

THAILAND'S REPORT ON SIGNIFICANT PROGRESS IN PROTECTING AND ENFORCING INTELLECTUAL PROPERTY RIGHTS

Since January of 2009 under the leadership of Prime Minister Abhisit Vejjajiva and his Deputy Minister of Commerce, Mr. Alongkorn Ponlaboot, Thailand has launched an unprecedented effort in its intellectual property rights protection with significant success in many dimensions. Given that, Thailand should be removed from the Special 301 Priority Watch List for the following reasons:

[1.] Unyielding Political Determination

- There has been an unyielding political will to elevate intellectual property protection as a national agenda. The National Committee on IP Policy was established and chaired by the Prime Minister. We also revealed the National IP Strategy and the Proactive Plan on Prevention and Suppression of IPR Violations. Above and beyond that, the Thai Government has marshaled the Creative Economy Policy to create Thailand as a hub of knowledge-based society in the year of 2012 aiming to have 1/5 of its GDP in creative sectors.

[2.] Major Legislative Reforms

- Major legislative reforms are now in progress. This includes Anti-Camcorder Law, Landlord Liability, enhanced border enforcement, and modernizing the Copyright Law to better protect in the digital environment based on international standards under the World Intellectual Property Organization (WIPO) Treaties.

[3.] Strengthened Law Enforcement

- Seizures and raids in 2009 demonstrate remarkable achievement in IP violation suppression. Close to 8,000 arrests of IP violators with 5.1 million IP infringing goods were seized. The enforcing agencies destroyed 66 million dollars worth of infringing goods. Record of criminal sanctions by Thailand's IP Court points to tough penalties to deter rights violation resulting in imprisonment in 119 cases in 2009 alone.

[4.] Proactive Actions to Combat Piracy

- Due to proactive actions to combat piracy, there has been a decline in cases of software piracy from 80 per cent in 2006 to 76 per cent in 2008 as reported by the Business Software Alliance. The government also enacted the TV and Radio Broadcasting Act and the National Telecommunications Committee's Temporary Regulations to resolve the problem of cable piracy.

[5.] Active Engagement with US Pharmaceutical Industry

- The government actively recruited participation of US pharmaceutical industry such as PReMA, which is the sister organization of PhRMA, in Thailand to identify constructive ways and means to ensure continued supply and access to medicines. PReMA is now represented and actively involved in both the Patent Law Amendment Working Group and subcommittees led by the Ministry of Public Health.

[6.] Awareness Raising

- The government realizes the IPR protection must be inculcated at a very young age. IP curriculum is being created for all levels of education. This includes trial programs in 40 schools before nationwide expansion and other coordination efforts with the Ministry of Education and Kenan Institute of Asia to create learning materials.

In conclusion, the Thai Government hereby submits that with our firm commitment, sustained efforts, and significant successes in IPR protection and enforcement, **Thailand should be warranted to be removed from the Special 301 Priority Watch List.**

RESPONSES TO THE CONCERNS OF US PHARMACEUTICAL INDUSTRY

STAKEHOLDER ENGAGEMENT ON MARKET ACCESS ISSUES AND IP

- Since the announcement of the compulsory licensing for four cancer treatment medicines by the Ministry of Public Health in early 2008, only two have been enforced and the list has not been expanded since. The current administration has made it clear in various occasions that Thailand attaches high importance to close dialogue between stakeholders including the pharmaceutical industry, patients and government agencies to identify constructive ways and means to ensure continued supply and access to medicines.

- Thailand would like to emphasize the fact that IP also has a social dimension which sometimes could be less compatible with market principles. The case of compulsory licensing in Thailand is highly sensitive as it relates to the public health and access to medicines by patients suffering from life threatening diseases such as HIV/AIDS and cancer. The government has been handling this issue with great caution to ensure that any measures taken are in conformity with Thailand's rights and obligations under the international agreements.

- In response to this, a four-party meeting was held at the Ministry of Foreign Affairs in September 2009 to discuss a possible confidence building mechanism to enable constructive and regular exchanges between relevant government agencies and the pharmaceutical industry. The meeting was attended by representatives from the Department of Intellectual Property, the Ministry of Public Health, the Ministry of Foreign Affairs and PReMA.

