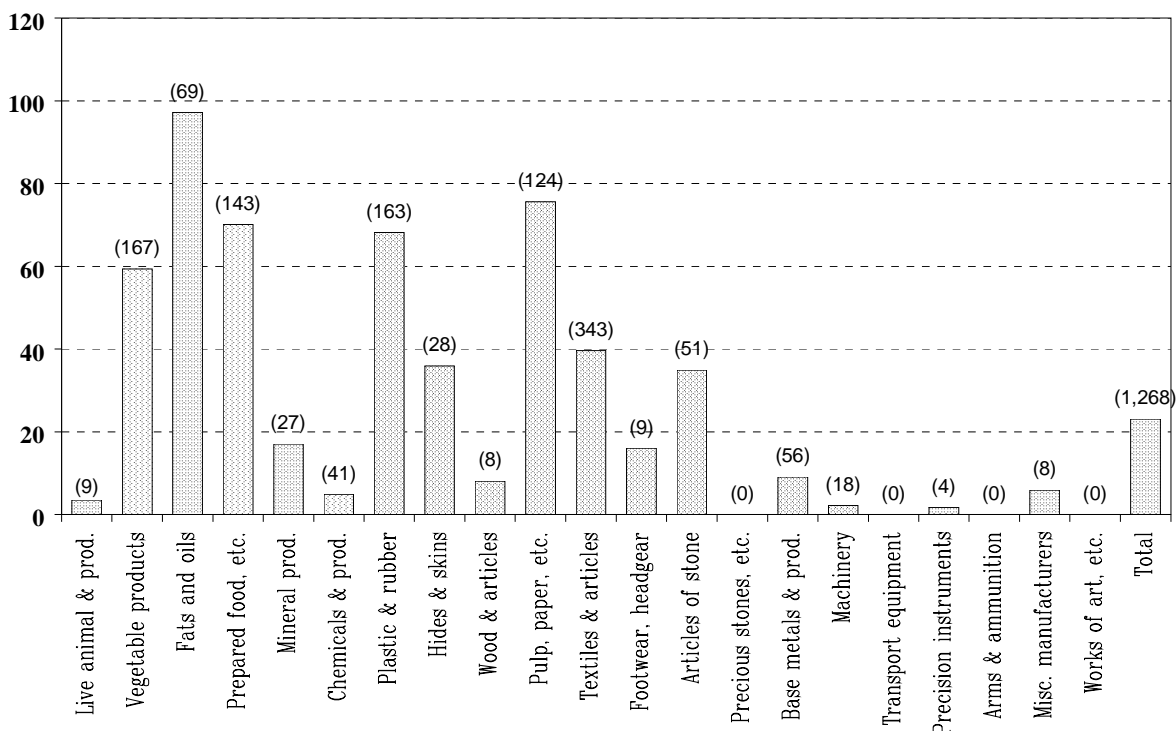
¹⁶ Existing tariff quotas relate to the 23 agricultural product groups.

¹⁷ Procedures for the allocation of quotas are described in a WTO document G/AG/N/THA/38/Add.1, 8 February 2002.

Chart III.1

Share of non-*ad valorem* duties, by HS section, 2003

Per cent



Note: Each bar in the chart depicts the percentage of tariff lines out of the total within each HS section that are non-*ad valorem* duties. The figure in parentheses above each bar shows the number of tariff lines in each HS section involving non-*ad valorem* rates. Excluding in-quota rates.

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

Table III.2

Tariff quota commitments, actual imports under tariff quotas, and MFN/bound tariffs, 1999-03

Description (HS Code)	Tariff quota (tonnes)				In-quota tariff (2003)		Out-of-quota rate (2003)	
	Quota level 2000	Actual imports			WTO bound	MFN applied	WTO bound	MFN applied
		2000	2001	2002				
Minimum access commitments								
Longans, dried (0813.40)	6.67	0.00	0.00	0.00	30%	30%	53.6%	53.6%
Copra (1203.00.0005)	951.22	0.00	0.00	0.00	20%	0.65 B/kg	36.4%	0.65 B/kg
Current access commitments								
Milk and cream, not concentrated, not containing added sugar or other matters (including flavoured milk) (0401, 2202.90)	2,349.33	0.00	0.00	0.00	20%	20%	41.5%; 84.9%	40%; 3 B/kg or 60% ^a
Milk and cream, concentrated or containing added sugar or other sweetening matter, in powder, granules or other solid forms, or a fat content, by weight not exceeding 1.5% (0402.10.0007)	50,555.56	45,617.55 (55,440.65)	49,905.89	61,548.55	5%	5%	218.4%	5%

Table III.2 (cont'd)

Description (HS Code)	Tariff quota (tonnes)				In-quota tariff (2003)		Out-of-quota rate (2003)	
	Quota level	Actual imports			WTO bound	MFN applied	WTO bound	MFN applied
		2000	2001	2002				
Potatoes, fresh or chilled (0701)	295.78	10,084.609 (6,124.425)	5,132.440	6,267.500	27%	27%	126.4%	6.25 B/kg or 60% ^a
Onions, fresh, chilled, dried, whole, cut, sliced, broken or in powder, but not further prepared, mixed (0703.10.0005, 0712.20 0104, 0712.20.0200, 0712.40.0304)	357.44	355.572	358.760	346.220	27%	27%	143.6%	6.25 B/kg or 60% ^a ; 60%
Garlic, fresh or chilled, whether or not in powder (0703.20.0007, 0712.90.0115, 0712.90.0128)	63.67	43.822 (0.00)	33.200	22.489	27%	27%	57.6%, 42%	57.6%; 42%
Coconut, fresh or dried, whether or not chilled or peeled including desiccated (0801.10.0106, 0801.10.0207)	2,375.89	61.236	73.487	97.979	20%	20%	54.6%	54.6%
Coffee, whether or not roasted or decaffeinated; coffee husks and skins: coffee substitutes containing any portion of coffee(0901)	5.14	3.230	4.151	3.003	30%	30%	91%	4 B/kg or 40% ^a
Tea (0902)	612.11	129.370 (84.286)	238.600	447.440	30%	30%	91%	60%;30%
Pepper, dried, whether or not crushed or ground (0904.11.0003, 0904.12.0004)	44.11	0.00 (14.735)	0.00	0.00	27%	27%	51.6%	4.2 B/kg or 30% ^a
Maize, for feedstuff (Ex. 1005.90)	53,542.67	50,689.00	0.00	0.00	20%	2.75 B/kg	73.8%	2.75 B/kg
Rice (including paddy, broken) (1006)	244,470.78	474.826 (422.8)	104.775	399.557	30%	2.75 B/kg; 30%	52.6%	2.75 B/kg
Soya beans, edible and inedible whether or not broken (1201.00.1000, 1201.00.9001)	10,690.89	1,370,480.876	1,423,056.368	1,476,708.759	0%	0%	80.9%	0.3 B/kg or 6% ^a ; 35%
Onion seeds (1209.91.0106)	3.08	6.305 (6.28)	6.212	6.275	0%	0%	220.4%	1%
Soya bean oil and its fractions, whether or not refined, but not chemically modified (1507.10.0001, 1507.90.0006)	2,233.00	75.264	0.00	0.00	20%	1.32 B/l; 20%	147.6%	1.32 B/l; 2.5 B/l
Palm oil and its fractions, whether or not refined, but not chemically modified (1511, 1513.21.0004, 1513.29.0007)	4,757.33	0.00	0.00	0.00	20%	20%; 2.5 B/l; 1.32 B/l	144.6%	2.5 B/l; 1.32 B/l
Coconut oil and its fractions, whether or not refined, but not chemically modified (1513.11.0008, 1513.19.0005)	392.56	0.00	0.00	0.00	20%	2.5 B/l; 1.32 B/l	52.6%	2.5 B/l; 1.32 B/l
Cane or beet sugar and chemically pure sucrose in solid form (1701)	13,468.89	0.00	0.00	5.364	65%	3.5 B/l; 65%	95%	3.5 B/l; 65%
Instant coffee and other extracts, essences and concentrates, of coffee, and preparations with a basis of these extracts, essences or concentrates or with a basis of coffee (2101.1)	131.33	50.393	28.532	68.074	40%	40%	49.6%	49.6%
Soya bean cake (2304.00.0008)	225,679.44	1,309,868.642	1,573,960.284	1,723,215.334	20%	5%	119%	6%
Unmanufactured tobacco; tobacco leaves (2401)	6,299.00	4,911.817	30%	30%	72%	35 B/kg or 60% ^a ; 17.5 B/kg or 30% ^a ;
Raw silk (5002.00.0003)	472.78	0.00	0.00	0.00	20%	10%	229.1%	10%

.. Not available.

a Whichever is higher.

Note: Figures in parenthesis for 2000 were retrieved from WTO documents.

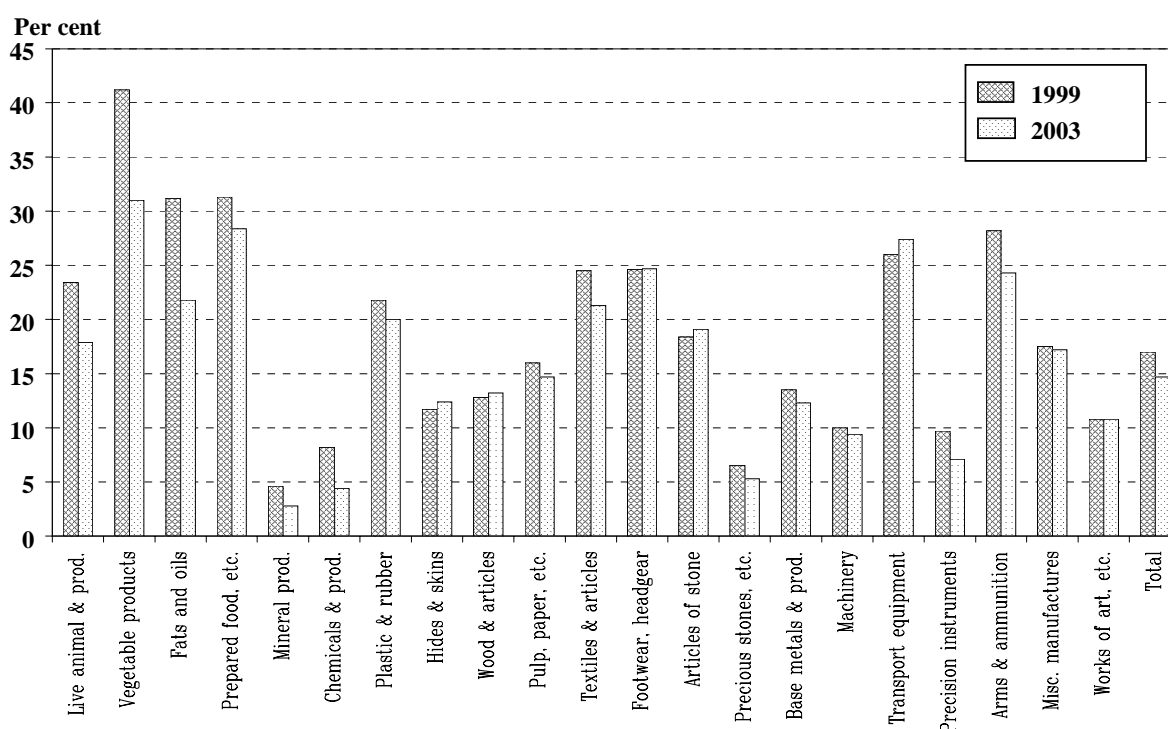
Source: WTO Document G/AG/N/THA/39, G/AG/N/THA/40, G/AG/N/THA/45; and data provided by the Thai authorities.

(g) Tariff averages

29. The overall simple applied MFN tariff average is 14.7%, down from 17.0% in 1999. HS categories of products with the highest simple tariff averages were vegetable products, prepared food, transport equipment, footwear and headgear, and arms and ammunition (Chart III.2).¹⁸

Chart III.2

Simple average applied MFN tariff rates, by HS section, 1999 and 2003



Note: Excluding in-quota rates. Including AVEs provided by the authorities for specific rates, as available. The *ad valorem* part of alternate rates are taken into account for the calculations. The 1999 tariff is based on HS96 and the 2003 tariff on HS02 nomenclature.

