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U.S.-Thailand Free Trade Agreement Negotiations

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U.S.- Thailand Free Trade Agreement Negotiations

Summary

President Bush and former Thai Prime Minister Thaskin on October 19, 2003, agreed to negotiate a bilateral free trade agreement (FTA). Six negotiating rounds have taken place to date, the most recent January 10-13, 2006 in Thailand. U.S. trade officials had hoped to conclude the negotiations by early 2006, but the negotiations were suspended by Thailand early this year due to Bangkok's political crisis. After 18 months of negotiations the two sides were wide apart on a number of issues, such as financial services liberalization and a number of other sensitive issues. Combined with considerable public opposition to the FTA in Thailand, the Bush Administration may be hard pressed to complete the negotiation well before trade promotion authority expires in mid-2007. At this date, negotiators have not even decided on a date or venue to resume the negotiation, thereby making it unlikely an agreement can be completed this year.

In the notification letter sent to the congressional leadership, then-U.S. Trade Representative Robert Zoellick put forth an array of commercial and foreign policy gains that could be derived from the agreement. The letter stated that an FTA would be particularly beneficial to U.S. agricultural producers who have urged the administration to move forward, as well as to U.S. companies exporting goods and services to Thailand and investing there. Mr. Zoellick also alluded to sensitive issues that would be needed to be addressed: trade in automobiles, protection of intellectual property rights, and labor and environmental standards.

Thailand has been viewed as a strong candidate for an FTA with the United States. Its economy has shown relatively healthy growth in recent years, rising by 6.2% in 2004 and 4.5% in 2005. Yet, Thailand maintains relatively high tariff and non-tariff barriers on a number of products and services — a reduction of these barriers would likely expand bilateral trade and benefit both economies. Secondly, an FTA with Thailand would allow U.S. exporters to gain access to Thai markets similar to that obtained by other countries through bilateral and plurilateral agreements with Thailand. Third, a U.S.-Thailand FTA would likely induce other countries to seek a trade liberalization agreement with the United States. Countries that form FTAs agree at a minimum to phase out or reduce tariff and non-tariff barriers (NTBs) on mutual trade in order to enhance market access between the trading partners. The U.S.-Thailand FTA is expected to be comprehensive, seeking to liberalize trade in goods, agriculture, services, and investment, as well as intellectual property rights. Other issues such as government procurement, competition policy, environment and labor standards, and customs procedures are also on the negotiating table.

The U.S.-Thailand FTA negotiations are of interest to Congress because (1) an agreement would require passage of implementing legislation to go into effect; (2) an agreement could increase U.S. exports of goods, services, and investment, with particular benefits for agricultural exports; and (3) an agreement could increase competition for U.S. import-competing industries such as textiles and apparel and light trucks, thereby raising the issue of job losses. This report will be updated.

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Why a U.S.-Thailand FTA?

The Bush Administration notified Congress on February 12, 2004, that it intends to begin free trade agreement (FTA) negotiations with Thailand. This notification, which follows an October 19, 2003 announcement by President Bush and former Thai Prime Minister Thaskin of their agreement to launch negotiations, allows for talks to begin within 90 days or by mid-May 2004, after required consultations with Congress. Two negotiating sessions took place in 2004, and a third was held April 4-8, 2005, in Thailand. The fourth and fifth sessions were held July 15, 2005, in Montana, and September 26-30, 2005, in Hawaii. The sixth was held in Thailand from January 10-13, 2006. But Thailand suspended negotiations on February 24, 2006, when it was decided that a new election would be held in April. Since the April election, no decision has been made yet to resume the negotiations due to ongoing political turmoil (the April election was invalidated by the constitutional court and a new general election is to take place this fall).

In the notification letter sent to the Speaker of the House and the Senate Majority Leader, then-U.S. Trade Representative Robert Zoellick put forth an array of potential commercial and foreign policy gains that could be derived from the agreement. At the same time, Mr. Zoellick alluded to sensitive issues that require attention: trade in automobiles, protection of intellectual property rights, and labor and environmental standards.[1]

Zoellick's letter states that an FTA would be particularly beneficial to U.S. agricultural producers who have urged the administration to move forward, as well as to U.S. companies exporting industrial goods and services. For agricultural producers, by eliminating or reducing Thailand's high tariffs and other barriers, the FTA offers the opportunity to significantly increase export sales to Thailand. In 2005, Thailand was the 16th largest market for U.S. farm exports.