- The Department of Intellectual Property has maintained close dialogue with PReMA. In the recent meeting on 24 December 2009, several issues were discussed such as CL, counterfeit drugs and trademarks, parallel imports. More of such meetings will be organized to serve as a forum for PReMA to express their concerns.

NATIONAL HEALTH ASSEMBLY

- The National Health Assembly is a social mechanism promulgated by the National Health Act B.E. 2550 (2007) to support participatory and constructive agreement-reaching amongst stakeholders on specific health issues at the national level.

- Thai Government recognizes the importance of engaging the US pharmaceutical industries. Representatives of PReMA are now included in two Sub-Committees, namely, the Sub-Committee on the Promotion of Domestic Pricing in line with the Living Costs and the Sub-Committee on Development of Domestic Pharmaceutical Industry, Drug Research and Development. The work of both Sub-Committees will feed into the drafting of the "Action Plan in Accordance with the National Strategy on Universal Access to Essential Medicines by the Thais".

ENGAGEMENT IN PATENT ACT AMENDMENT PROCESS

- On February 9, 2010 the Department of Intellectual Property, Ministry of Commerce of Thailand, established the **Committee on the Development of Intellectual Property Laws on Patents**.

- **Committee on the Development of Intellectual Property Laws on Patents**
Main Responsibilities

- plan, draft, and revise the Patent Act of 1979 and its amendment to be consistent with policies established by the Royal Thai Government
- appoint working groups to administer the process

- Member Representation

- Chaired by the **Director General** of the Department of Intellectual Property
- Members from the pharmaceutical industry are represented and have seats in the Committee including **PREMA**, the sister organization of **PhRMA**, and the Thai Pharmaceutical Manufacturers Association
- Other members represented on the Committee include the Inventors Association of Thailand, Industrial Designers Society, the Thai Food and Drug Administration, the National Health Security Office, stakeholders from the related government agencies, non-government organizations, legislative and judicial branches, academics, and trade associations

- Subsequently, on **March 8, 2010** the Committee on the Development of Intellectual Property Laws announced the formation of the **Patent Law Amendment Working Group**.

- Main Responsibilities

- Drafting the Patent Law Amendment to be submitted to the Committee on the Development of Intellectual Property Laws for consideration and approval

- Member Representation

- Chaired by the **Deputy Director General** of the Department of Intellectual Property
- Representatives from **PREMA**, the Thai Pharmaceutical Manufacturers Association, the Thai Food and Drug Administration, the National Health Security Office, the Thai IP Association, and legal experts from both the public and private sectors

- The first Patent Law Amendment Working Group meeting is expected to be held in March, 2010.

IP PROTECTION AND ANTI-COUNTERFEITING

- Thailand's laws on counterfeiting of pharmaceuticals are stringent and impose severe criminal penalties on those who sell fake or unregistered pharmaceuticals, including those that bear a counterfeit trademark. Furthermore, Thai law enforcement agencies maintain continuous efforts on arrests, confiscations, and investigations.

- Counterfeit pharmaceuticals could be medicines, both brand name and generic, which are fraudulently mislabeled with respect to identity and/or source. Counterfeits could also refer to products with insufficient quantities or absent of correct medicinal ingredients. As a matter of fact, most arrests are conducted under Drug Act B.E. 2530 (1987).

- With regard to counterfeits of which the appearance and packaging are fraudulently and exactly replicated, arrests will be conducted under Trademark Act B.E. 2534 (1991). In 2008 there were 14 trademark infringement cases in which 82,496 pills were confiscated. In 2009, the number went down to 10 cases in which 19,262 counterfeit pills were confiscated. The figures suggest a smaller scale of infringement and a reduction of approximately 30 percent.

PATENT LINKAGE AND DATA PROTECTION

- Thailand would like to reaffirm that, as a WTO Member, the Thai laws and regulations on patent and data protection including the Regulations of the Ministry of Public Health enacted on 30 January 2007 are consistent with the requirements of the TRIPS Agreement (Article 39:3).