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

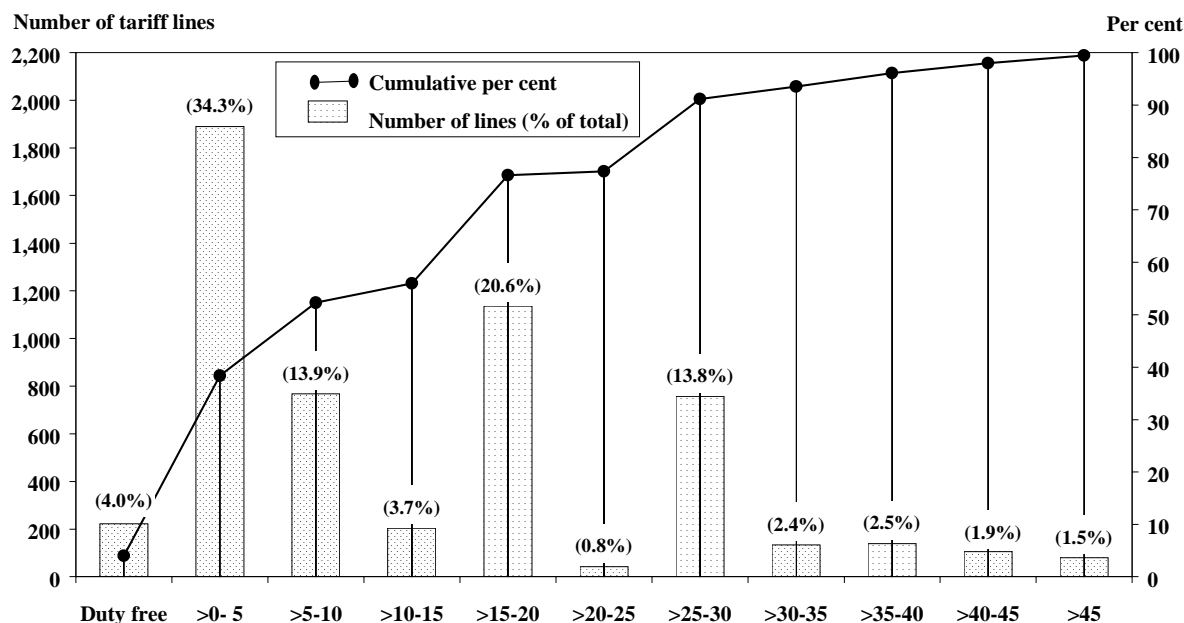
(h) Tariff dispersion

30. In addition to the 4.0% of tariff lines that are duty free, 34.3% of lines are subject to applied tariff rates of 5% or less (Chart III.3). Domestic tariff spikes, that is rates exceeding three times the simple applied MFN average, affect 1.6% of all tariff lines, while international tariff peaks, or those with rates exceeding 15%, affect 43.5% (2003).

¹⁸ Once the Japan–Singapore Economic Agreement for a New Age Partnership enters into force, the overall simple applied preferential tariff average will be 4.7% including AVEs, and 2.6% excluding AVEs.

Chart III.3

Frequency distribution of MFN tariff rates, 2003



Note: Excluding in-quota rates. Including AVEs provided by the authorities for specific rates, as available. The *ad valorem* part of alternate rates are taken into account for the calculations. Total does not add to 100% as for 0.5% (representing 29 lines) no tariff rate is available. Where several rates exist for a tariff line the average has been taken into account.

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

(i) Tariff escalation

31. Tariff escalation is present in a number of subsectors, most notably food products, textiles, leather products, wood products, paper products, petroleum and coal products, non-metallic mineral products, iron and steel, and non-ferrous metal (Table AIII.1). Tariff escalation means that the level of effective tariff protection increases as goods in these sectors undergo further processing; it thus tends to deter imports of semi-finished and finished goods.

(j) Tariff reduction and exemptions

32. Thailand continues to use extensive border tax exemptions to encourage investment in remote areas and production for export (data on the amount of customs duty reductions and exemptions were not available to the Secretariat). The granting of these concessions is generally the responsibility of the Board of Investment (BOI).

Board of Investment and other location-related provisions

33. Developments since 1999 in the BOI's provisions include the abolition in August 2000 of local-content requirements and export requirements.

34. Projects located in the most remote (zone 3) areas continue to be entitled to duty-free imports of machinery, irrespective of the share of exports in output.¹⁹ These exemptions resulted in revenue losses of US\$1,775 million in 2002. Imports of machinery, equipment, and materials for use by oil and gas concessionaires and their contractors are exempted from import duties.²⁰

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

35. The export processing zones provide exemptions from import duty and VAT for all imported machinery and raw materials used for production of exports, and from export taxes on exported goods.²¹ On 1 January 2003, the authorities abolished export requirements (previously, producers located in EPZs had to export at least 40% of their annual sales) as an approval criteria²²; firms located in EPZs may supply the local market, provided import duty, excise tax, and VAT are paid in full.

36. Non-tax incentives include: permission for foreign investors to own land for carrying out promoted activities; permission to bring in foreign technicians and experts to work on promoted projects; and permission to remit foreign currencies.²³ Currently, the main exports out of Thailand's ten EPZs are electrical appliances and parts, electronic and scientific equipment, optical equipment, and jewellery. Exports from EPZs accounted for approximately 7% of total merchandise exports in 2002.

37. The Customs Department introduced a new programme, the free zone (FZ) in 2000, in accordance with Article 97 of the Customs Act 1926, with a view to promoting investment in and exports from these zones. The establishment of an FZ is allowed if the zone is used for industrial or commercial operations or other operations deemed beneficial to national economy. Goods imported and taken into an FZ and for industrial or commercial operations qualify for exemption from import duties, VAT, and excise tax. To date, one free zone, consisting of ten industrial (electronics, machines, tool and jewellery) plants, has been established.

Bonded warehouse and other provisions for tariff refunds

38. Goods may be imported into a bonded warehouse without payment of import tariffs when the materials are to be used as an input in products destined for export or are themselves re-exported; these imports must be stored and used in a production process for exportation within two years from the date of importation. In FY 2002, customs revenue losses from this measure amounted to B 21.5 billion.

39. Exporters can also choose to use the duty drawback scheme administered by the Customs Department in order to import inputs duty free for export production. Importers are entitled to a refund of import duties already paid on imported raw materials if they are used for production and exported within one year; claims for drawback must be made within six months after exportation. In FY 2002, customs revenue forgone as a result of this measure amounted to B 14.8 billion.

¹⁹ For projects located in either zone 1 or zone 2, 50% reduction of import duties are accorded.

²⁰ BOI online information. Available at: <http://www.boi.go.th/english/business/taxation.html>.

²¹ Goods sold or services provided among industrial operators, whether in the same or a different EPZ, are treated as exports and thus are subject to neither VAT nor export taxes. EPZs currently in operation are industrial estates at Ladkrabang, Laemchabang, Northern region, Southern region, Bangpoo, Chonburi (Bowin), Ban-wa, Bangpa-in, Plangyaol, and Pichit.

²² WTO document G/SCM/101/Suppl.1, 2 April 2003.

²³ These measures, while generally granted in practice, are guaranteed under the legislation covering EPZs, but not otherwise.

End-use provisions

40. According to the authorities, some end-use provisions remain in Thailand's tariff, whereby the tariff on an item varies according to the use made of the product; however, detailed information regarding end-use provisions was not available to the Secretariat.

(k) Tariff adjustments

41. Since 1999, the Government has implemented four sets of tariff reductions based on recommendations of the Tariff Restructuring Committee, established in 1998. In this regard, on 10 August 1999, the Government reduced tariffs on 638 items of capital goods, raw materials, and other items such as machinery, chemical products, plastics, and cotton; on 1 January 2000, 153 items covered in the ITA became duty free; on 4 July 2000, tariffs on 542 items of raw materials, intermediate products, capital goods and other items such as chemicals, pharmaceutical products, packaging, machinery, and input for automotive parts were reduced; and on 31 October 2000, the Cabinet approved a tariff reduction on 73 items of raw materials for goods under the ITA-I, petrochemical goods, synthetic organic coloring matter, and other goods, as part of a Cabinet-approved new economic package.²⁴ Tariff rates for meat of bovine animals (HS0210.20), oil cake (HS2306.490), and packing material (HS3923.90) were increased between 2002 and 2003.

42. At the WTO Singapore Ministerial Conference in early December 1996, Thailand was party to the Ministerial Declaration on Trade in Information Technology Products (the Information Technology Agreement (ITA)), which bound tariffs on specific information technology products at zero. In this process, Thailand committed itself to eliminating duties on an MFN basis in two equal annual rate reductions ending in January 2000 on approximately three quarters of products covered by the ITA; for the remainder, tariffs are to be brought down to zero in eight equal rate reductions ending in 2005.

(l) Regional and bilateral tariff preferences

43. Thailand grants tariff preferences to members of the Association of South-East Asian Nations, under an agreement for the progressive establishment of an ASEAN Free-Trade Area by 2002 (Chapter II(6)(ii)(b)). The average AFTA preferential rate extended by Thailand was about 4.0% in 2003, compared with an MFN average of 14.7%.²⁵ By 2002, Thailand had no line specified on the Temporary Exclusion List; seven sensitive items are excluded (Chapter II(6)(ii)(b)).

44. In 1999, Thailand granted GSP to the Lao People's Democratic Republic.²⁶

(m) Global System of Trade Preferences

45. Under the Global System of Trade Preferences (GSTP), Thailand provides preferential margins of 2.5% to 100% of MFN rates on about 1,600 items to members of the GSTP Agreement.

²⁴ APEC (2002).

²⁵ In 1999, the AFTA rate was 9.8%, about half the average applied MFN rate (WTO, 2000, p. 43).

²⁶ APEC (2002).

(iii) Non-tariff border measures

(a) Import licensing and prohibition

46. Thailand's system of import restrictions involving licensing and prohibitions have remained generally unchanged since its previous Review. Conditions attached to import licensing on various items tend to be complex and opaque, and in some cases appear equivalent to quantitative restrictions (Table III.3). A number of import restrictions are in force for economic purposes, including on several additional products made subject to import licensing or prohibition, while some products were liberalized, since 1999.²⁷ Infant industry protection has been the main objective behind import restrictions since the 1970s.

Table III.3
Products subject to import licensing in Thailand, 2002

Commodity	HS code	Rationale	Measures and condition
Yellowfin tunas	0302.32	Environmental protection	Import certificate from the Department of Fishery is required.
Milk and cream	04.01, 2202.90	To encourage the production of milk, to protect local producers	Tariff quota
Milk and cream in powder	0402.10.0007	To develop and encourage domestic industry, to secure farmers' income	Tariff quota
Potatoes	0701	Domestic protection	Tariff quota
Onion	0703.10.0005, 0712.20.0104, 0702.20.0200	Industry protection	Tariff quota
Garlic	0703.20.0007, 0712.90.0115, 0712.90.0128	To protect domestic farmers	Tariff quota
Coconut	0801.11.0000, 0801.19.0007	Local farmers' protection	Tariff quota
Dry longan	0813.4	Industry protection	Tariff quota
Coffee	0901, 2101.10	Industry protection	Tariff quota
Tea	09.02	Local farmers' protection	Tariff quota
Pepper	09.04	Domestic protection	Tariff quota
Maize (Corn)	1005.90	To protect domestic farmers	Tariff quota, import surcharge for non-WTO Members
Rice	1006.10, 1006.20, 1006.30, 1006.40	To secure local farmers' income	Tariff quota
Soyabeans	1201.001.000, 1201.009.001	Local farmers' protection	Tariff quota
Copra	1203.00.0005	Industry protection	Tariff quota
Onion seeds	1209.91.0106	To stabilize price of onion seeds	Tariff quota
Soyabean oil and its fractions	1507.10.0001, 1507.90.0006	Domestic protection	Tariff quota
Palm oil and its fractions	1511, 1513.210004, 1513.29.0007	To encourage the production of palm oil and to secure local producers' income	Tariff quota
Coconut oil	1513.11.0008, 1513.19.0005	Industry protection, to secure farmers' income	Tariff quota
Fish-meal with protein content less than 60%	2301.200.106	Stabilize price of raw material use for animal food	NAL: importation is not generally allowed

Table III.3 (cont'd)

²⁷ These include: prohibition of the import of diamonds originating in Sierra Leone (in June 2001) and Liberia (in January 2002) in accordance with the resolution of the UN Security Council; the introduction of licensing requirement for the import of albuterol or salbutamol and its salts (in March 2002), caffeine (in June 2002) for public health reasons, and certain pharmaceuticals and chemicals (in May 2002) for economic stability and public health reasons. In January 2003, the importation of 50 x 50 x 50 cm marble blocks was liberalized.

