

電子公文

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主旨：有關汶萊、印尼、馬來西亞及泰國將於本(2009)年第1次資深官員會議（SOM I）期間接受APEC個別行動計畫同儕檢視（IAP Peer Review）案，請惠檢視專家所提研究報告中 貴管相關部分並研提問題（中英文），俾供我方與會代表運用，請 查照惠復。

說明：

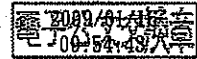
- 一、依據APEC秘書處執行長Mr. Michael Tay本年1月13日電子郵件辦理（詳附件1）。
- 二、按2009年APEC SOM I期間於2月13日至14日對汶萊、印尼、馬來西亞及泰國進行個別行動計畫（IAP）同儕檢視。有關泰國IAP專家研究報告電子檔項電郵提供 貴單位在案，請惠檢視專家所提研究報告中 貴管相關部分並研提問題（中英文），並於2月3日前電郵本局承辦人彙辦（舒志宏；聯絡電話：02-2397-7406；電子郵件：alfredoshu@trade.gov.tw）。
- 三、另汶萊、印尼及馬來西亞之專家報告俟收到後隨即提供。

正本：教育部、國家通訊傳播委員會、中央銀行、行政院公共工程委員會、行政院農業委員會、行政院勞工委員會、行政院公平交易委員會、行政院體育委員會、行政院衛生署、行政院環境保護署、行政院新聞局、行政院文化建設委員會、行政院大陸委員會、行政院金融監督管理委員會、行政院經濟建設委員會財經法制協調服務中心、行政院經濟建設委員會綜合計劃處、行政院經濟建設委員會經濟研究處、行政院勞工委員會職業訓練局、行政院農業委員會動植物防疫檢疫局、行政院衛生署食品衛生處、行政院衛生署藥政處、行政院衛生署醫事處、中央健康保



險局、外交部領事事務局、財政部關政司、財政部關稅總局、財政部賦稅署、法務部檢察司、法務部法律事務司、內政部營建署、內政部地政司、內政部社會司、內政部兒童局、內政部入出國及移民署、內政部警政署航空警察局、交通部航政司、交通部路政司、交通部郵電司、交通部民用航空局、交通部觀光局、交通部運輸研究所、經濟部投資業務處、經濟部投資審議委員會、經濟部標準檢驗局、經濟部工業局、經濟部智慧財產局、經濟部能源局、經濟部國營事業委員會、經濟部商業司、經濟部水利署、台灣經濟研究院中華台北APEC研究中心、中華經濟研究院、中華郵政股份有限公司、本局多邊貿易組、雙邊貿易一組、貿易服務組、電子商務小組、APEC專案小組

副本：外交部國際組織司、本局局長室、徐副局長室（均不含附件）



局長 黃志鵬

依照分層負責規定授權單位主管決行



CONTENTS

1. INTRODUCTION.....	1
2. GENERAL ISSUES	13
3. EVALUATION METHODOLOGY	23
4. ANALYSIS AND COMMENTS ON THAILAND'S INDIVIDUAL ACTION PLAN	24
I. Tariffs.....	24
II. Non-Tariff Measures.....	27
III. Services	29
IV. Investment.....	42
V. Standards and Conformance	44
VI. Customs Procedures.....	47
VII. Intellectual Property Rights	52
VIII. Competition Policy	59
✓IX. Government Procurement.....	61
X. Deregulation/Regulatory Review.....	67
XI. Implementation of WTO Obligations (including Rules of Origin)	73
XII. Dispute Mediation.....	76
XIII. Mobility of Business Persons.....	80
XIV. APEC Food System	82
XV. Transparency.....	84
XVI. Free Trade Agreements/Regional Trade Agreements.....	85
XVII. Trade Facilitation	91

Annex 1 - Members of the Review Team

Annex 2 - Review Process Questions and Answers

Annex 3 - Participants from the Government of Thailand for the Interview Session by the Review Team

Annex 4 - Status of Thailand's FTAs

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 purchasing goods or services directly from business operators outside Thailand; and any act that has negative effects such as impairing or obstructing business operations of other businesses.

Thailand has engaged in a series of cooperation arrangements with other member economies. For example, Thailand cooperates with Japan Fair Trade Commission (JFTC) and Indonesia Commission for the Supervision of Business Competition (KPPU) to conduct the 2008 APEC training course on Competition Policy held in Indonesia. Thailand has also continued to provide recommendations and non-confidential information related to competition matters as requested by other member economies.

IX. Government Procurement

APEC objective

To (a) develop a common understanding of government procurement policies and systems, and on each APEC economy's practices (b) liberalize government procurement markets in the APEC region in accordance with Bogor principles and objectives (c) contribute to the government procurement work in multilateral fora.