- The TRIPS Agreement does not require Members including Thailand to maintain patent linkage which would prevent the Food and Drug Administration from granting marketing approval to generic medicines before the protection of the originator reference product expires. However, the Food and Drug Administration and the Department of Intellectual Property are looking into ways and means to improve transparency and flow of information on patented pharmaceuticals and registered drugs.

GOVERNMENT PROCUREMENT POLICIES

- Under Thailand's Office of the Prime Minister Procurement Regulation B.E. 2535 public hospitals are subject to purchase their medicines and medical supplies from the Government Pharmaceutical Organization (GPO) only under the following conditions:

1. In the case where GPO **manufactures for sale** generic medicines: In such cases, the price of the generic medicines sold by GPO **must not be higher than 3%** of the price established by the Ministry of Public Health.

2. In the case where GPO sells the medicines that it does not manufacture. In such cases, the public hospitals are (1) required to conduct request for bids for pharmaceuticals in which the process is open to all pharmaceutical companies and the public hospitals must inform GPO of the request and (2) public hospitals must purchase the medicines from GPO only when prices offered through the bidding process by GPO is equal to or less than those offers submitted by other pharmaceutical companies.

- GPO self-initiated and currently registers all drugs that are produced, sold, and imported with the Thai Food and Drug Administration (FDA) for safety purposes though the GPO is exempted from the process under Articles 12 and 13 of the Drug Act B.E. 2510. Amendments to the Drug Act B.E. 2510 are currently being drafted in which this exemption has been repealed.

EXPEDITED PATENT EXAMINATION

- Thailand submitted its instrument of accession to the **Patent Cooperation Treaty (PCT)** which became effective on December 24, 2009. This marks another major movement to accelerate the patent application process.
- Thailand has been trying to build institutional capacity in bringing its examination procedures in line with international standards. The government has earmarked a budget over 650,000 USD to be disbursed over 2009-2010 to upgrade the patent system including increasing the number of patent examiners.

Office of Commercial Affairs
Royal Thai Embassy
March 16, 2010

Thai Roundtable on Intellectual Property Rights:

Evaluating Thailand's Progress on IPR Enforcement and Protection

Presentation of:
Office of Commercial Affairs, Royal Thai Embassy

Current Status

- Thailand has been on the U.S. Intellectual Property Special 301 Priority Watch List since 2007.
- Since its placement on the Priority Watch List, Thailand has undertaken substantial and comprehensive steps to increase IPR protections in Thailand.
- We will hope that the significant improvements will lead to our removal from Priority Watch List.

Out of Cycle Review

- In direct response to the out-of-cycle review, Thailand formulated an Intellectual Property Plan.
- The IP Plan focuses on four main goals:
 1. Strengthening cooperation with the pharmaceutical sector
 2. Passing necessary expedited legislation
 3. Increasing the flow of information
 4. Enhanced suppression efforts

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Goal 1: Strengthened Cooperation with the Pharmaceutical Sector

- The RTG recognizes the need to increase the protection of pharmaceutical patents and reduce the reliance on compulsory licensing of pharmaceuticals.
- The RTG is facilitating dialogue and meetings between relevant RTG agencies and the private pharmaceutical sector.
- A Memorandum of Understanding on the Cooperation on Prevention and Suppression of Trademark Infringing Pharmaceuticals has been signed.
- The RTG has begun discussions regarding establishing a pharmaceutical patent database.

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Goal 2: Expedited Legislation

- The RTG recognizes the need to quickly pass legislation to prohibit certain types of IPR infringement not currently covered under law.
- The following legislation has been singled out for particular focus in this short out-of-cycle review timeframe:
 - Anti-Camcording Bill
 - Landlord Liability Legislation
 - Customs Seizure of Infringing Goods

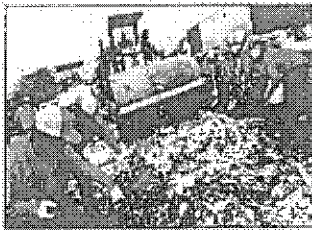
Goal 3: Increasing the Flow of Information

- The RTG has a plan and place to increase the flow of information between agencies involved in the protection of IPR.
- This includes the development of a joint database on IPR violations that will incorporate information from all relevant agencies to better target individuals and practices for investigation.
- This sharing of information among the various enforcement agencies in Thailand will help with IPR enforcement efforts in the long term.