The administration also argued that an FTA would help boost U.S. exports of goods and services in sectors such as information technology, telecommunications, financial services, audiovisual, automotive, and medical equipment. In 2005, U.S. companies exported to Thailand $7.4 billion in goods and over $1 billion in services. Maintaining preferential access for U.S. investors in Thailand is also a top priority for U.S. business. Given that Thailand is a relatively small economy compared to

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[1] *Inside U.S. Trade,* "USTR Zoellick Notifies Congress of Intent To Negotiate Free Trade Pact with Thailand," February 19, 2004.

the United States (1/100th "the size"), the agreement by itself will have limited effects on the overall U.S. economy.

From the standpoint of U.S. foreign policy interests, the Administration views the proposed FTA as strengthening cooperation with Thailand in bilateral, regional, and multilateral fora. Bilaterally, the FTA is seen as strengthening Thailand's position as a key military ally, particularly in the war on terrorism. Regionally, the FTA is viewed as advancing President Bush's Enterprise for ASEAN Initiative (EAI). The goal of the EAI is to negotiate a network of bilateral trade agreements with the 10 members of ASEAN.[2] Multilaterally, Thailand plays a key leadership role in the World Trade Organization (WTO). An FTA could encourage Thailand to actively cooperate with the United States in supporting multilateral trade negotiations under the aegis of the Doha Development Agenda, particularly in the area of agricultural liberalization.

As for Thailand, similar broad economic and political calculations explain its interest in an FTA. In economic terms, Thailand is very concerned that its exports to the United States have been losing market share in recent years to countries such as Mexico and China. By eliminating U.S. tariff and non-tariff barriers to Thai exports, an FTA could help increase the competitiveness and market share of Thai products in the U.S. market. Thailand also does not want to be excluded from FTA benefits the U.S. has negotiated with other countries, particularly the potential of an FTA to increase U.S. investment in Thailand. Modernization of the services economy and diffusion of higher levels of technology, know-how, and labor management skills are essential for the Thai economy to advance beyond the competition from lower-wage emerging market economies such as China, Vietnam, and Laos. In addition, a closer political and economic relationship with the United States could provide Thailand with more leverage to play a larger role in Southeast Asia.

General opposition to the FTA in both countries is expected from workers and companies in import-competing industries that bear the brunt of the adjustment costs of a trade agreement. Despite the welfare gains to society as a whole (e.g. more efficient resource allocation, lower priced imports, and greater selection of goods), those industries subject to increased competition face additional pressure to cut costs, wages, and prices. Some companies may not be able to withstand these pressure and may be forced out of business, accompanied by a loss of jobs. Under these circumstances, certain stakeholders, as a matter of self-interest, may oppose trade agreements that accelerate competition and structural changes in an economy.

Specific opposition in Thailand has arisen from stakeholders in the agricultural and services sectors. Given that close to 50 percent of the Thai labor force is employed in agriculture, liberalization of this sector has been contentious. Similarly, in a number of services sectors, Thai companies feel they are at a competitive disadvantage in opening up to U.S. competitors. Thailand's banking and financial services industry, in particular, is wary of further liberalization after the financial

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[2] ASEAN is the Association of Southeast Asian Nations. Members include Brunei, Indonesia, Malaysia, the Philippines, Singapore, Cambodia, Laos, Myanmar (Burma), Vietnam, and Thailand.

crisis of 1997. Thai stakeholders are also particularly wary, given the high incidence of AIDS infections, in U.S. efforts to secure data exclusivity for patented pharmaceuticals. In addition, a number of Thai business interests reportedly are concerned over potential U.S. investment in newly privatized companies such as the Electricity Generating Authority of Thailand and the Mass Rapid Transit Authority.

Opposition in the United States may arise from groups concerned about the impact of the trade agreement on labor and environmental standards. Often joined by anti-globalization activists, these interest groups question whether trade agreements enhance the social welfare of participating countries. Other issues such as transparency in government decision-making, human rights, and freedom of the press could also be raised. Increased market access for Thai agricultural products such as rice and sugar, as well as a reduction of the 25% U.S. tariff on lightweight pick-up trucks, is already controversial. In addition, Thailand is a persistent opponent and critic of U.S. trade remedy laws, which many U.S. interests groups don't want to see weakened.