Commodity	HS code	Rationale	Measures and condition
Fish-meal with protein content more than 60%	2301.200.106	Stabilize price of raw material use for animal food	Import surcharge
Oil cake residues, from the extraction of soyabean oil	2304.00.0008	Stabilize price of raw material use as animal food	Tariff quota, import surcharge for non-WTO Members
Marble (except marble block of 50x50x50 cm ³)	2515	Encourage and protect domestic industry	NAL: importation is not generally allowed
Gasoline	2710.001	Monitoring current fuel price	Automatic licensing, only for authorized importers
Kerosene	2710.002	Monitoring current fuel price	Automatic licensing, only for authorized importers
High speed diesel oil	2710.003	Monitoring current fuel price	Automatic licensing, only for authorized importers
Naphtha	2710.005, 2710.009	Monitoring current fuel price	Automatic licensing, only for authorized importers
LPG Gas	2711.120, 2711.130, 2711.140, 2711.190	Monitoring domestic consumption	Automatic Licensing, only for authorized importers
Potassium Permanganate	2841.61	Public morals, drug suppression	Automatic licensing, only for registered importers
Clenbuterol	2922.199	Public health	NAL: importation is permitted under the approval of the Food and Drug Administration
Albuterol or Salbutamol	2922.509	Public health	NAL: importation is permitted under the approval of the Food and Drug Administration
Caffeine	2939.30, 3003.40	Public health, social security	Restriction, allow only with certificate from the FDA, or other authorized concerned
Waste, parings and scrap of plastics	3915	Environmental and public health	NAL: with approval from the Department of Industrial Works
Wood sawn or chipped	4403, 4407 – 4421	To facilitate international trade transaction	Automatic licensing, certificate of origin, export certificate from exporting country
Raw silk	5002	Accommodate to current situation, industry protection	Tariff quota
Silk yarn	5004	Accommodate to current situation, industry protection	Automatic licensing, with conditions set by Department of Foreign Trade
Jute	5303.10, 5303.90, 5305.91, 5305.99	To secure farmers' income	NAL: imports permitted for use as raw material in manufacturing
Garment	61.01 to 61.14 61.17.90, 62.01-62.11, 62.17.90	Compliance with ATC commitment	Automatic licensing
Sacks and bags of jute or other textile	6305.10, 6305.90	To secure farmers' income	Importation is not generally allowed, only permitted for the use as raw material in manufacturing
Worked monumental or building stone	6802	Industry protection	NAL: importation is not generally allowed
Used motorcycle engine	8407.31, 8714.19, 72.04, 76.02	Public health and safety	Absolutely prohibited
Used diesel engines with displacement of 331-1,110cc.	8408.90	Public health and safety	NAL: importation is not generally allowed
Intaglio printing machinery	8443.500	To prevent making of counterfeit money	Automatic licensing
Chain saws	8467.81, 8467.91, 8508.20, 8508.90	To prevent smuggling of logging, forest conservation	Department of Foreign Trade authorizes the Department of Forestry to grant import permits

Table III.3 (cont'd)

Commodity	HS code	Rationale	Measures and condition
Passenger car (prototype)	8702.101, 8702.901	Industry protection, foreign currency reservation	Importation is not generally allowed, except for use as prototype for assembly or production
Used motor vehicles	8703.21, 8703.229, 8703.239, 8703.249, 8703.319, 8703.329, 8703.339	Public health, environmental protection	NAL: importation is not generally allowed, exempt for importation for re-export or importation by individual
Motor vehicles for the transport of 30 or more persons	8702.101, 8702.901	Industry protection, foreign currency reservation	NAL: importation is not generally allowed, except for use as prototype for assembly or production
Used motorcycle	8711	Public health	Importation is not generally allowed
Colour photo-copying apparatus	9009.110, 9009.120	To prevent making of counterfeit money	Automatic licensing
Game machines, coin or disc operated	9504.30, 9504.901, 9504.909	Public moral	Prohibited
Original sculptures and statuary, in any materials	9703.009	To prevent smuggling of historical objects or antiques	NAL: Department of Foreign Trade authorizes the Department of Fine Art to grant licences
Used machine for multimedia production		To prevent the violation of intellectual property	NAL
CFC refrigerators		Public health and environmental protection	Importation is prohibited
Glazed ceramic wares		Public health	NAL: importation will be allowed on case by case basis
Gold		Economic security and stability	NAL: Department of Foreign Trade authorizes the Department of Finance to grant licences
Counterfeit products		To prevent importation of imitation and counterfeit product	Absolutely prohibited
Diamonds from Sierra Leone and Liberia		Conformity with UN resolution	Importation is prohibited
Medals, coins		To prevent making of counterfeit medals and coins	NAL: importation is allowed only by the Minister of Finance and other authorized entity
Goods duplicating registered products		To prevent imports that violate the rights of registered product	Absolutely prohibited
Drug and pharmaceutical chemicals in 16 items, 154 categories (Aristolochia spp., Chloramphenicol, Chloroform, Chlorpromazine, Colchicin, Dapsone, Nitrofurans, Diethylstilbestrol, Sulfonamides, Fluoroquinolones, Glycopeptides, Dimetridazole, Metronidazole, Ronidazole, Ipronidazole, Nitroimidazoles)		Economic security, public health, accommodate to domestic production	Automatic licensing, with import certificate from authorities concerned

Note: NAL = Non-automatic licensing.

Source: Department of Foreign Trade, Thailand. Available at: http://www.dft.moc.go.th/import_index.htm (in Thai only).

47. The legislative authority for regulating imports is provided by the Export and Import Act B.E. 2522 (1979). The Act empowers the Minister of Commerce, with the approval of the Cabinet, to restrict imports for reasons such as economic stability, public interest, public health, national

security, peace and order, morals, or for any other reason in the national interest. Under the Act, imports may be "absolutely" or "conditionally" prohibited; in the latter case, e.g. those requiring non-automatic licensing, they are allowed if certain specified conditions are satisfied. In addition to the Export and Import Act B.E. 2522 (1979), various other laws stipulate import restrictions. Under the Investment Promotion Act, the Board of Investment is authorized to request the Ministry of Commerce to ban imports of goods competing with those produced by a domestic industry, if the Board is of the view that other forms of protection are not sufficient to assist the industry. Imports may also be prohibited under the various laws in place for health and safety reasons (see below).

Import prohibitions

48. Products that are absolutely prohibited include counterfeit goods and the equipment for their manufacture, marble, used motorcycle engines, game machines (coin or disc operated), household refrigerators utilizing CFC in the production process, and glazed ceramic ware (Table III.3). Thailand lifted the ban on imports of diamonds from Angola in April 2003. The authorities state that the objective of import prohibitions is to protect public morals, national security, human, animal or plant life, and health.²⁸

49. 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.²⁹

Import licensing

50. Products subject to non-automatic licensing currently include 23 agricultural items under tariff quota and processed goods (including certain fish-meal, raw silk and silk yarn, jute and kenaf, gunny bags woven of jute or kenaf, used diesel engines, certain buses, chainsaws, used cars and tractors, used motorcycles, marble, plastic wastes, building stones and coins in size and weight similar to official coins, and certain antiques or objects of art). Automatic import licensing system currently applies to certain garments, intaglio printing machines, and colour photocopying machines. Coverage of products can be changed through notifications of the Ministry of Commerce.

51. Thailand has not notified its relevant licensing legislation nor provided replies to the Import Licensing Questionnaire under Articles 1.4(a), 8.2(b) and 7.3 of the Agreement.³⁰

(b) Import quotas

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

(iv) Contingency measures

(a) Safeguards

53. Since 9 July 1999, Thailand's legal basis for safeguard measures has been the Ministry of Commerce Notification on Safeguard Measures B.E. 2542 (1999).³¹ In January 2002, the Board of Investment (BOI) announced the imposition of temporary surcharge on steel imports in an attempt to

²⁸ APEC (2002).

²⁹ Department of Livestock Development Notification, 28 December 2000.

³⁰ WTO document G/LIC/9/Rev.1, 18 February 2003.

³¹ WTO document G/SG/N/1/THA/2, 17 December 1999.

protect local steel production promoted by the BOI.³² This measure was terminated in July 2002 and replaced by anti-dumping measures.

(b) Anti-dumping and countervailing measures

54. There has been no change in Thailand's Anti-Dumping and Countervailing Act, which provides the legal basis for anti-dumping and countervailing measures.³³ Under the Act, formal procedures for anti-dumping and countervailing investigations are initiated by petition filed with the Department of Foreign Trade (DFT). The DFT then conducts an investigation and makes a preliminary determination. The preliminary determination may involve duty rates calculated on the basis of a preliminary analysis of responses to a questionnaire submitted by the foreign government and the foreign producers/exporters. The preliminary determination is then announced to the public by the DFT. The DFT may then apply provisional measures after affirming that the investigated products are dumped, causing injury to domestic producers. Provisional measures may take the form of a provisional duty or a security by cash deposit or bond equal to the amount of the preliminarily determined margin of dumping. The imposition of provisional measures is generally limited to four months, with a possible extension to six months at the request of exporters. Provisional measures are announced to the public by the DFT. After the end of period of imposition of provisional measures, if the DFT makes an affirmative determination of dumping with regard to the product concerned, it will announce the imposition of final measures.

55. As of May 2003, Thailand maintained definitive anti-dumping duties on six products from 12 WTO Members; another three were levied on products imported from non-members (Table III.4).³⁴ During the period under Review, Thailand's anti-dumping duties (including provisional measures) ranged from 5.98% to 135.5% of the value of imports. Thailand has used no countervailing measures since its previous Trade Policy Review.

Table III.4
Anti-dumping measures, as at 31 May 2003

Product	Country/customs territory	Date of imposition	Definitive duty rate in force
Hydrogen peroxide	India	08/02/99	30% (f.o.b.)
H-section	China	10/10/02	27.81% (c.i.f.)
	Poland	27/05/97	27.78% (c.i.f.)
	Republic of Korea	24/04/98	31-65-44.70% (c.i.f.)
	Indonesia	08/02/00	39.96% (c.i.f.)
Float Glass	Indonesia	08/02/00	39.96% (c.i.f.)
Cold-rolled carbon steel, sheet and strip in coils and cut-to length	Kazakhstan	25/01/03	26.36% (c.i.f.)
	Russia	20/02/03	35.80-64.70% (c.i.f.)

Table III.4 (cont'd)

³² Imports of hot-rolled sheets/plates/coils of iron or non-alloy steel will be subject to import surcharges of 25% of c.i.f. value. Surcharges for cold-rolled sheets/coils of iron or non-alloy steel will also be at 25% of c.i.f. value. Surcharges for painted or unpainted, zinc-coated or aluminium zinc alloys coated of iron or non-alloy steel will be at 5% of c.i.f. value. Surcharges for cold-rolled sheets/coils of stainless steel will be at 15% of c.i.f. (Announcement of the Board of Investment No. Thor.1-4/2545 [Online]. Available at: <http://www.boi.go.th/english/announcements>).

³³ An unofficial translation of the Anti-Dumping and Countervailing Act is found in WTO document G/ADP/N/1/THA/4 (G/SCM/N/1/THA/4), 20 December 1999.