Goal 4: Enhanced Suppression Efforts

- Increased the suppression of IPR violations at all levels.

- Particular focus on major infringers and Red-Zone areas.



• From January-September, 2010, there were 2,650 arrest cases of IPR infringement in which 3,171,804 infringing items were seized.

• Most recently, in September of this year, the Thai forces destroyed 600,000 pirated items worth approximately 2,300 million Baht (US\$ 71 million).

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Additional Pro-Active Steps Taken to Strengthen IPR Protections

- In addition to the initiatives in the Intellectual Property Plan for out-of-cycle review, since 2007 Thailand has also undertaken the following pro-active steps to combat IPR infringement:
 1. Public Awareness Campaigns.
 - Various public awareness campaigns have been conducted in an effort to raise awareness amongst the general public and youth to create a better understanding on the importance of respect for IPR.
 - These campaigns have specifically targeted the widespread software, cable TV, and book piracy.
 - The Ministry of Education now includes IPR awareness of the damage of piracy as part of school curriculums.
 2. Ensuring better protection of the rights of copyright owners in digital and network-based environments.

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Additional Pro-Active Steps Taken to Strengthen IPR Protections

3. Amending the optical disk law.
4. Reducing patent examination delays.
5. Strengthening law enforcement responses.
6. Increasing emphasis on combating IPR violations.

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These Actions Demonstrate a Firm Commitment to IPR Protection

- The actions Thailand has undertaken over the past several years have resulted in substantial improvements in Thailand's intellectual property monitoring and enforcement.
- We believe they demonstrate Thailand's firm commitment to strengthen IPR rights and affirm its commitment to meet its international obligations.

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Thailand's IPR Protection Improvements Merit Recognition

- In light of these significant achievements, Thailand believes that our unprecedented efforts and significant successes warrant Thailand's removal from the Special 301 Priority Watch List.
- We recognize that IPR protection and enforcement is an ongoing issue. While much has been done, much more remains to be done. Thailand is committed to working with the United States and other trading partners to improve the global IP environment.



FACT SHEET Office of Commercial Affairs Royal Thai Embassy

Intellectual Property Rights Protection in Thailand

Thailand is committed to the protection of intellectual property rights (IPR). This commitment stems from Thailand's desire to offer a pro-business and investment climate for companies overseas, but also for Thai-based companies as our country's economy becomes increasingly knowledge-based. Thailand has developed an extensive legal, administrative, and educational framework to further strengthen the protection of IPR. The Department of Intellectual Property, Thai police and other law enforcement agencies, and industry associations all work closely together and with foreign countries to further strengthen Thailand's IPR system. The net result is that Thailand has made significant progress in IPR protection and enforcement.

Current IPR Framework in Thailand

- Thailand is a member of the World Trade Organization (WTO) and has passed all WTO-mandated legislation outlined in the WTO agreement on Trade Related Aspects of Intellectual Property (TRIPS). Thailand is also a signatory to the Berne Convention (copyright). Thailand formally submitted the instruments of accession to the Patent Cooperation Treaty on December 24, 2009. Thailand is also a member of the ASEAN Framework Agreement on Intellectual Property Cooperation of 1995.
- Thailand has enacted nine laws specifically addressing the protection of IPR:
 - Patent Act (1979 – amended in 1999)
 - Trademark Act (1991 – amended in 2000)
 - Copyright Act (1994)
 - Protection of Layout-Designs of Integrated Circuits Act (2000)
 - Trade Secret Act (2002)
 - Protection of Geographical Indications Act (2003)
 - Optical Disc Production Act (2005)
 - Plant Varieties Protection Act of 1999
 - Traditional Medicine and Practice Act of 1999
- These laws are enforced by various agencies, including the Department of Intellectual Property (DIP), the Royal Thai Police, Customs Department, and representatives of IP owners. In 2003, Thailand created the Department of Special Investigations (DSI) specifically to address IPR enforcement.
- Thailand established the first ever specialized Central Intellectual Property and International Trade Court in 1997. In that year, Thailand established also a specialized Department of Intellectual Property and International Trade Litigation under the auspices of the Office of the Attorney General.