In short, competing viewpoints have surfaced regarding the desirability of an FTA. As in most FTAs that the United States has negotiated, the distribution of gains and losses would depend on the details of the provisions.

As background for congressional oversight, this report examines Thailand's economy and trade orientation, the scope and significance of the U.S.-Thai commercial relationship, and the likely top issues in the negotiations. The report concludes with a short summary of the Congressional role and interest in the FTA.

Thailand's Economy and Trade Orientation

Thailand was severely affected by the Asian Financial Crisis, which hit the Thai economy in July 1997 and subsequently affected several other East Asian economies. The economic crisis in Thailand was characterized by a significant depreciation of its currency (the baht), depletion of nearly all of Thailand's foreign exchange reserves, a decline in the stock market, bankruptcies among a number of major Thai banks and corporations, and a sharp deterioration of property prices. The combination of these shocks led to a sharp economic downturn. Ten years prior to the 1997 crisis, Thailand had been one of the world's fastest growing economies. Between 1990 and 1996, gross domestic product (GDP) averaged 8.6%, fueled in large part by rapid export growth. However, in 1998, GDP fell by 10.5% while, exports and imports dropped by 6.7% and 33.0%, respectively, over 1997 levels (see **Table 1**). In addition, the unemployment rate rose from 3.2% in 1997 to 7.3% in 1998, and living standards (measured according to per capita GDP measured on a purchasing power parity basis, plummeted by 11%.[3]

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[3] Purchasing power parity (PPP) measurements attempt to convert foreign currencies into U.S. dollars, based on the actual purchasing power of such currency (derived from surveys on domestic prices) in each respective country. They thus give a more accurate measurement of the size of a country's economy and living standards relative to those in the (continued...)

Thailand's economy was stabilized by a $17.2 billion loan from the International Monetary Fund. Real GDP grew by 4.4% in 1999 and by 4.8% in 2000, but slowed to 2.2% in 2001. Public dissatisfaction in Thailand with the way the government was handling economic restructuring brought about the election of a new coalition government in 2001 (headed by the Thai Rak Thai Party) with Thaksin Shinawatra as prime minister. He launched a series of economic initiatives designed to stabilize the economy, boost domestic demand, encourage the growth of small and medium-sized businesses, and improve rural incomes. Thailand's economy experienced relatively strong growth from 2002-2004; real GDP growth averaged 6.2%. Real GDP growth was more modest in 2005 at 4.5%, due to a number of factors, including the December 2004 tsunami, higher energy prices, rising inflation, concerns over the avian influenza (bird flu), and domestic insurgencies. Global Insight, an international economic forecasting firm, estimates Thailand's real GDP will rise by 4.6% in 2006 and 5.2% in 2007.[4] Major economic challenges include reducing the high level of corporate debt and the amount of non-performing loans held by the banking sector.

Table 1. Selected Economic Indicators for Thailand's Economy: 1996-2005

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Real GDP Growth (%)	5.9	-1.4	-10.5	4.4	4.8	2.2	5.3	7.0	6.2	4.5
GDP ($billions)	182	151	112	123	123	115	127	143	162	177
GDP (billions $PPP)*	377	380	347	365	386	404	432	471	513	546
Per Capita GDP ($PPP)*	6,298	6,278	5,666	5,900	6,178	6,419	6,799	7,359	7,890	8,340
Exports ($billions)	56	58	54	58	69	65	68	80	96	111
Imports ($billions)	72	63	43	50	62	62	65	76	95	120
Annual FDI ($billions)	2.3	3.9	7.3	6.1	3.4	3.9	1.0	2.0	1.4	1.7
Public Debt as a % of GDP (%)	16.7	31.8	40.2	51.6	54.2	49.8	51.5	46.9	36.3	31.4
Unemployment Rate (%)	3.6	3.2	7.3	6.3	5.8	5.1	3.5	3.0	2.8	2.4

Source: The Economist Intelligence Unit (EIU) and Global Insight. Data for 2005are estimates.
* PPP= purchasing power parity.

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[3] (...continued)
United States.

[4] Global Insight, *Thailand*, December 20, 2005.