³⁴ WTO document G/ADP/N/98/THA, 29 April 2003.

Product	Country/customs territory	Date of imposition	Definitive duty rate in force
Flat-rolled products of stainless steel ^a	Chinese Taipei	13/03/03	4.84-33.99% (c.i.f.)
	EU	13/03/03	10.02-25.57% (c.i.f.)
	Japan	13/03/03	0.00-50.92% (c.i.f.)
	Republic of Korea	13/03/03	50.99% (c.i.f.)
Flat hot-rolled steel in coils and not in coils	Algeria	27/05/03	33.26% (c.i.f.)
	Argentina	27/05/03	37.94-53.09% (c.i.f.)
	Chinese Taipei	27/05/03	3.45-25.15% (c.i.f.)
	India	27/05/03	26.81-31.92% (c.i.f.)
	Indonesia	27/05/03	24.48% (c.i.f.)
	Japan	27/05/03	36.25% (c.i.f.)
	Kazakhstan	27/05/03	109.25% (c.i.f.)
	Republic of Korea	27/05/03	13.96% (c.i.f.)
	Romania	27/05/03	27.95% (c.i.f.)
	Russia	27/05/03	24.20-35.17% (c.i.f.)
	Slovak Republic	27/05/03	51.95% (c.i.f.)
	South Africa	27/05/03	128.11% (c.i.f.)
	Ukraine	27/05/03	30.45-67.69% (c.i.f.)
	Venezuela	27/05/03	78.44% (c.i.f.)
	China	14/03/03	45.85% (c.i.f.)
Citric acid ^b	China	14/03/03	45.85% (c.i.f.)

a Provisional measures.

b Preliminary determination.

Source: Department of Foreign Trade, Thailand.

(v) Government procurement and countertrade

(a) Government procurement

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

57. The core procurement rules for the Central Government are the Regulations of the Office of the Prime Minister on Procurement B.E. 2535 (1992), as amended in 2002. The 2002 amendment involved, *inter alia*, changing of membership of the Procurement Committees and the implementation of electronic auction (e-Auction). According to the authorities, all government agencies (central and provincial administration) must comply strictly with the Regulations for procuring activities; local administration and state enterprises are not under direct control of the Regulations.

58. The authorities state that procurement regulations are designated to ensure that public funds are used economically and efficiently, provide fair and equal opportunity to anyone to supply the goods and services required, prevent corruption, and respond to the Government's social and economic policies; competitive bidding in the form of open tendering is regarded as the best method of achieving these objectives and must be employed for higher value contracts. However, in practice, preference is given to Thai products, contractors, and consultants, as described in the previous Secretariat Report.³⁵ Competitive bidding is used when the value of a goods or services contract

³⁵ Determination of the local preference margin is based on the level of industrial standards met by the product concerned. Where products do not meet industrial standards or registration, the Government considers the origin of the product. If foreign products are proposed at a price not more than 5% higher domestic

exceeds B 2 million³⁶; for procurement valued between B 100,000 and B 2 million, selective tendering is used, and price agreement through negotiation is used for procurement valued at no more than B 100,000. Special methods are used when procurement is made repeatedly or when a delay in procurement may be detrimental to the procuring agency concerned and when the amount of procurement exceeds B 100,000. According to the authorities, domestic and foreign contractors with capital of more than B 500 million are considered on an equal basis.

59. The Office of Procurement Management under the Comptroller General's Department in the Ministry of Finance serves as the Secretariat of the Public Procurement Management Committee³⁷, issues, amends, and advises on procurement regulations and practices, and negotiates international agreements on procurement issues.³⁸ Other relevant agencies responsible for the administration of Thailand's government procurement include: the Bureau of the Budget (which is responsible for the budget planning, allocation, and evaluation); the Comptroller General's Department (budget disbursement); the Thai Industrial Standards Institute (registration of products subject to industrial standards requirements in order to be eligible for preference margins); Office of the Auditor General (procurement audit); Office of the National Counter Corruption Commission (inspection of the procurement process); and the Administrative Court (the jurisdiction of administrative cases involving such matters as a dispute in relation to unilateral administrative acts).

60. A Cabinet resolution of 1 October 2002 required that all government agencies maintain their own websites containing procurement information, and implement the electronic auction (e-Auction) for at least one item of simple merchandise purchasing by 14 February 2003. To this end, the regulations of the Office of the Prime Minister on procurement 1992 were amended to allow e-Auction procedures.

61. The authorities indicate that the Government does not record the value of annual procurement by government agencies; Budget Appropriations on Equipment, Properties and Construction, which may be considered as an indirect indicator of the value of annual procurement by government agencies, has declined gradually since FY 1999, from B 193.6 billion to B 121.3 billion in FY 2002.³⁹

products, the Government exercises the right to negotiate with domestic suppliers and may purchase the domestic products.

³⁶ Tenders are advertised within the specified time through a bid notice posted at the office of the government agency, radio broadcasts, and newspapers; notices are also sent to the Public Relations Department, the Mass Communication Organization of Thailand for public information, the Bidding Information Centre for dissemination, and the Office of the Auditor-General.

³⁷ The Procurement Committee comprises the Permanent Secretary of the Finance Ministry as chairman, the Comptroller-General from Comptroller General's Department, and representatives from the Defence Ministry, the Office of the Auditor General, the Office of the Attorney General, the Bureau of the Budget, the Office of the Council of State, the Office of the National Counter Corruption Commission, the Office of the Permanent Secretary to the Prime Minister, the Office of Public Debt Management, Thai Industrial Standards Institute, and other appointed qualified persons. The responsibilities of the Committee include: interpreting and making rules concerning compliance with the Regulations; considering exemption from, or relaxation of compliance with the Regulations; considering complaints concerning failure by a government agency to comply with the Regulations; proposing revisions of the Regulations to the Council of Ministers; and designating categories or types of supplies that must be purchased from abroad.

³⁸ The functions and responsibilities of the Office were transferred from the Office of the Permanent Secretary, the Prime Minister's Office in October 2002.

³⁹ The government agencies of Thailand are divided into four categories: central and provincial administration, local administration, state enterprises and independent public bodies. The expenditures of the Central and Provincial Administration mainly rely on the budget allocation; the other three categories partially rely on the budget allocation and are able to manage their own budget and revenues.

(b) Countertrade

62. Current countertrade policy stipulates that all procurement contracts by government agencies and state enterprises that involve imports above B 300 million must have a related countertrade transaction of at least one half of the procurement value.⁴⁰ Coordination of countertrade is the responsibility of the Department of Foreign Trade at the Ministry of Commerce.

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Registration and documentation procedures

63. A few export items (e.g. orchids, langans, durian) require registration with the Department of Agriculture; registration is apparently in place for quality, price monitoring, and food security purposes. Registration is also used to meet quantitative restrictions in the case of textiles and clothing. In order to expedite customs clearance for exports, an EDI (electronic data interchange) system has been implemented since 2000.

(ii) Export taxes, charges, and levies

64. Since 1999, there has been no change in Thailand's export duties (Table III.5). Export taxes in Thailand consist of statutory rates and applied rates. The contribution of export taxes to government revenue remains negligible. The persistence of relatively high statutory export taxes, nevertheless, leaves an element of uncertainty in Thailand's trade regime, as export taxes on important products such as rice or rubber could in principle be reintroduced up to the level of the statutory rates without the need for legislative approval. According to the authorities, the collection of export taxes is primarily for the purpose of conserving the environment.

Table III.5
Export duties in Thailand, 2003
(Baht and per cent)

Commodity	Applied rate	Statutory rate
Hides of bovine animals		
Raw hides	B 5 per kg.	B 5 per kg.
Parings, waste, and dust for use in the production of leather	B 0.4 per kg.	B 4 per kg.
Wood, sawn wood, and articles made of wood		
Wood and sawn wood	0% to 40%	40%
Articles of wood		
Unsuitable for other conversion	10%	10%
Other	20%	20%
Rice	0%	10%
Metal scraps	0%	50%
Rubber	0%	40%
Raw silk and silk yarn	0%	B 100 per kg.
Certain fish	0%	75%

Source: Information provided by the Thai authorities.

(iii) Export prohibitions, restrictions, and licensing

65. As in the case of imports, licensing is used to administer quotas, conditional prohibitions, and absolute prohibitions. These measures are in place for economic, quality, health and safety purposes,

⁴⁰ Office of the Prime Minister Regulation on Countertrade B.E. 2543 (2000).

as well as to implement agreements with trading partners, concerning notably textiles and clothing, motor vehicles, and certain agricultural products (Table III.6). Membership of the Board of Trade and respective trade associations is often required to obtain export licences.⁴¹

Table III.6
Products subject to export licensing in Thailand, 2002

Commodity	HS	Rationale	Measures and condition
Agriculture products			
Live horses, asses, and mules	0101	Animal preservation	Export is generally not allowed
Chipmunks	0106	Animal preservation	Export is generally not allowed
Elephants	0106	Animal preservation	NAL, with approval from Department of National Parks, Wildlife, and Plants
Turtles (spiny terrapin)	0106	Animal preservation	Export is generally not allowed
Live animals in 277 categories	0106	Animal preservation	NAL, for 80 categories, automatic licensing for 197 categories with approval from Department of Forestry
Rare live sea animals carcass and products	0301-0307	Animal preservation, in compliance with CITES agreement	Export is not generally allowed
Ornamental fish (in 400 species)	0301.10	Animal preservation	Export is generally not allowed
Live shrimp	03.06	Prevent domestic shortages	Automatic licensing, with certificate from Department of Fishery
Crustaceans (shrimp and octopus) frozen or chilled	0306, 0307, 1605, 1902	Requirement of importing nation (only exports to the U.S. and EU)	Exporter must be members of Thai Frozen Food Association
Pearl shell	03.07	To encourage local farming industries	NAL, with export certificate from Department of Fishery
Tortoise-shell	05.06, 05.07, 05.11	Animal preservation	NAL, with approval from Ministry of Agriculture
Dead animals, unfit for human consumption (291 categories)	05.06, 05.07, 05.11	Animal preservation	NAL, for 262 categories AL, for 29 categories with approval from Ministry of Agriculture
Coral	0508	Animal preservation	Export is generally not allowed
Pearl shell	0508	To encourage local industry	Automatic licensing, with export certificate from Department of Fishery
Orchids for export to EU	0603.10	According to bilateral agreement	Exporters must be registered with Department of Agriculture, and required phytosanitary certificate
Durian	0810.90	To regulate the export system	Automatic licensing, exporters must be registered with Department of Agriculture
Longans	0810.90	To regulate the export system	Exporters must be registered with Department of Agriculture, Ministry of Agriculture
Coffee	0901, 2101.10	Compliance with International Coffee Agreement	Automatic licensing
Rice	1006.10, 1006.20 1006.30, 1006.40	Prevention of domestic shortages, export control	Automatic licensing, export quota (EU)
Jute seeds	1209.99	Domestic preservation	Export is generally not allowed
Rattan	1401.20	Domestic preservation	Export is generally not allowed

Table III.6 (cont'd)

⁴¹ EIU (2002a), p. 25.