Public sector reform in 2002 resulted in major changes to government structure and responsibilities, including the consolidation of responsibility for public procurement in the Comptroller General's Department in the Ministry of Finance. The core principles of government procurement – open and effective competition, transparency, fairness and local industry development – were introduced. Thailand also introduced the concepts of value for money, fair dealing, accountability and due process and non-discrimination to government procurement.

Value for Money. Thai officials must procure on the basis of quality rather than simply selecting the lowest cost bidder. Article 23 of the Royal Decree on Good Governance in Public Sector (2003) requires that government agencies carefully consider the costs and benefits of procurement to society and to the public, including quality and maintenance of the goods and services and the objectives of the procurement activities. Thailand is currently working on new regulations to further develop value for money, including better specifying value for money and developing regulations to support procurement of green products and services. ✓

Open and Effective Competition. All government agencies must develop and maintain their own websites containing government procurement information and are required to input all procurement information through the Government Procurement Information Center (GPIC) website. There have been no changes to open and effective competition since the last IAP and no further improvements are planned. ✓

Fair Dealing. Procurement officers must carefully examine bidder qualification to prevent collusive bidders and unlawful relations between bidders and government officials. The obligation is set out in The Anti-Collusion Act and Article 9 of the Anti-Corruption Act of 1999, which prohibits any State Official from carrying out certain activities that make conflicts between personal and public interest. Collusive bidders are prohibited from submitting bids – the same penalty as imposed on debarred tenders. There have been no changes to open and effective competition since the last IAP and no further improvements are planned.

Accountability and Due Process. Article 27 of the Royal Decree on Good Governance in Public Sector (2003) requires that government agencies should delegate appropriate decision making to responsible persons. Delegating this authority will empower procurement officers and make procurement activities more efficient by reducing processes and time. There have been no changes to open and effective competition since the last IAP and no further improvements are planned.

Non-Discrimination. The Foreign Business Act provides that domestic and foreign contractors with capital of 500 million baht or more are considered on an equal basis in bidding for highly ✓

technological infrastructure projects. According to Thailand's 2004 IAP Response, this measure was introduced to provide greater access to procurement opportunities for foreign contractors. Previously, foreign contractors were permitted to bid on a case by case basis, though local consultants and products were given specific preferences. There have been no changes to open and effective competition since the last IAP and no further improvements are planned.

The reference to equal treatment of contractors with 500 million baht or more capital implies that foreign contractors with less than 500 million baht capital are not accorded equal treatment. However, In response to a question from Canada, Thailand has indicated that foreign contractors registered under Thai law receive equal treatment.

The core procurement obligations of the Central and Provincial Administration are set out in the Regulations of the office of the Prime Minister on Procurement 1992. These regulations are also considered models to be followed by the Local Administrations, State Enterprises and Independent Local Bodies. The four public organizations of Thailand can be divided into: (i) Central and Provincial Administration; (ii) Local Administration; (iii) State Enterprise; and (iv) Independent Public Bodies.

In addition to these core principles, private sector participation and local industry development have also been identified as core principles of GOT procurement.⁴² Increasing private sector participation in the delivery of public services through procurement management measures, such as contracting out.

All government agencies are required to input all procurement through the GPIC website. The Comptroller General's Department has planned to develop a Public Procurement Reform Plan as a framework for improving public procurement and to build good governance in the public sector in the near future. The reform plan will cover all concepts and issues that will improve regulations, electronic procurement development, procurement professional development, SME's participation, international agreements and decentralization of the decision-making to local governments. The reform plan will also emphasize development of all procurement issues in

⁴² Thailand, Trade Policy Review, Report by the Secretariat, W/TPR.S/191, 22 October 2007, para 68

line with international best practices such as transparency, value for money, and effective competition.

Thailand has also drafted new regulations – Regulation of the Ministry of Finance on Procurement B.E – which are being considered by the Council of State. The Regulations are intended to improve Thailand's government procurement mechanisms by amending the requirements for transparency, value for money, efficiency and accountability.

Thailand's government procurement will also be affected by Article 44 of the Royal Decree on Good Governance in Public Sector (2003) states, "Government agencies have to disclose information relate to procurement activities in the current fiscal year." The public can request procurement information at the procuring agencies or search the internet.

Development of Electronic Procurement

Since 2002 Thailand has made progress in electronic procurement initiatives. Thailand is moving forward on electronic procurement initiatives. Thailand is developing an internet portal for government procurement (www.gprocurement.go.th) that will provide access to all government procurement systems – e-Catalog, e-Shopping, e-Auction and the Vendor Management System – as well as the electronic learning system and other necessary government procurement information (laws and regulations). The internet portal also provides access to information on procurement opportunities. The portal is currently available in Thai, but Thailand intends to extend the system to an English-language version.