Thailand's economy is heavily dependent on international trade and foreign investment. In 2005, the value of Thailand's merchandise exports was equal to 63% of its GDP. Foreign direct investment (FDI) is an important source of exports, employment, and access to new technologies and processes. Thailand's top five trading partners in 2005 were ASEAN, Japan, the European Union, the United States, and China (see **Table 2**). The United States was Thailand's second largest export market and its fifth largest supplier of imports. Thailand's major exports (2004 data) included machinery and mechanical appliances (mainly computers and computer parts), electrical apparatus for electrical circuits, and electrical appliances. Major imports included mineral and metal products, electronic parts, and crude oil. Annual FDI flows to Thailand have been relatively flat over the past few years, averaging about $1.5 billion annually from 2002 to 2005. Some analysts contend that China may be drawing FDI away from Thailand and other East Asian countries.

Table 2. Thailand's Top 5 Trading Partners: 2005
($billions)

	Total Trade	Exports	Imports	Trade Balance
ASEAN	45.8	24.2	21.6	2.6
Japan	41.3	15.2	26.1	-10.9
European Union	25.8	15.0	10.8	4.2
United States	25.0	17.1	7.9	9.2
China	20.1	9.0	11.1	-2.1

Source: Bank of Thailand. Estimated, based on data for January-November 2005.

U.S.-Thailand Commercial Relations

The United States and Thailand maintain extensive commercial ties. Thailand affords the United States preferential treatment vis-a-vis other countries for certain types of investment under the U.S.-Thai Treaty of Amity and Economic Relations of 1966.[5] The American Chamber of Commerce in Thailand estimates that the United States is the second largest foreign investor in Thailand (after Japan), with cumulative investment at over $21 billion through 2004. U.S.-invested firms in Thailand employ over 200,000 Thai nationals. Major sectors for U.S. FDI in Thailand include petroleum, banking, electronics, and automotive. In recent years, U.S. auto companies have invested heavily in Thailand.

[5] In order to comply with WTO rules, Thailand is expected to phase out these privileges by 2005, which would give all foreign investors equal access to Thailand services markets.

In 2005, Thailand was the 23rd largest U.S. export market ($7.4 billion) and its 16th largest source of imports ($20.0 billion) (see **Table 3**).[6] U.S. exports to, and imports from, Thailand expanded by 15.6% and 14.0%, respectively over the previous period in 2004. Major U.S. exports to Thailand include semiconductors and other electronic components; computer equipment; basic chemicals, navigational, measuring, electromedical, and control instruments; miscellaneous manufactured products ; and basic chemicals. Major U.S. imports from Thailand include computer equipment, semiconductors and other electronic components, communications equipment, apparel, and miscellaneous manufactured products (mainly jewelry).

Table 3. U.S. Merchandise Trade with Thailand: 1997-2005

($billions)

	1997	1998	1999	2000	2001	2002	2003	2004	2005 (est.)
U.S. Exports	7.4	5.2	5.0	6.6	6.0	4.9	5.8	6.4	7.4
U.S. Imports	12.6	13.4	14.3	16.4	14.7	14.8	15.2	17.6	20.0
U.S. Trade Balance	-5.2	-8.2	-9.3	-9.7	-8.7	-9.9	-7.3	-11.2	-12.6

Source: U.S. International Trade Commission *DataWeb*.
Note: Data for 2005 are estimates based on actual data for January-November 2005.

Thai-U.S. economic relations continue to deepen, as Thailand continues to reform its economy and lower its trade barriers. Still, a number of contentious issues persist. Thai officials have criticized U.S. agricultural subsidy programs, contending that they give U.S. farmers an unfair competitive advantage. In addition, Thailand has participated in two WTO dispute resolution cases against the United States: U.S. anti-dumping subsidy offsets (the "Byrd Amendment"), and U.S. restrictions on shrimp imports. While the United States has not filed any cases against Thailand in the WTO, it has pressed Thailand to liberalize its trade and investment regimes and to improve protection of U.S. intellectual property rights (IPR).