Commodity	HS	Rationale	Measures and condition
Tuna in airtight containers	1604.14	To regulate the export system	Exporter must be members of Thai Food Processors Association
Sugar	1701	Local industries protection	Automatic licensing, exporters must be registered with Ministry of Industry
Canned pineapple and concentrated pineapple juice	2008.20, 2009.40	To regulate the export system	Exporters must be a member of Thai Food Processors Association, or Thai Pineapple Industry
Oil cake and other solid residue, resulting from extraction of ground-nut oil	2304, 2305	Prevention of domestic shortages	Export is generally not allowed
Oil cake and other solid residue, resulting from extraction of soyabean oil	2304.00.0008	Prevention of domestic shortages	Export is generally not allowed
Non-agriculture products			
Potassium permanganate	2841.61	Public moral, prevention of narcotics	Automatic licensing: only with approval from Office of the Narcotic Control Board
Caffeine	2939.30, 3003.40	Public health	Automatic licensing: only with approval from FDA or Department of Industrial Works
Animal or vegetable fertilizers	3101.00	Prevention of domestic shortages	NAL: with approval from Department of Agriculture, Ministry of Agriculture and Cooperatives
Wood, sawn or chipped	4401, 4403, 4404, 4406, 4407	Prevention of domestic shortages	Export is generally not allowed, except Pines and Eucalyptus that receive approval from Director-General of Department of Forestry
Wood charcoal	4402	Forest conservation	NAL: exportation is not generally allowed
Rubber woods	4403, 4404, 4406, 4407	Prevention of domestic shortage	Automatic licensing
Non-categorized HS numbers			
Buddha images		To protect national treasures of artistic, historic, and archaeological value	Automatic licensing, with export certificate from Department of Fine Arts
Coal		Conservation of exhaustible natural resources	NAL, allowed only for re-export, or coal imported to produce for exports; export certificate from the Department of Alternative Energy Development and Efficiency, Ministry of Energy
Counterfeit products		To prevent the production of counterfeit products	Prohibited
Fuel		Pursuant to the UN Security Council resolution	Automatic licensing, with certificate from Petroleum Authority of Thailand
Gold		Economy security and stability	Automatic licensing, with conditions set by Ministry of Finance
Goods duplicated from copyright products		To prevent the exportation of imitation products	Prohibited
Goods export to Sierra Leone		Compliance with UN resolution 1171 (1998)	Prohibited
Goods export to Angola		Compliance with UN resolution 1173 (1998)	Prohibited

Table III.6 (cont'd)

Commodity	HS	Rationale	Measures and condition
Natural sand		Conservation of exhaustible national resources	Prohibited
Re-export products		According to the commitment with the countries that produce or export goods to Thailand	Thailand has not yet committed to re-export agreement with any countries
Silica sand or quartz sand		Conservation of exhaustible national resources	Department of Foreign Trade authorizes the Department of Mineral Resources to grant licences
Tapioca		Export quota (EU)	Bilateral agreement provisions
Textiles		Export quota (EU, U.S., Canada, Norway)	Bilateral agreement provisions

Note: NAL = Non-automatic licensing.

Source: Department of Foreign Trade, Thailand [Online]. Available at: http://www.dft.moc.go.th/export_index.htm.

66. Changes in Thailand's export licensing and prohibitions since 1999 include: removal of export prohibition on all types of arms, military vehicles, military hardware, and spare parts to Serbia and Montenegro (including Kosovo) (in March 2002); imposition of an export prohibition on all types of arms, military vehicles, hardware, and spare parts to Ethiopia and Eritrea (in June 2001), Liberia (in January 2002), and Somalia (in February 2002) in accordance with resolutions of the UN Security Council; and the export of caffeine has been regulated since June 2002 and of potassium permanganate since August 2002.

67. Exports of automobiles to Chinese Taipei is subject to export licence and quota allocation, in accordance with a bilateral agreement.

68. There has been no change since 1999 in Thailand's export-related exchange control regulations; they require that all proceeds of exports exceeding B 500,000 are received in Thailand not be later than 120 days from exportation.

(iv) Export assistance

69. Since 1999, the Export-Import Bank of Thailand (EXIM Bank) has terminated its major subsidy programmes by the end of 2002, including the Packing Credit Facility, which was an export financing scheme involving concessionary interest rate provided by the Bank of Thailand, with co-financing from commercial banks.⁴² The other main export finance schemes by the EXIM Bank remain unchanged.⁴³

70. In December 2002, pursuant to Article 27.4 of the WTO Agreement on Subsidies and Countervailing Measures, the SCM Committee granted Thailand a time-limited extension in respect of two specific export subsidy programmes.⁴⁴

71. Domestic products that are exported are eligible for tax cards as defined in the Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act B.E. 2524 (1981). Tax cards can be used by the holders for payment of taxes and duties. According to the authorities, the refund is intended to cover some hidden tax and duty costs attached by upstream industries. Foreign producers

⁴² WTO document G/SCM/Q2/THA/15, 9 May 2003.

⁴³ These include the Pre-shipment Financing Facility, the Term Loan for Business Expansion, the Merchant Marine Financing the Long-term Credit for Exports of Capital Goods, the Financing Facilities for Overseas Contract, and Export Credit Insurance (see WTO, 2000, pp. 53-55 for details).

⁴⁴ WTO document G/SCM/101, 13 January 2003.

producing in Thailand are eligible for tax cards provided they present either the credit note or credit advice issued by a commercial bank showing the receipt of goods payment from abroad (especially the amount of money received). All exported products are eligible for tax cards except for certain items including minerals and goods subject to export duty or fees.

(4) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Taxation

72. Tax revenues in Thailand were B 783.8 billion in FY 2001, which was about 15.3% of GDP (B 5,123 billion); personal and corporate income tax, value-added tax and excise tax accounted for about 82% of the tax revenues, while customs duties accounted for 11.7%.

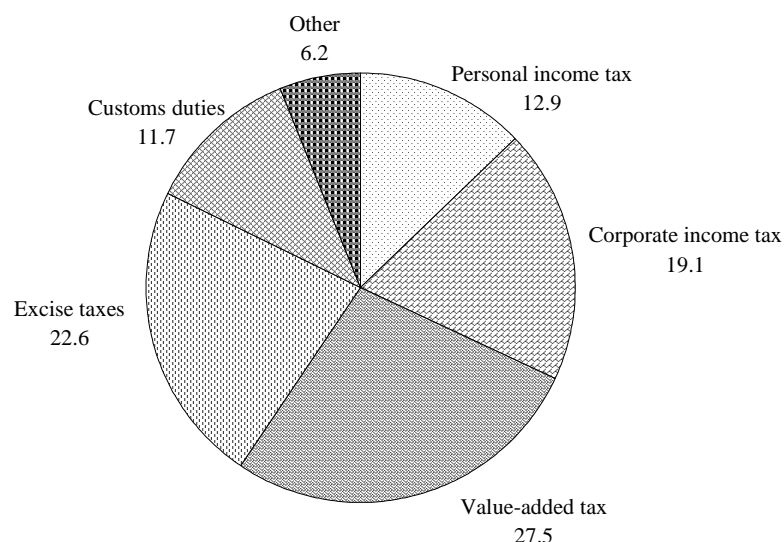
(a) Indirect taxes

73. In addition to the customs tariff, three indirect taxes are levied on the c.i.f. value of imports: the excise tax, municipality tax, and VAT. All three are levied on imports at the same rates as on domestic production. These indirect taxes represent about 50% of tax revenue, compared with 11.7% for customs duties (Chart III.4).

Chart III.4

Composition of tax revenue, fiscal year 2001

Per cent



Source: Data provided by the Thai authorities.

Excise taxes

74. In FY 2001, excise taxes accounted for approximately 23% of total tax revenues. They are levied on 15 product groups, although 95% of revenue is derived from four product groups: petroleum products, beverages, tobacco, and motor vehicles. Excise taxes involve *ad valorem*, specific, or alternative rates (i.e. rates involving either an *ad valorem* or specific rate; the higher of

the two is applied). *Ad valorem* rates are as high as 75% (for cigarettes). Since 1999, excise taxes on certain petroleum and petroleum products (gasoline, kerosene, diesel, and LPG) have been eliminated. All goods subject to excise tax (with the exception of alcohol, tobacco, and playing cards) are exempted in the case of exportation. Excise taxes on local wines were reduced effective from January 2003, from B100 per unit (a litre of pure alcohol) to B70 per unit.

Value-added tax

75. The VAT is levied at the rate of 7% on goods and services, with exemptions only for books, education, hospitals, unprocessed agricultural products, fertilizers, animal feeds, pesticides, and certain other social goods and services. For products where excise tax and interior tax are applied, VAT is levied on the value inclusive of excise and interior tax. Exports are exempt from VAT.

(b) Direct taxes

76. Taxes on income and profits account for roughly 32% of total tax revenues; corporate and personal income taxes account for 19% and 13% respectively.

77. Corporate income tax in Thailand is levied on the profits of domestic and foreign companies alike. The tax rates vary from 2% to 30% depending on the taxpayer and the amount of profits (Table III.7).⁴⁵

Table III.7
Corporate income tax in Thailand, June 2003

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

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

Source: Revenue Department online information. Available at: <http://www.rd.go.th/publish/6044.0.html>.

78. As in many other countries, the corporate tax is used by the Thai Government not just to generate revenue, but also as an instrument of economic policy by means of tax incentives. Among

⁴⁵ Revenue Department online information. Available at <http://www.rd.go.th/publish/6044.0.html>. Profits are defined for tax purposes as income minus business expenses, including depreciation allowances (ranging from 5% to 100% per annum depending on the type of asset), wages, and salaries.

the main types of incentive are corporate tax holidays (that is, total exemption from tax) for specified periods; these incentives are, in most cases, granted by the Board of Investment (section (ii) below).⁴⁶ One noteworthy tax incentive outside the purview of the BOI involves the reduced tax rate of 10% granted to International Banking Facilities (IBFs) in an attempt to develop Thailand's financial sector. This particular tax incentive, by implicitly subsidizing foreign exchange borrowing by Thai enterprises, was probably one of the factors that exacerbated the financial crisis in 1997. The Government also continues to allow businesses to choose the "double declining balance" method of accelerated depreciation, by which assets can be depreciated at twice the rate of the straight line method. This measure is intended to increase after-tax cash flow of businesses and encourage them to invest in new assets. The inevitable outcome of these tax incentives is that marginal effective tax rates can vary substantially across sectors.

79. No major changes appear to have taken place in Thailand's personal income tax since 1999.⁴⁷ Personal income tax rates range from 5% to 37%.

(c) Transparency

80. There appears to be a lack of transparency in Thailand's tax incentives, which undermines public accountability and thus governance. In particular, the tax authorities do not publish detailed information on the amounts of tax revenue forgone as a consequence of these measures. Nor do they rigorously and systematically evaluate the impact and effectiveness of such incentives. Experience in other countries suggests that tax incentives are seldom cost-effective.⁴⁸ Clearly, publication of estimates of tax revenues forgone along the lines of practices in many OECD countries⁴⁹, as well as studies evaluating their cost-effectiveness, would greatly enhance fiscal transparency in Thailand and contribute to more effective tax policy. Elimination of incentives that are found to be ineffective would permit a broadening of the tax base, which could be accompanied by reductions in statutory tax rates without necessarily involving any loss in total tax revenues; the outcome would be a more neutral tax system.

(d) Bilateral tax treaties

81. Since its previous Review, Thailand has signed double taxation treaties with five countries: Armenia, Bulgaria, Cyprus, United Arab Emirates, and Uzbekistan.⁵⁰

⁴⁶ See, for example, WTO document G/SCM/101/Suppl.1, 2 April 2003.

⁴⁷ See WTO (2000), p. 58 for details.

⁴⁸ Most econometric studies show that forgone tax revenues exceed the increase in desired investment, (OECD, 1995). Tax holidays are regarded as a particularly ineffective type of tax incentive compared to tax credits (see Mintz, 1990, 1992).

⁴⁹ Such estimates are published in the form of tax expenditure accounts in 14 countries (See OECD, 1996).

⁵⁰ To date, Thailand has concluded tax treaties with: Armenia, Australia, Austria, Bangladesh, Belgium, Bulgaria, Canada, China, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Hungary, India, Indonesia, Israel, Italy, Japan, Republic of Korea, Laos, Luxembourg, Malaysia, Mauritius, Nepal, the Netherlands, New Zealand, Norway, Pakistan, the Philippines, Poland, Romania, Singapore, South Africa, Spain, Sri Lanka, Sweden, Switzerland, United Arab Emirates, the United Kingdom, the United States, Uzbekistan, and Viet Nam.

(ii) **Investment incentives**

(a) Incentives provided by the Board of Investment

82. The BOI recognizes a need to remove impediments to investment rather than relying on widely-used tax incentives.⁵¹ On 1 August 2000, therefore, the BOI made various changes to its investment incentive scheme; the changes involved, *inter alia*, streamlining various tax-based incentives intended to attract inward FDI. On the other hand, the BOI appears to be taking a more proactive approach to industrial policy and the pursuit of competitiveness, with measures targeted at certain industries, such as agri-industry, automobiles, textiles, electronics, and high-valued services.