- In 2009, Thailand created the National Committee on Intellectual Property to help coordinate policy, legal, and enforcement efforts.
- The Thai government regularly sponsors a number of outreach programs to educate companies on the importance of IPR protection investment.

Important Statistics on Intellectual Property Rights Protection in Thailand

- In 2009, Thailand's law enforcement agencies suppressed 7,612 IPR violations, including:
 - 3,781 copyright violations / 3,099,592 items seized,
 - 3,826 trademark violations / 2,168,887 items seized,
 - 5 patent violations / 46,461 items seized.
- In 2009, Thailand's Customs Department suppressed 667 IPR violations at the border, seizing 473,858 items.
- In 2009, the Central Intellectual Property and International Trade Court presided over 7,131 intellectual property cases, including:
 - 396 civil cases,
 - 6,735 criminal cases,
 - Prison terms were imposed in 119 cases,
 - 895 search warrants were requested by the police, with 532 (60 percent) granted.
- In 2009, the DIP in collaboration with the Royal Thai Police, the Customs Department and the DSI organized two destruction ceremonies of confiscated IPR infringing goods.
 - Over 1.5 million items worth over 2,000 million baht were destroyed
- Thailand continues to hold regular meetings with important stakeholders to identify constructive ways and means to ensure the continued supply and access to medicines, particularly life-threatening illnesses such as heart disease, HIV/AIDS and cancer.
 - Compulsory Licenses (CL) have been issued for only 5 drugs total, the last one being issued on January 4, 2008.
 - Thailand handles this issue with great caution to ensure that any measures taken are in conformity with Thailand's rights and obligations under international agreements.

Thailand has Made Significant Progress in Combating Against IPR Violation

Prevention and Suppression of IPR Violation is the National Agenda. Cabinet Set up the Committee Chaired by the Prime Minister to Tackle the IPR Violation Problem and Formulate Action Plan to Combat against IPR Violation.

Thailand is currently drafting its report on the country's IP situation of the year 2008/2009 which would demonstrate Thailand's intensive and determined efforts to prevent and suppress IPR violation. The report will highlight several important activities and implementation as follows:

- IP protection and promotion is recognized not only as the engine of economic growth and development but also the foundation of the economic security. The government thus places the respectation of intellectual property rights and prevention and suppression of IPR violation on the top of the national agenda.
- The Thai Government has taken the IPR enforcement and infringement problem seriously and will do it utmost to solve the problems and restore the business and inventor's confidence.
- National Committee on Prevention and Suppression of Intellectual Property Rights Violation chaired by the Prime Minister has been set up in early 2009 to improve the efficiency of the IPR enforcement and formulate strategies and policies in combating against IPR violations at all levels. In its first meeting on 2 February 2009, the Committee instructed the Department of Intellectual Property (DIP), in consultation with related agencies to draft a comprehensive strategy and action plan to suppress and prevent IPR violation. The draft strategy and action plan will soon be submitted to the National Committee for endorsement.
- Some 5,849 arrest cases of IPR offenders were made and more than 4.5 Million infringing goods were seized in 2008. Moreover, in January 2009 alone, Thai authorities took legal actions against 366 cases of IPR violation, and seized more than 310,000 infringing goods worth at least 140 Million Baht. More than 1,000,000 pieces of counterfeiting pharmaceutical have also been seized, mostly erectile dysfunction treatment medicines trafficking from external sources.
- During January – October 2008, 4,979 intellectual property right violation cases were in the Central Intellectual Property and International Trade Court (CIPIT)'s consideration. The court ruled the cases in favor of the plaintiffs and fined the defendants in 3,155 cases, imposed actual prison terms on the defendants in 15 cases, and suspended a prison term in 439 cases. In the case of repeated guilty, the penalty is accumulated.
- All seized items were destroyed in order to prevent them from leaking back into the market. Recently in December 2008 concerned authorities; the Police, the Department of Special Investigation and the DIP jointly destroyed a huge lot of intellectual property infringed items weight more than 280 ton, worth approximately \$4.6 Million.
- Since combating against IPR violation involves not only the Police, the Customs and the DIP but also various agencies, the Deputy Prime Minister in April 2008 thus tasked the DIP to revise the Prime Minister Office's Regulation on the Enforcement of IPR Related Laws such as Revenue Code, Factory Law, Drug Law and Import-Export Law so that all the agencies involved would cooperate to suppress and panelize the IPR violation.
- In this connection, all applicable laws will be jointly used to penalize the IPR infringers.