Issues in the FTA Negotiations

Countries that form FTAs agree at a minimum to phase out tariff and non-tariff barriers (NTBs) on mutual trade in goods in order to enhance market access between trading partners. Most U.S. FTAs, including NAFTA and agreements with Chile and Singapore, are more comprehensive. Because the U.S.- Thailand FTA is being modeled on the Singapore FTA, no sector, product, or functional issue can expect to be excluded from the liberalization process. This approach is favored by many Members of Congress. As a result, the negotiation is covering trade in goods and services, agriculture, investment, and intellectual property rights, as well as other issues such as government procurement, competition policy, and customs procedures.

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[6] Estimated, based on data for January-November 2005.

Trade in Goods

Tariffs are the major barrier to liberalized trade in goods. Thailand's reliance on import licensing, opaque customs procedures, and excise taxes are also issues the U.S. is addressing.

Thailand's simple average applied tariff rate of about 13% for non-agricultural imports provides a relatively high level of protection.[7] Many Thai tariff rates are much higher than the average and tend to be applied to imports competing with locally produced products. These include tariffs on autos and auto parts, alcoholic beverages, fabrics, footwear and headgear, and some electrical appliances. For example, the tariff on passenger cars and sport utility vehicles is 80%, the tariff on motorcycles 60%, and the tariff on completely knocked down (CKD) auto kits 33%. Tariffs on fabrics range from 25%-40%.

Beyond cuts in tariffs, market access for U.S. goods could be improved by reducing excessive paperwork and undue processing delays in Thai customs procedures. In addition, import licensing requirements on various items remains opaque and can sometimes serve as a quantitative restriction.

U.S. tariffs imposed on Thai non-agricultural exports are relatively low, averaging around 2-3%, but U.S. tariffs on some items such as textiles and apparel and light trucks are much higher. Thai concerns may also focus on U.S. trade remedy measures, such as use of antidumping and countervailing duty procedures to protect U.S. industry.

Agricultural Trade

The United States and Thailand are important trading partners in agricultural products, but the U.S. market is more important for Thailand than the Thai market is for U.S. exporters. The United States is the second largest market for Thai agricultural exports and Thailand is the fourth largest supplier of U.S. agricultural imports. At the same time, even though the United States has been the largest supplier of Thailand's agricultural imports, Thailand ranks only as the 16th largest market for U.S. agricultural exports.[8]

The total value of bilateral farm trade was about $1.2 billion in 2002 with the U.S. running a $377 million deficit. The major Thai exports to the United States are processed seafood, frozen shrimp, rubber, rice, tapioca, sugar, and fruits and

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[7] *WTO Trade Policy Review - Thailand*, p.73.

[8] Thailand Development Research Institute (TDRI), "Impact of Thailand- U.S. Free Trade Agreement," December 2003, 132pp. This study was jointly funded by the Thailand-U.S. Business Council [based in Bangkok], the American Chamber of Commerce in Thailand, and the U.S.-ASEAN Business Council. The study is available on the US - ASEAN Business Council: [http://us-asean.org/us-thai-fta/USTFTA-TDRIstudy.pdf] Hereafter, this report is referred to as the TDRI study.

vegetables. Major Thai imports from the U.S. are oil seeds, cotton, cereals (especially wheat), soybean oil and cake.[9]

Thai-U.S. agricultural trade is more restricted than trade in manufactured goods. Both countries impose higher tariffs on agricultural products than on manufactured goods. The Thai average MFN applied tariff on agricultural products is about 24 percent compared to about 7% for the United States.[10]

More than 43% of the Thai tariff lines for agricultural products have applied rates exceeding 20%, compared to only 1.3% of the U.S. tariff lines. Consumer-ready products, meats, fresh fruits and vegetables face tariffs ranging from 40-60%. Excise taxes and surcharges, licensing fees, and labeling and certification standards can further boost the tax burden considerably.[11]

U.S. fruit growers estimate lost sales of up to $25 million annually from the combined effect of Thailand's high tariffs and surcharge.[12] Other U.S. exports that could benefit from liberalization include meat and dairy products, sugar, alcoholic beverages, and tobacco. U.S. tariff rates that Thailand may want to see reduced include vegetables and fruits with tariff rates exceeding 10%, pineapples with a tariff rate of 29%, and fish and fish products with a tariff rate of 26%. Thailand, which is the world's third largest producer of sugar, will also seek substantial liberalization of the U.S. sugar quotas.[13]

Since agricultural barriers are higher than non-agricultural barriers, liberalization could boost trade more in agricultural products than in manufactured goods. U.S. farm groups estimate that potential U.S. agricultural exports to Thailand could increase by around $300 million annually if Thailand's tariffs and other trade-distorting measures were substantially reduced.[14] Similar large increases in Thai agricultural exports to the United States can be expected if substantial liberalization occurs.