83. Under the Investment Promotion Act B.E. 2520 (1977), the BOI continues to have wide-ranging influence on the formulation and implementation of trade and investment policies. The BOI, *inter alia*, authorizes the granting of tax and non-tax measures; main tax incentives include reduction of import duties and corporate tax exemptions, and main non-tax measures include permission to be majority foreign-owned and permission to own land, to approved investments, domestic or foreign.⁵² In 2002, BOI-approved FDI totalled B 99.6 billion for 483 projects; over half involved 100% foreign-owned investments. Japan was by far the largest source of inward FDI. Most inward FDI was for export-oriented ventures, especially in metal products and machinery, electric and electronic products, and light industries. Some 70% of approved investments were from foreign sources. Minimum investment of B 1 million is required for promoted projects.

84. In August 2000, the BOI undertook various reforms in its investment incentive schemes⁵³:

- Approval criteria now differ between a project investing less than B 500 million and a project equal to or above B 500 million; both are required to generate value added of at least 20% of sales revenue (except electronic products and agricultural projects), and the latter requires a feasibility report at the time of application. Investment applications must be processed within 60 working days (for projects under B 500 million) or 90 working days for larger projects.
- The BOI lowered the maximum permissible debt-to-equity ratio. As a result, the criteria to assess eligibility for investment promotion measures include having a maximum debt-to-equity ratio of three-to-one (previously four-to-one).
- The BOI abolished certain eligibility requirements for the reduction or exemption of import duties⁵⁴; as a consequence, BOI-approved projects are granted either exemptions (for projects located in zone 3) or a 50% reduction (for those in zones 1 or 2) of import duties on certain machinery, without any requirement to export or locate factories in industrial estates or promoted industrial zones.⁵⁵ Import duty exemptions on raw or essential materials used in manufacturing exports are

⁵¹ BOI online information. Available at: http://www.boi.go.th/english/7_Strategies.pdf.

⁵² The BOI also offers promoted investments legislative guarantees against: expropriation without adequate compensation; competition from new state enterprises; state monopolization of the sale of products similar to those produced by the promoted project; price controls; tax-exempt imports (by government agencies or state enterprises) of products competing with those produced by the promoted project; and imposition of export restrictions.

⁵³ According to Board of Investment Announcement No. 1/2543 (1/2000).

⁵⁴ These requirements were that investment projects locate their factories in industrial estates or promoted industrial zones, or export at least 80% of total sales.

⁵⁵ The measure applies to machinery with an import tariff of 10% or above.

granted for one year (for projects located in zone 1 or 2) or five years (for those in zone 3).⁵⁶

- Corporate tax exemptions continue to be accorded depending on the zone in which an enterprise is located.⁵⁷ A three-year corporate tax holiday (exemption) is granted for projects in industrial estates or promoted industrial zones in zone 1. In zone 2, the exemption is for three years or five years (previously seven years), if projects are located in industrial estates or promoted industrial zones.⁵⁸ In zone 3, an eight-year corporate tax holiday is granted, regardless of the location, capped at 100% of investment capital.⁵⁹ Since December 2001, the amount of the corporate tax exemption has been capped at 100% of investment capital (excluding the costs of land and working capital).⁶⁰
- The BOI selected five targeted industries: agri-business, automobiles, fashion, electronics, and high-valued services⁶¹; these industries appear to be eligible for exemptions of import duties on certain machinery and a corporate tax holiday for eight years, irrespective of the location of the project.⁶²
- The BOI also allows foreign investors up to 100% equity in promoted projects, except for List 1 businesses, as defined in the Foreign Business Act (Chapter II(8)(ii)), and investment incentives are now available to both foreign and domestic investors on a non-discriminatory basis. Since August 2000, the BOI has allowed up to total foreign ownership in manufacturing activities, irrespective of location.

85. The Ministry of Finance also introduced a tax incentive scheme in December 2001 for firms locating regional operating headquarters (ROH) in Thailand. The scheme includes a reduced company tax rate of 10% (instead of 30%), and accelerated depreciation. Expatriate employees of ROH can also opt to be taxed at a flat rate of 15% (instead of progressive scales ranging from 5% to 37%), for a maximum of two years. Eligibility criteria apply; for example, ROHs must provide services to affiliated entities in at least three foreign countries, and have minimum paid-up capital of B 10 million.

⁵⁶ Extra incentives apply in certain zone 3 provinces, such as a 50% tax holiday for an additional five years.

⁵⁷ Zone 1 includes Bangkok and five provinces (e.g. Samut Prakan); zone 2, twelve provinces (e.g. Ang Thong); and zone 3 (all 58 remaining provinces). In August 2000, two provinces were added to zone 2 and the 58 provinces in zone 3 were divided into two areas based on development level of each province; incentives for the 40 more developed provinces are now more limited in scope than for the 18 less-developed provinces in zone 3.

⁵⁸ Projects submitted before end 2004 and located in industrial estates receive a seven-year tax holiday.

⁵⁹ Extra incentives apply in certain zone 3 provinces; a 50% tax holiday is available for five years after the eight-year exemption period; water, electricity, and transportation costs are deductible from taxable income for ten years from the date of first sales, meaning that these costs can be deducted twice; and 25% of the installation and construction costs of infrastructure facilities can be deducted in the calculation of net profit.. Since August 2001, projects with capital exceeding B 10 million must obtain ISO or similar international standard certification within two years; otherwise the tax holiday is reduced by one year.

⁶⁰ According to an amendment to the Investment Promotion Act.

⁶¹ BOI Bulletin No.68/45, 10 April 2002 "BOI Targets Five Industries For Proactive Marketing Campaign" [Online]. Available at: http://www.boi.go.th/english/focus/boi_pr_target_industries02.html.

⁶² These incentives also seem to apply to enterprises engaged in other priority activities. Priority activities are: agriculture and agriculture products; technological and human resource development; public utilities and infrastructure; environmental protection; and targeted industries.

86. Effective from 19 September 2002, zoning requirements for various promoted activities were relaxed: e.g. projects previously required to locate in either zones 2 or 3 may relocate to zone 1.⁶³

87. Thailand requested and was granted by WTO Members extension of the transition period to eliminate export subsidies in the form of corporate tax exemptions (tax holidays) associated with these pre-existing BOI-approved investments.⁶⁴

(b) Notifications to the WTO

88. Since 1999, Thailand has made five subsidy notifications pursuant to Article XVI:1 of GATT 1994 and Article 25 of the WTO Agreement on Subsidies and Countervailing Measures.⁶⁵ The notifications cover certain of the investment promotion incentives described above, the benefits provided by the Industrial Estate Authority of Thailand, and the refinancing schemes operated by the Bank of Thailand at subsidized interest rates. Several WTO Members have asked questions regarding these notifications.⁶⁶

(iii) Trade-related investment measures

89. Thailand abolished local-content requirements in the automotive sector as of January 2000. Thereafter, incentives offered by the BOI for the manufacture of locally made engines for pick-up trucks were also abolished. The only remaining local-content requirement concerns the manufacture of ready-to-drink milk; according to the authorities, the requirement is not tied to any incentives granted by the BOI. Thailand has also eliminated export performance requirements on new investments tied to BOI incentives, as discussed in the previous section; however, projects approved before August 2000 must apparently still meet their export requirements in order to continue to benefit from the tax incentives, especially tax holidays.⁶⁷ Certain export requirements tied to incentives granted to those locate in EPZs were also eliminated on 1 January 2003.⁶⁸

(iv) Standards and other technical requirements

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

90. Thailand is a member of ISO and IEC. Between 1999 and 2002, the TISI established 692 Thai industrial standards (TISs), of which about 4.8% are mandatory. The number of TISs that are identical to international standards has increased since 1999 (Table III.8).⁶⁹ Thailand intends to align its standards in priority areas with the relevant international standards by the end of 2005; these areas include electrical products and electronics, rubber products, machinery, food labelling, and standards and guides on conformity assessment.

⁶³ Board of Investment Announcement No. 2/2545, 26 December 2002.

⁶⁴ WTO document G/SCM/101, 13 January 2003.

⁶⁵ The latest notification is in WTO document G/SCM/N/71/THA/Suppl.1, 12 July 2002.

⁶⁶ For example, WTO document G/SCM/Qe/THA/13, 27 May 2002.

⁶⁷ Previously, at least 80% of total sales had to be exported, for example, to be eligible for the reduction of import duties on machinery and certain materials.

⁶⁸ WTO document G/SCM/101/Suppl.1, 2 April 2003.

⁶⁹ TIS are defined by the Industrial Product Standard Act B.E. 2511 (1968) and its amendments, as well as relevant ministerial regulations.

Table III.8
Thai industrial standards (TISs), 1999-02

Year	Cumulative total of published TISs	Cumulative total of published TISs identical to international standards		
		ISO	IEC/CISPR	CODEX
1999	1,750	97	65	2
2000	1,939	168	137	7
2001	2,130	241	184	7
2002	2,280	320	217	7

Source: Thai Industrial Standards Institute.

91. Since 1999, Thailand has made some 120 notifications under the WTO Agreement on Technical Barriers to Trade; most were under Article 2.9 and three under Article 2.10 (urgency procedure).

92. It would appear that firms meeting TISs continue to enjoy a 5% price preference for government procurement (see section (2)(v)). The TISI has established 33 technical regulations (mandatory standards) (Table AIII.2).

93. In 1999, the Thai Industrial Standards Institute (TISI) and the Federal Office of Road Safety of Australia concluded a bilateral Mutual Recognition Arrangement on automotive products. Thailand currently participates in various APEC mutual recognition arrangements.⁷⁰ It has also signed: the Pacific Accreditation Cooperation Multilateral Recognition Arrangement and IAF Multilateral Recognition Arrangement, the Asia Pacific Laboratory Accreditation Cooperation (APLAC) Multilateral Recognition Arrangement, the International Laboratory Accreditation Cooperation (ILAC) Multilateral Recognition Arrangement, and the Asia Pacific Legal Metrology Forum Memorandum of Understanding.

94. Manufacturers that have been awarded ISO 9000 certification are exempted from assessment of their quality control system; a quality management system certificate for a product or product group is generally accepted provided that such certificate is issued by either the ISO 9000 certification body that has been accredited by the Office of the National Accreditation Council of Thailand, or by the ISO 9000 certification body that has been approved by the Industrial Product Standards Council. The TISI may, however, conduct additional assessments on items if the certified quality management system differs from the particular requirements for product certification and the general requirements for product quality control.⁷¹

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

95. Thailand's Food and Drug Administration (FDA), under the Ministry of Public Health, monitors and regulates the production, sale, and import of food and tobacco products, cosmetics, drugs and narcotics, medical devices, and psychotropic and volatile substances, as empowered by the Food Act B.E. 2522 (1979). Imports and exports of feedstuffs, fertilizers, hazardous substances, live

⁷⁰ These include the APEC Mutual Recognition Arrangement on Conformity Assessment of Electrical and Electronic Equipment (APEC Electrical MRA - Part I), the APEC MRA on Conformity Assessment of Foods and Food products (APEC Food MRA), the APEC MRA on Conformity Assessment of Telecommunications Equipment (APEC Tel MRA), and the APEC Arrangement for the Exchange of Information on Toy Safety (APEC, 2002, Chapter 5).

⁷¹ Criteria for product certification are available online at: http://www.tisi.go.th/license/r_pc_01_e.html; information on Thai Laboratory Accreditation Scheme (TLAS) and the directory of accredited laboratories is available at: <http://www.tisi.go.th>.

animals, plants, and seeds are administered by the Ministry of Agriculture and Cooperatives. Under the WTO Agreement on Sanitary and Phytosanitary Measures (the SPS Agreement), 80 quarantine, health and food-related regulations have been notified. Thailand is an active participant of the FAO/WHO Joint Codex Alimentarius Commission, the FAO International Plant Protection Convention, the World Animal Health Organization, and the WTO SPS Committee.