- On OD piracy, besides copyright infringement offense, criminal, uncompoundable offense of unauthorized selling/renting of movie/VDO products could be applied against the copyright infringement OD sellers. By this measure, the offenders will face severe criminal procedure even though the right holder has withdrawn the copyright infringing case.
- On camcorder piracy, while the copyright law is currently used to penalize the camcorder piracy, the DIP is conducting a study on the pros and cons of specific camcorder piracy law.
- On software piracy, ECOTEC Police took legal actions against a number of business entrepreneurs that illegally used pirated software. Apart from criminal procedure, the right holder may request the civil court to compensate it with the damages caused by such infringement. The recent Central Intellectual Property and International Trade Court (CIPIT)'s decision ordering the corporate offender to pay damages of \$100,000 to the right holder was one of the best concrete examples. Moreover, the Business Software Alliance (BSA) has recently reported approximately \$42,000,000 reduction of damages caused by pirated software in Thailand.
- Thai authorities also launched several projects and campaigns to enhance public awareness on IP such as "STOP PIRACY" and "Love Thai Buy Genuine Goods" campaigns. The Thai Government firmly believes that the intellectual property right violation can successfully reduced once the public are aware of its importance and benefit.
- On compulsory licensing, the Thai government realizes that the measure should only be used as a last resort, in an extreme necessary situation and for public non-commercial use. The Thai government supports the setting up of Joint Committee between concerned public and private agencies so that related parties would have a dialogue forum to exchange views on the public access to essential medicine problem.

Department of Intellectual Property,
February, 2009

THAILAND UPDATE

FM Kasit reiterates stance on intellectual property and CL issues

- Foreign Minister Kasit reiterated Thailand's stance on March 4, 2009, in an economic ministers meeting that Thailand has established a national committee to oversee the protection of intellectual property and enforcement of related laws, and that compulsory licensings (CLs) already issued do not violate Thailand's WTO obligations.

- Thailand encourages more and close consultations between the government and private sectors, including patient networks, in resolving the problem of access to medicines. CL will only be used as a last resort as there are other measures that are available in resolving the issue, which may include, but is not limited to, collaborative efforts in the purchase of medicines, regional cooperation, and the conduct of research and development.

Deputy Commerce Minister Alongkorn Ponglaboot explains the government's strategy for national unity

- In his remarks at a meeting with heads of offices of the Royal Thai Embassy on March 12, 2009, Deputy Commerce Minister Alongkorn viewed that the government's strategy is not to allow the government to be a source of political conflict itself. The government will not take side in the political conflict. While at the same time, it continues to uphold the rule of law and will not allow laws to be violated when it may have economic impacts on the country such as the closing of airports.

- This strategy is achieving its goals thereby gradually bringing back stability to Thailand. The hosting of ASEAN Summit met with success and proceeded without major incidents. The government is enjoying widening support in all regions of the country.

PM Abhisit's responds to the call for reform of Thailand's lèse-majesté law

- Prime Minister Abhisit responded to the call for reform of Thailand's lèse-majesté law on March 5-6, 2009 that the law was necessary to provide mechanism to protect the monarchy, a highly respected institution that is placed above all conflict, from being violated.

- PM explained that the problem with the law had to do with its enforcement and the fact that the political situation has become involved. When the law allows anyone to file a complaint with the police and when there are many complaints, police would have to proceed with them in order to be on the safe side. PM had discussed with the Police Chief about the necessity of enforcing the law with caution so that the law would not be abused. However, PM would disagree if there are those who deliberately attack the monarchy but refuse to be held accountable by claiming their rights to freedom of expression.