Intellectual Property Rights

Deficiencies in Thai protection of U.S. IPR, such as patents, copyrights, and trademarks, have been a longstanding U.S. concern. The USTR's 2005 "Special 301" report acknowledged that Thailand had taken a number of measures in 2004 to improve IPR protection, such as conducting raids on illegal production facilities, but expressed concern over transshipments of illegal IPR products through Thailand and the continued high piracy rates of copyrighted materials (such as optical disks,

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[9] TDRI Study, p. 43.

[10] TDRI Study, p.44.

[11] TDRI Study, p. 55.

[12] Office of the U.S. Trade Representative, *2002 National Trade Barriers Report*, p. 373.

[13] *BNA, International Trade Reporter,* "Thai Minister Calls on United States To Resist Special Interests in FTA Talks," April 1, 2004.

[14] Office of the U.S. Trade Representative, *2002 National Trade Barriers Report*, p. 373.

software, and books). The International Intellectual Property Rights Alliance (IIPA) estimates that IPR piracy in Thailand cost U.S. firms $175 million in 2004.

U.S. IPR stakeholders lobbied hard to see Thailand make more progress on IPR enforcement before the FTA negotiations were formally announced. In a March 2004 press release, IIPA president Eric Smith stated: "The Thai Government harbors dozens of CD plants capable of producing over 400 million discs per year — more than seven times any justifiable legitimate domestic demand. It is clear Thailand has become a major exporter of pirate discs."[15] In deference to these concerns, then-U.S. Trade Representative Zoellick, in announcing the intention to begin negotiations, recognized their "... concerns about the deficiencies in Thailand's protection of intellectual property and in its customs regime. Addressing these issues, as well as other areas such as strengthening measures against the production of illegal optical discs, will be essential for the successful conclusion of these negotiations."[16] In August 2005, the Thai government reportedly implemented new regulations that would enforce stringent restrictions on the sale and transfer of CD production equipment in order to combat piracy. All CDs will be required to display a "mark certifying manufacture" issued by the government.[17]

Trade in Services

Services such as commerce (wholesale and retail trade), transportation, telecommunications, and finance account for a growing share of economic activity in Thailand. In 2002, services accounted for about 55% of GDP and about 40% of employment. A large share of foreign investment goes into services, especially in finance and retail trade.[18]

U.S. negotiating objectives are likely to include improvements in access for U.S. providers of financial, telecommunications, and professional services, and other sectors. Liberalization of these sectors is likely to be accompanied by improvements in Thailand's regulatory environment, as well as capacity to oversee and insure effective competition.

In pursuing these objectives, U.S. negotiators are insisting on according greater market access across each other's entire services sector, subject to a few exceptions that must be in writing. This so-called negative list approach was used in the Singapore FTA and is supported by many Members of Congress. Exceptions in the Singapore agreement deal with sectors that usually require government certification or licenses (lawyers, accountants) involve government institutions (airports,

[15] IIPA press release, March 30, 2004.

[16] Statement available the Office of the United States Trade Representative website.

[17] BNA, *World Intellectual Property*, September 2005.

[18] *WTO Trade Policy Review - Thailand*, p. 77.

provision of social security, public hospitals, government corporations), or involve national policy (atomic energy).[19]

Major financial institutions in Thailand include the central bank, commercial banks, finance companies, securities companies, and insurance companies. Following the 1997 Asian financial crisis, Thailand increasingly deregulated and liberalized access of foreign firms to its financial sector. For example, foreign equity limits were relaxed for ten years to allow foreign ownership of up to 100% (previously 25%) in commercial banks and finance companies. However, new capital invested in these companies after the ten-year period must be provided by domestic investors until foreign-held equity share falls to 49%. Other restrictions concerning the number branches foreign banks may operate, as well as limits on the number of expatriate professionals that can be employed, could also be raised in the negotiations. Similarly, in the area of brokerage services, foreign firms are allowed to own shares greater than 49% of Thai securities firms only on a case-by-case basis.[20]