96. As a part of a comprehensive government restructuring in 2002, the National Bureau of Agricultural Commodity and Food Standards (ACFS) was established under the Ministry of Agriculture and Cooperatives. The aim of the ACFS is to consolidate work in various agencies on agricultural commodity and food standards; it is mandated as a single national body to formulate and implement policy for SPS regulations.⁷²

97. Importers of regulated products must apply to the FDA for an import licence, and manufacturers require a manufacturing licence. Additional registration requirements are imposed on various "specific-controlled" processed and packaged food items, as well as drugs, cosmetics, and most other regulated products, at a cost of B 5,000 per item, not including expenses for analysis. The Food Committee may recommend to the Minister of Public Health that an individual food be specified as a specific controlled food; currently, 18 kinds of food are listed as specific-controlled food (Table III.9). In addition, there are a number of "standardized" food products, which do not require registration but their quality and labelling must meet the requirements as specified in the Notification of the Ministry of Public Health.⁷³

Table III.9
"Specific-controlled" food products administered by the Ministry of Public Health, 2002

Type of food	Notification No. (year)
1. Food colouring	21 (1979), 55 (1979) and 66 (1982)
2. Cow milk	265 (2003)
3. Ice cream	222 (2001) and 257 (2002)
4. Flavoured milk	266 (2002)
5. Other milk products	267 (2002)
6. Food enhancers	38 (1979)
7. Cultured milk	46 (1980) and 99 (1986)
8. Drinking water in sealed containers	61 (1981), 135 (1991), 220 (2001) and 256 (2002)
9. Non-alcoholic beverages in sealed containers	214 (2000) and 230 (2001)
10. Ice	78 (1984), 137 (1991) and 254 (2002)
11. Food additives	84 (1984) and 119 (1989)
12. Sodium cyclamate and food containing cyclamates	113 (1988)
13. Food for weight control	121 (1989)
14. Food in sealed containers	144 (1992), 179 (1997) and 253 (2002)
15. Modified milk for infants and young children	156 (1994) and 167 (1995)
16. Modified food (other than milk) for infants and young children	157 (1994), 168 (1995) and 171 (1996)
17. Supplementary food for infants and young children	158 (1994) and 169 (1995)
18. Stevioside and food containing stevioside	262 (2002)

Source: Ministry of Public Health, Government of Thailand.

⁷² WTO document G/SPS/N/THA/93, 4 April 2003.

⁷³ These foods include peanut oil, palm oil, coconut oil, chocolate, fortified rice, iodized table salt, electrolyte beverage, tea, coffee, soybean milk in sealed containers, natural mineral water, products from the hydrolysis or fermentation of soybean protein, fish sauce, vinegar, fat and oil, butter oil, margarine, cream, cheese, semi-processed food, honey, royal jelly, jam, ghee, butter, quicklime soaked egg, food containing contaminants, food contaminated with radioactive substances, food containing pesticide residues, food containing veterinary drug residues, shrimp, and certain methanol.

(c) Quarantine requirements

98. Since its previous Review, Thailand has introduced various amendments to its laws related to quarantine requirements. In 1999, the Plant Quarantine Act B.E. 2507 (1964) was amended with a view to harmonizing Thailand's domestic pest control measures with international requirements. The amendment, *inter alia*, includes: additional import and export control measures for plants and germplasms; increases in penalties for any violation of the law; and adjustment of the administrative fees for phytosanitary services. The Animal Epidemics Act B.E. 2499 (1956) was also amended with a view to harmonization of animal disease control measures; the amendment involved, *inter alia*, introduction of regulations over activities involving embryos; strengthening the authority of veterinarians and the Department of Livestock Development to control animal diseases; and strengthening of penalties. There was also an amendment to the Animal Feed Control Act B.E. 2525 (1982) in 1999. In 2000, a Ministerial Announcement under the Plant Quarantine Act was issued to prohibit import or transit of certain genetically modified (GM) plants. In 2001, Ministerial Regulations under the Animal Epidemics Act B.E. 2499 (1956) were promulgated; they stipulated requirements for import, export, or transit of animals and carcasses thereof. In 2002, an amendment to Royal Decree under Animal Epidemics Act B.E. 2499 (1956) was promulgated; it stipulates controls on import, export, and transit of dogs and cats in order to prevent diseases such as rabies, leptospirosis or tuberculosis.

99. A health certificate issued in the exporting country must accompany imports of certain food products. Sanitary certificates are required for imports of certain live animals and their products, and a phytosanitary certificate is needed for the import of most plants and plant materials.

(d) Labelling requirements

100. 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 form⁷⁴; the announcement also prohibited labelling such as GM free or non GM food.

(v) Intellectual property rights

101. Since its previous Trade Policy Review in 1999, Thailand has amended its legislation in order to implement the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS); it has also taken further steps to improve enforcement.

102. Thailand is a member of the World Intellectual Property Organization and a party to the Berne Convention. However, Thailand has not acceded to the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, or the Rome Convention (International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations).

(a) Legislative developments

103. Major changes since 1999 include the amendment to the Trademark Act in 2000 and the enactment of the Plant Varieties Protection Act B.E. 2542(1999), the Protection of Layout Designs of

⁷⁴ The requirement applies to food products containing more than a certain amount of modified or engineered DNA. The requirement does not apply to small producers that sell food products directly to consumers.

Integrated Circuits Act B.E. 2543 (2000), and the Trade Secrets Act B.E. 2545 (2002). In addition, a draft law on the protection of geographical indications is under consideration by Parliament.

Copyright and related rights

104. There has been no change in Thailand's copyright legislation in the period under review. Under the Copyright Act (1994), protection is given during the life of the creator, plus 50 years⁷⁵, except in the case of works of applied arts, which are protected for 25 years from the date of creation⁷⁶; under Thai law, a copyright is considered to exist upon creation of a work and registration is not required. Protection extends to literary works (including computer programs), dramatic, artistic, musical, audio-visual, photographic, cinematographic works, sound recordings, broadcasting works, and all other materials in the literary, scientific, and artistic domains. Authors' moral rights and performers' rights are also protected under the Act.

105. In the case of infringement, copyright holders have the right, under the Act, to seek injunctions, compensation for damages, and to recover investigation costs and legal expenses. Competent authorities under the Copyright Law are given the right to seize pirated goods upon the request of the copyright holder and to enter any premises where they suspect such goods are being held. Penalties for direct infringement for commercial purposes range from B 100,000 to B 800,000, with prison terms of six months to four years. Exception clauses in the case of computer software include the research and study of the computer and personal use by the owner of a copy of the software, provided that the purpose is not for profit.

Trade marks

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

107. Applications for trade mark registration must be filed with the Department of Intellectual Property at the Ministry of Commerce. To qualify, a trade mark must meet the requirements of distinctiveness, differentiation from other registered trade marks, and not be in violation of public order or morality. Thailand's Trademark Act adopts the International Classification of Goods and Services, in accordance with the Nice Agreement. Statistics on trade mark registration in Thailand indicate a fall in 2000 and recovery since 2001 (Table III.10).

⁷⁵ In the case of a work of joint authorship, copyright lasts for the life of the joint authors plus 50 years after the death of the last surviving author. Where the author is a legal person, copyright lasts for 50 years from the date the work was created; provided that the work is published during such period, copyright endures for 50 years from its first publication.

⁷⁶ If the work of applied art is published within 25 years of its creation, copyright endures for fifty years from first publication.

Table III.10
Trade mark and patent statistics for Thailand, 1998-02

	1998	1999	2000	2001	2002
Trade marks					
Applications	18,419	22,439	27,055	26,119	30,109
Registrations	12,231	15,711	14,217	19,937	23,146
Patents					
Applications	6,409	6,897	7,746	7,994	7,726
Registrations	1,131	598	744	1,516	2,466

Source: Department of Intellectual Property [Online]. Available at: <http://www.ipthailand.org>.

Patents

108. There has been no change in Thailand's patent legislation since its previous Review. The Patent Act B.E. 2522 (1979), as amended, grants protection to nationals of other countries that are party to any international convention to which Thailand is also a party in the same manner as that given to Thai nationals. The importation of patented products by the patentee is considered as "working the patent". The Patent Act includes both invention and petty patents; an invention may be in the form of a product or process. Terms of protection, applied from the date of filing, are 20 years for inventions, ten years for designs, and six years for petty patents.⁷⁷ Under the Patent Act, an invention is defined as any innovation or invention that creates a new product or process, or any improvement on a known product or process. A product design is defined as any form or composition of lines or colours that gives a special appearance to a product and can serve as a pattern for an industrial or handicraft product.

109. Applications for patents must be submitted to the Department of Intellectual Property at the Ministry of Commerce. Statistics on patent registration in Thailand indicate a decline in 1999 and a recovery since 2000.

Layout designs of integrated circuits

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

Trade secrets

111. In the Trade Secrets Act B.E. 2545 (2002), protection of undisclosed information requires that it must not be generally known among or readily accessible to persons in the business, must have value attributable to its secrecy and be in the control of persons who have taken measures to keep it secret; the Act allows government agencies to disclose information to protect any public interest that does not have commercial objectives. The protection lasts indefinitely as long as the information remains confidential. No registration is required under the Act.

⁷⁷ These terms of protection can be extended twice for periods of two years.

Protection of plant varieties and geographical indications

112. The Plant Varieties Protection Act B.E. 2542 (1999) entered into force in December 1999.⁷⁸ The Act protects plant research and development; protection lasts up to 27 years.⁷⁹ The draft law on geographical indications has been sent to the Parliament for approval.

(b) Parallel imports

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

(c) Compulsory licensing

114. Since 1999, there has been no change in Thai legislation concerning compulsory licensing.⁸⁰ Regarding copyright, any interested person may apply for compulsory licensing to translate a work into Thai or to reproduce a translation published in Thai, under special circumstances, such as for the benefit of study, teaching or research without a profit-seeking purpose. Regarding patents, any person may apply for a licence under the provisions of Section 46 (Annex III) of the Patent Act after the expiration of three years from the grant of a patent or four years from the date of application, whichever is earlier. According to the authorities, a compulsory licence has been granted for use by third party in only one instance, since 1999.

(d) Enforcement

115. Upon request or suspicion, customs officers are allowed to seize, at the border, trade mark infringing goods that are being imported or exported. With respect to copyright, the right holder must file a request with customs to suspend importation and/or inspect goods. Customs jurisdiction is not confined to border points.

116. Since the previous Review of Thailand in 1999, the Government has taken various actions to promote and enforce protection of intellectual property rights. On 1 May 2003, the Royal Thai Police in coordination with the Department of Intellectual Property started monitoring and raiding major shopping centres and CD factories reputed for IPR infringement. A Memorandum of Understanding on the Cooperation of the Relevant Government Agencies on the Enforcement of Intellectual Property Rights, aimed at enhancing coordination of relevant agencies for the protection of IPRs, came into force on 20 December 2002. Table III.11 summarizes the result of arrests and confiscation related to violations of IPR-related laws in Thailand.

⁷⁸ WTO document IP/N/1/THA/P/1, 13 November 2000.

⁷⁹ EIU (2002a), p. 36.

⁸⁰ The relevant provisions are in Sections 45, 46, 47 and 47 bis of the Patent Act B.E. 2522 (1979) as amended by Patent Act (No. 2) B.E. 2535 (1992) and Patent Act (No.3) B.E. 2542 (1999).