The e-Catalog system was initially developed for 25,000 items. The e-Shopping system has been implemented by Central Government agencies and has been applied to five products: facsimile machines, notebook computers, laser printers, televisions and digital projectors. Thailand intends to further develop these systems by expanding the number of products for e-Catalog and e-Shopping. The e-Catalog (Government Products and Services Code) is developing using UNSPSC as a model. The demonstration e-Catalog will be represented on the GPIC website.

The demonstration provides features of some goods and services to be procured by government agencies.

The e-Auction system has been implemented throughout Thailand, including by provincial administrations. Thailand has improved the e-Auction Regulation by changing from "Ministry of Finance Announcement" to "Regulations of the Office of the Prime Minister on Electronic Procurement B.C. 2549" and has additional information. Procurement agencies must publish procurement Terms of Reference on the www.gprocurement.go.th website and the procuring agency's website for 3 days for public opinions.

Thailand expects to complete development of the electronic web based procurement system by the end of 2009.

Development and implementation of the e-procurement systems has resulted in economic benefits. Thailand has indicated that the move to an electronic procurement process has resulted in cost savings of approximately 7.30% of the procurement budget, or 54,673 million baht between January 1, 2005 and July 31, 2008.

Countertrade

Regulations concerning countertrade and barter were repealed in early 2007 with the result that these are no longer top procurement priorities. The countertrade policy had required that all procurement contracts by government agencies and state enterprises involving imports of a value greater than 300 million baht should have a related countertrade transaction of at least half the procurement value or 20% to 50% of the import price.⁴³

⁴³ Thailand, Trade Policy Review, Report by the Secretariat, W/TPR.S/191, 22 October 2007, para 77

Procurement Agreements

Thailand is not a signatory to the WTO Agreement on Government Procurement, but participates in WTO Working Group on Transparency in Government Procurement.⁴⁴

Thailand's current procurement agreements are:

Thailand – Australia Free Trade Agreement

Thailand – New Zealand Closer Economic Partnership Agreement

Japan – Thailand Economic Partnership Agreement (JTEPA)

Procurement Agreement currently under negotiation are:

Thailand – U.S. FTA

Thailand – EFTA

ASEAN-Australia-New Zealand FTA

ASEAN-EU FTA

“Buy Thai” Requirements No Longer Applied

While Thailand has made progress in liberalizing its government procurement regime, there are concerns that problems still remain. The U.S. Trade Representative, through the National Trade Estimates Report, notes that an unofficial “Buy Thai” policy that discriminates against foreign products and foreign suppliers may continue to exist. The policy was established in a 2001 Directive from the Prime Minister’s Office that, although no longer officially in effect may continue to discriminate through “specific language in government instructions on some procurement tenders [that explicitly exclude] foreign-made non-Thai products from the bidding process.”⁴⁵ USTR further notes:

⁴⁴ Thailand, Trade Policy Review, Report by the Secretariat, W/TPR.S/191, 22 October 2007, para 66
⁴⁵ USTR National Trade Estimates 2008 Thailand

APEC STUDY REPORT OF THAILAND'S 2008 IAP

“Government agencies and state enterprises reserve the right to accept or reject any or all bids at any time and may also modify the technical requirements during the bidding process. The latter provision allows considerable leeway to government agencies and state-owned enterprises in managing tenders, while denying bidders any recourse to challenge procedures. Allegations that changes are made for special considerations frequently surface, including charges of bias on major procurements. Despite an official commitment to transparency in government procurement, U.S. companies and Thai media have reported allegations of irregularities. In addition, some U.S. companies have expressed concerns regarding a Thai government decision to no longer include arbitration clauses in concessions and government contracts.”⁴⁶

Thai officials have advised the Review Team that the “Buy Thai” policy is no longer in effect.⁴⁷ The officials responsible for these issues were not available in Bangkok at the time of the Review Team visit. ✓

However with respect to the U.S. claims the Thai authorities explained that in the case where the government agencies’ and state enterprises’ procuring units reserve the rights to accept or reject any or all bids at any time and may also modify the technical requirements during the bidding process. Changes will only be made under special circumstances, and do not intend to circumvent the requirements of the procurement regulations such as manipulating and skewing the bidding process. ✓

X. Deregulation/Regulatory Review

APEC objective

To facilitate free and open trade and investment in the APEC region by improving the transparency of regulatory regimes and eliminating domestic regulations that restricts trade or investment and are not necessary to achieve a legitimate objective.

⁴⁶ USTR National Trade Estimates 2008 Thailand

⁴⁷ The 2001 Buy Thai policy introduced during the financial crisis was amended by the Cabinet’s resolution on May 29th, 2007. Consequently, all government procurements have no longer to follow “Buy Thai” policy. The government agencies must currently comply with the Prime Minister Procurement Regulations B.E. 2535 as amended and the regulation of the Office of the Prime Minister on e-Procurement B.E.2549. ✓