Thailand's communications market is characterized by limited competition and relatively high prices. While Thailand has committed to open up telecommunications services to direct foreign competition by early 2006, the reform process has lagged. Although the Thai Government has allowed foreign participation in the telecommunications sector since 1989, the market is still dominated by two state-owned companies: the Communications Authority of Thailand, which controls international services, and the TOT Corporation and Public Company Limited, which controls domestic services. A few private sector companies have been awarded concessions by the Thai government to provide wireless and fixed-line services. Pending establishment of a National Telecommunications Commission to serve as an independent regulator, deregulation and full liberalization of the telecommunications market is likely to be difficult.[21]

Liberalization of other services such as legal, construction, architecture, engineering, and accounting are also U.S. negotiating objectives. Various Thai laws currently make it very difficult for foreign-owned companies and nationals to operate in these industries.[22]

Investment

The United States has an investment agreement with Thailand under the 1966 Treaty of Amity and Economic Relations (AER). The treaty accords the same rights to U.S. and Thai citizens and companies to own and operate in each other's territory with the exception of professional services and several sectors such as communications, transportation, and depository banking.

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[19] CRS Report RL31789, *The U.S.-Singapore Free Trade Agreement*, by Dick K. Nanto.

[20] Office of the United States Trade Representative, *2002 Trade Barriers Report*, p. 378.

[21] *WTO Trade Policy Review - Thailand*, p. 84.

[22] Office of the United States Trade Representative, *2002 Trade Barriers Report*, pp. 377-378.

Initially, the AER provided few benefits to U.S. investors because Thailand at the time had few laws and regulations restricting foreign investment. Over time, however, Thailand instituted new laws and regulations that limited foreign nationals' operations in Thailand. As a result, the legal treatment accorded by the 1966 treaty became preferences extended only to U.S. investors. Consequently, the AER came to violate Thailand's WTO obligations to accord equal treatment to all member states. Thailand received an exemption from the WTO for ten years, but the exemption expired in January 2005.

The FTA negotiations may consider ways to construct a bilateral investment agreement that is WTO-consistent but still retains current privileges for U.S. companies and nationals. With over 1200 U.S. companies currently taking advantage of the rights protected by the AER, the issue is a top priority for the U.S. business community.[23]

U.S. negotiators may also make establishment of a special investor-state dispute mechanism a priority objective. Such a mechanism could ensure neutral and binding third-party resolution of disputes involving foreign investors and the host country.

Thailand's plans for reforming and privatizing a number of state-owned companies continues to be a matter of great interest to foreign investors. The Thai government's plan to overhaul state-owned telecommunications, energy, and transport companies has encountered widespread opposition from labor unions, causing indefinite delays in planned share offerings of the Electricity Generating Authority of Thailand, Thailand's largest state-owned company.[24]

Status of FTA Negotiations

The two sides completed their sixth round of FTA negotiations in Chiang Mai, Thailand on January 10-13, 2006. While U.S. negotiators stated that some progress was made, they expressed disappointment over the lack of progress in the talks. Major stumbling blocks reportedly include U.S. proposals on IPR,[25] and liberalization of the services sector, including distribution, financial services (such as banking, insurance, and securities brokerage), and telecommunications. Thai officials have sought to reduce high U.S. tariffs on light trucks (25%) and restrictions on sugar imports. In addition, the January 2006 FTA talks were reportedly temporarily disrupted by an estimated 10,000 Thai protesters. On January 19, 2006, Thailand's lead negotiator in the U.S.-Thailand FTA talks, Nitya Pibulsonggram resigned. Press reports stated that the resignation was induced in part by political opposition to the FTA by various groups. In March 2006 Thailand suspended the negotiations pending the outcome of the snap April general election (which was

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[23] TDRI Study, p. 103.

[24] Crispin, Shawn W. "Thailand's Drive to Privatize Hits A Few Hurdles," *Wall Street Journal*, March 11, 2004, p. 7.

[25] One concern expressed by Thai opponents to the FTA is that U.S. efforts to obtain stronger IPR protection on patents will prevent Thailand from gaining access to low cost drugs, such as those used by HIV/AIDS patients. U.S. negotiators deny this would occur.

subsequently invalidated by a constitutional court). With a new general election scheduled for this fall, the FTA negotiations remain suspended. Thus, it appears that even if they were to restart unexpectedly before the election, it is unlikely an agreement could be completed in time to be considered under the current Trade Promotion Authority statute, which expires on July 1, 2007.