Table III.11
Activities against intellectual property rights violation, 1998-02

Offences under	1998	1999	2000	2001	2002
Copyright Act B.E. 2537					
Arrests	742	661	1,558	2,515	3,363
Materials seized (items)	414,265	274,252	1,858,839	1,038,301	743,724
Trademark Act B.E. 2534					
Arrests	813	839	1,317	1,456	1,295
Materials seized (items)	506,600	876,795	1,733,796	917,893	1,409,848
Patent Act B.E.2522					
Arrests	2	7	4	14	16
Materials seized (items)	142,181	5,166	28,272	1,848	150,376
Cassette Business and Television Devices B.E.2530					
Arrests	26	10	48	17	114
Materials seized (items)	4,175	524	35,795	1,268	10,911
Total					
Arrests	1,583	1,517	2,927	4,002	4,788
Materials seized (items)	1,067,221	1,156,737	3,656,702	1,959,310	2,314,859

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

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

(a) Privatization and corporatization of state-owned enterprises

117. Since Thailand's previous Trade Policy Review in 1999, there has been little progress in Thailand's privatization (divestment).⁸¹ However, considerable progress has been made to corporatize state-owned enterprises in preparation for their eventual privatization.⁸² The current 85 state enterprises can be grouped into six broad sectors: telecommunications, water, energy, transport, finance, and others, the latter consisting mainly of agricultural, industrial, or services suppliers, notably financial services.

118. According to the authorities, re-prioritization of privatization programmes took place in 2001; the current priority of the government is the development of performance and commercial operations of state enterprises. The Master Plan for State Enterprise Reform thus envisages the following sequence in the reform of state enterprises: the development of policy for market and regulatory structure, the transformation of state enterprises into limited liability companies in accordance with the Corporatisation Act B.E. 2542 (1999), and eventual privatization. Actual implementation of this reform depends on issues to be addressed for each enterprise.

119. Since 1999, various laws and regulations have entered into force with a view to enhancing implementation of the privatization programmes, such as the Trade Competition Act (1999), the

⁸¹ For example, there remain comprehensive statutory state monopolies in some key service sectors, such as petroleum and electricity. Although these have been identified by the Government for privatization, there has been resistance from these sectors (APEC, 2003, p. 22).

⁸² In particular, the Petroleum Authority of Thailand was transformed into PTT PLC in October 2001, the Telephone Organization of Thailand was transformed into TOT Corporation in July 2002, and the Airports of Thailand was transformed into AOT Co. Ltd. in September 2002. Since 1999, initial public offerings have taken place for certain percentages of shares of: Internet Thailand (October 2001), PTT PLC (December 2001), Bank Thai (November 2002), and Krung Thai Card (November 2002).

Foreign Business Act (1999), Taxation Laws (amended in 2002), and the Corporatization Act (enacted in 1999).

120. The State Enterprise Policy Committee (SEPC) coordinates regulatory restructuring; deregulation and liberalization policies have been developed on a case-by-case basis. A policy for the reform and development of state enterprises was announced in March 2001.⁸³

(b) Publicly owned enterprises involved in external trade

121. Thailand's latest notification to the WTO Working Party on State Trading Enterprises referred to three state-trading enterprises: the Public Warehouse Organization (PWO), the Liquor Distillery Organization (LDO), and the Thailand Tobacco Monopoly (TTM).⁸⁴ In addition, a number of other publicly owned companies are directly or indirectly involved in trade of goods or services (Table III.12).

Table III.12
Selected publicly owned commercial companies, 2002

Organization (affiliated ministry in parenthesis) ^a	Function and trade-related privileges
Agriculture and agri-industry	
Dairy Farming Promotion Organization of Thailand (MoA)	Promotion of dairy farming including sales of domestic output to meet domestic-content requirements. No external trade.
Fish Marketing Organization (MoA)	Fish marketing facilities. No external trade.
Forest Industry Organization (MoA)	Plantation management, re-forestation, logging, sawmilling and forest industries. According to the authorities: not responsible for export or import; generates income from forest industry and related activities; without special privileges; and freely competes with the private sector.
Marketing Organization for Farmers (MoA)	Marketing of agricultural products and supply of services. No external trade.
Rubber Estate Organization (MoA)	Production, purchase, and distribution of rubber and rubber by-products. No external trade.
Thai Plywood Company Limited (MoA)	Production of plywood, import and export of wood, and forest planting and conservation.
Thailand Tobacco Monopoly (MoF)	Supply and production of cigarettes (domestic monopoly). Imports of tobacco.
Public Warehouse Organization (MoCM)	Purchase and distribution of agricultural products. Exclusive import rights for potatoes and tea.
Liquor Distillery Organization (MoF)	Production and supply of alcohol (sole domestic producer), and production of liquor. Exclusive production rights for 95% ethyl alcohol.
Energy	
PTT Public Company Limited ^b	Oil and gas production, distribution, and import. According to the authorities: PTT operates as a normal private enterprise; receives no special privileges from the Government; and freely competes with other international and domestic enterprises. Source for government purchases.
Esso	Oil, gas, and petrochemicals production and trade.
Electricity Generating Authority of Thailand	Sole rights for distribution and trade in electricity.
Provincial Electricity Authority	Supply of Electricity. No external trade.
Metropolitan Electricity Authority	Supply of Electricity. No external trade.
Manufacturing	
Glass Organization (MoD)	Production of glass and glass by-products, under the supervision of the Ministry of Defence. Established primarily for the purpose of military utilization; 10% price advantage for government sales. No external trade.
Battery Manufacturing Organization (MoD)	Same

Table III.12 (cont'd)

⁸³ State Enterprise Policy Office online information. Available at: <http://www.privatisation.go.th/>.

⁸⁴ WTO document G/STR/N/7/THA, 18 May 2001.

Organization (affiliated ministry in parenthesis) ^a	Function and trade-related privileges
Leather Tanning Organization (MoD)	Same
Government Pharmaceutical Organization (MoPH)	Procurement of drugs, and drug manufacture. Source for government procurement.
Playing Cards Factory (MoF)	Monopoly supply and production of playing cards. Exclusive import rights (to be lost upon privatization).
Services	
Communications Authority of Thailand	Telecommunications services
TOT Corporation Public Company Limited ^c	Telecommunications services
Thai Airways International	Air transport services
Airports of Thailand Public Company Limited ^d	Air transport services
Krung Thai Bank	Financial services
Bank for Agriculture and Agricultural Cooperatives	Financial services

- a MoA = Ministry of Agriculture and Cooperatives.
 MoCM = Ministry of Commerce.
 MoD = Ministry of Defence.
 MoPH = Ministry of Public Health.
 MoF = Ministry of Finance.
 MoID = Ministry of Industry.
 MoI = Ministry of the Interior.

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

c TOT was transformed from the state-owned enterprise under the control of Ministry of Transportation and Communications (MoTC) into a public company named TOT Corporation Public Company Limited, on 31 July 2002 under the control of the Ministry of Information and Communication Technology (MICT).

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

Source: Information provided by the Government of Thailand.

(vii) Regulation of corporate practices

122. Since its previous Review in 1999, Thailand has continued to take steps to create a more transparent, competitive, and rules-based business environment.

123. Thailand participates in the WTO Working Group on the Interaction between Trade and Competition Policy.

(b) Competition policy and regulatory issues

124. Thailand's laws and regulations concerning competition policy remain largely unchanged since its previous Trade Policy Review in 1999. Under the Constitution of the Kingdom of Thailand B.E. 2540 (1997), the Government must support a market-based economy, and regulate and ensure fair competition, consumer protection, and anti-monopoly practices through indirect and indirect means. The Price of Goods and Services Act B.E. 2542 (1999) and the Trade Competition Act B.E. 2542 (1999) are main laws defining Thailand's competition policy.

125. Under the Price of Goods and Services Act (1999), the Central Commission on Price of Goods and Services was established to prevent price manipulation or other unfair business practices, where these may affect consumers directly.

126. Subject to Cabinet approval, the Commission has the power to designate (by issuing a notification) any particular goods or services as controlled goods or services, or introduce minimum

purchasing prices or maximum selling prices for these goods and services, and to maintain the prices at a certain level.⁸⁵

127. Under the Trade Competition Act, which entered into force in April 1999, the Trade Competition Commission, established in November 1999, is responsible for carrying out research and monitoring competitive conduct and implementing competition legislation and regulations in Thailand. The Commission consists of the Minister of Commerce (chairperson), the Permanent-Secretary of Commerce (vice-chairperson), the Permanent-Secretary for Finance, and eight to twelve "qualified persons" appointed by the Council of Ministers.⁸⁶ The Director-General of the Department of Internal Trade is the Secretary-General of the Commission. The Trade Competition Commission is empowered to appoint inquiry subcommittees to conduct investigations and inquiries into anti-competitive practices. The Act, *inter alia*, prohibits businesses that are deemed dominant from setting unfair prices, establishing unfair trading conditions, limiting supply, and intervening in other businesses without proper reason; mergers that may create "monopolistic" power or reduce competition unless permission for those mergers is obtained from the Trade Competition Commission; conspiring and colluding in order to create "monopolistic" power or reduce competition; any act that may restrict a person in Thailand from purchasing goods or services directly from business operators outside Thailand; and any act that has negative effects such as impairing or obstructing business operation of other businesses.

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

129. Since its inauguration, the Office of Trade Competition Commission has made decisions on three cases; one involves alleged excessive pricing by a cable television monopoly and one alleged tying of the sale of beer with that of whisky; no penalties were imposed in either case. According to the authorities, the weak enforcement of the competition legislation can be attributed to: the lack of definition of "dominance" required to enforce the Trade Competition Act provisions on abuse of dominance; institutional, procedural, legal or resource limitations in the Office of Trade Competition, including lack of funds for staff-training, public relations, and investigative activities.⁸⁷

(c) Corporate governance: accounting and disclosure practices

130. Thailand's successful economic restructuring and long-term development depends on creation of an efficient capital market capable of mobilizing savings and channelling them into the most

⁸⁵ The current list of controlled goods consists of: liquified petroleum gas, formic acid, cassette tapes, compact discs, video tapes, student uniforms, calcium carbide, milk (fresh or powdered), sugar, oils and fats obtained from plants and animals (edible or inedible), gasoline and diesel, pork and edible parts of pig, chemical fertilizers, pesticides or fungicides, drug and medical products, motorcycles, passenger cars, pick-up trucks, animal feed and concentrated feed, bar steel, slab, structural steel. The Commission reviews the list of controlled goods and services at least once a year with a view to ensuring its conformity with the economic conditions.

⁸⁶ No less than half of the qualified persons must be from the private sector.

⁸⁷ WTO document WT/WGTCP/W/188, 29 May 2002.

productive uses. Good corporate governance is essential for the establishment of such a market; studies show a positive correlation between the quality of corporate governance and share prices in the local market⁸⁸, which are, in turn, a key determinant of companies' cost of capital. Inadequate standards of corporate governance could jeopardize other reforms, notably corporate and financial restructuring as well as privatization.

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

132. In August 2000, the Accounting Act entered into force, requiring all companies to register the names of its accounting officers. The Act has also given legal force to the accounting standards as pronounced by Thailand's accounting body, the Institute of Certified Accountants and Auditors of Thailand (ICAAT). There are approximately 100,000 qualified company accountants (as of October 2002).

133. In 2002, the Securities and Exchange Commission (SEC) announced the Action Plan on Good Corporate Governance; it includes amending relevant laws, issuing a set of best practices, introducing incentive schemes, and an educational programme. The Plan is aimed at promoting shareholders' rights, transparency and accounting standards, good corporate governance, directors' accountability, a good corporate governance rating programme, and educational and public relations programmes.⁸⁹ In this context, the SEC is to announce names of listed companies that have accomplished high level of information disclosure, and information concerning investigation of complaints, and inappropriate acts of companies under SEC supervision.

134. The SEC has adopted several measures to ensure and enforce compliance with good corporate governance practices by listed companies, such as updating disclosure requirements and accounting standards to international levels. If disclosure documents are found to be incorrect or insufficient, the SEC orders amendments to be made, and the Stock Exchange of Thailand (SET) suspends trading of such stock.

135. One company has been delisted since 1999 due to false disclosure of financial information. The authorities are of the view that in the interest of retail investors mandatory delisting should be the last measure of enforcement to be adopted; the SEC and the SET focus more on the management of the listed companies by imposing measures on the management. A list is made of companies whose management does not comply with good corporate government practices.

(d) Bankruptcy procedures

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

⁸⁸ See, for example Gompers et al (2001), p. 29.

⁸⁹ SEC online information. Available at: <http://www.sec.or.th/secen1/news/secnews/10-2002.doc>.