Congress and the U.S.-Thailand FTA

The U.S.-Thailand FTA negotiations are of interest to Congress because (1) an agreement would require passage of implementing legislation to become operational; (2) an agreement could increase U.S. exports of goods, services, and investment; (3) an agreement could increase competition for U.S. import-competing industries such as textiles and apparel and pick-up trucks; and (4) if an agreement is implemented, Thailand would become the second Asian FTA partner (the first was Singapore) for the United States.

Many Members of Congress support an aggressive FTA strategy because of the potential to open foreign markets further to U.S. exports and investment. While the Administration's policy of negotiating multiple FTAs has not been very controversial, some Members have expressed concerns that the Administration's criteria for deciding on FTA partners has relied too heavily on foreign policy considerations. In the case of Thailand, however, the same Members welcomed the announcement of the Thailand FTA because Thailand represents a relatively large market that offers significant commercial gains, particularly to U.S. agricultural producers.[26]

At the same time, some congressional concern has surfaced in regard to automotive trade, centered on the impact that a reduction of the current 25% U.S. tariff on pick-up trucks could have on imports and U.S. jobs. Auto companies based in Thailand produce more than 500,000 pick-ups a year, making the country the world's second largest producer. None of these vehicles, however, are exported to the United States, but the United Auto Workers argue that if the 25% tariff were removed, some 80,000 auto jobs would be jeopardized. (More than a million pick-ups are currently produced in the United States.)

Senators George Voinovich (R-OH) and Carl Levin (D-MI), co-chairs of the Senate Auto Caucus, in a November 12, 2003 letter, urged the Bush Administration to retain the 25% tariff out of concern that its elimination would open the door for Japan to export trucks from Thailand to the United States. A similar letter was signed by the chairs of the House Auto Caucus, Representatives Dale Kildee (D-MI) and Fred Upton (R-MI).[27] On the Senate side, a group of 40 Senators (36 Democrats and 4 Republicans) sent a similar letter to U.S. trade officials on March 18, 2005.

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[26] *Inside U.S. Trade*, "Bush Announces FTA with Thailand As It Puts G-21 At Distance." October 24, 2003.

[27] *Inside U.S. Trade*, "U.S. Seeks Thailand FTA Despite Opposition On IPR; Autos May Pose Problem," February 20, 2004.

A different approach to this concern is embodied in S.Con.Res. 90 introduced by Senators Levin and Voinovich on February 23, 2004, and H.Con.Res. 366, introduced February 24, 2004, by Representatives Kildee, Quinn, and Levin. Because Japan and other countries could benefit from bilateral concessions agreed to between the United States and Thailand, the resolutions maintain that negotiations affecting access to the U.S. automotive market should only take place if all major automobile producing countries participate.

One House Ways and Means Committee member Phil English announced on June 8, 2006 that he would not support the FTA if it were brought to Congress. English said that "Thailand continues to demonstrate that it does not share common views with the United States with respect to the World Trade Organization and a country's right to police its markets effectively from predatory or illegally traded imports."[28]

Other members of Congress may wish to consider how a U.S.-Thai FTA could affect U.S. commercial relations in Asia in general, particularly in light of the trend among Asian countries for bilateral trade agreements. China's growing economic role in Asia and its quest for new markets, materials, and trade deals is pushing almost every other major Asian country, including Japan and South Korea, to consider FTAs with each other.[29] Given the increased competition, the U.S.-ASEAN Business Council has called for a vigorous timetable for the completion of the U.S.-Thai FTA talks and designation of the next ASEAN country with which the United States will seek an FTA.[30] Accordingly, U.S. trade strategy toward the ten-nation ASEAN grouping, which is the third largest market for U.S. exports, could be an important congressional consideration.

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[28] *International Trade Daily,* "English Tells Bush He Opposes U.S.-Thailand Free Trade Agreement," June 9, 2006.

[29] *The Economist*, "Why Asian countries are Racing to Sign Bilateral Trade Deals with Each Other," February 28, 2004, pp. 39-40.

[30] *BNA: International Trade Reporter*, "Business Group Call on U.S. Government to Strengthen Trade Links with ASEAN," March 11, 2004.