Facts behind revocation of former Prime Minister Thaksin's diplomatic passport

- Mr. Thaksin has been convicted on charges of corruption and conflict of interests relating to the purchase of land plots in the Bangkok's downtown by his wife, Khunying Pojaman Shinawatra, during his tenure as Prime Minister.

- The Supreme Court ruled that, when Mr. Thaksin was Prime Minister, he had the authority to supervise the Financial Institutions Development Fund (FIDF), a state agency. The fact that the former Prime Minister knew about the purchase of government-owned land by his wife from FIDF constituted conflict of interests on his part as a state official. The Supreme Court therefore found the former Prime Minister guilty under the National Counter Corruption Act (NCC), an organic law of the Thai Constitution of 1997. The NCC stipulates that "government officials, including Prime Minister, and their spouses are prohibited from entering into or having interests in contracts with state agencies under their supervision."

- The Supreme Court sentenced Mr. Thaksin to two years imprisonment, without giving him a suspended sentence on the ground that he acted in violation of the laws despite his position as the head of government, who should have set a good example of being honest and having good political ethics in accordance with the honored position entrusted to him. Mr. Thaksin, however, fled the country, eluding his sentence. The revocation of Mr. Thaksin's diplomatic passport is a result of the verdict in line with relevant passport regulations.

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Thailand's Fourteen Points of Clarification: The US National Trade Estimate Report on Foreign Trade Barriers

	Relevant passage contained in the NTE Report	Thailand's clarification
<p>Page 492 Para. 6</p>	<p><i>"The lack of sustained and coordinated enforcement, and, in particular, the lack of successful prosecutions, remains a substantial problem."</i></p>	<ul style="list-style-type: none"> • Under the current administration, the profile of IP has been raised to an unprecedented level. A national Committee on Prevention and Protection of Intellectual Property Rights was set up in January 2009 chaired by the Prime Minister with top level officials from various government agencies as active participants. The main objective is to formulate policies and strategies on intellectual property and implement them in a cohesive fashion. • Modernisation of intellectual property laws is on the government agenda. Several IP laws are under active revision. On top of that, the legislative authority is looking into the draft Prime Minister's Office regulation which pools together the existing 33 IP-related legislations containing provisions on penalties. This is another concrete example of the government's attempt to ensure that future application by the Court is more integrated and the final decision on penalties is proportionate to actual misconduct. • The law enforcement agencies namely the Department of Special Investigation, the Royal Thai Police and Customs Department have pursued aggressive raids, arrests, and seizures of infringing goods at borders and behind borders.

	Thailand's clarification
<p>Page 493 Para. 1</p> <p><i>"Patent examinations can often take five years or more"</i></p>	<p>Confiscated items are routinely destroyed in large quantities in order to prevent them from reentering the market.</p> <ul style="list-style-type: none"> • Generally the patent examination process of the Department of Intellectual Property takes on average three years from the date the applicant formally submits the request for substantive examination. However, the applicant has to file the request for substantive examination within five year commencing from the date of the publication in the Department Gazette. The length of the examination also depends on how quickly the application is submitted. The examination is based on a first come, first served basis.
<p>Page 493 Para. 2</p> <p><i>"The US pharmaceutical industry has expressed concerns regarding the issuance of compulsory licenses on patented drugs by Thailand's Ministry of Public Health"</i></p>	<ul style="list-style-type: none"> • Thailand's implementation of compulsory licensing is consistent with the domestic law and international obligations. The enactment is based on public health considerations, without any commercial motives. • Thailand is well aware that effective protection has an important bearing on the development of new pharmaceuticals. The Thai government is supportive of close dialogue between rights owners and relevant government agencies.
<p>Page 493 Para. 3</p> <p><i>"...the Ministry of Public Health issued implementing regulations for the 2002 Trade Secrets Act. The US pharmaceutical industry has expressed concerns with these new regulations, particularly with respect to deficiencies they identify in the level</i></p>	<ul style="list-style-type: none"> • Thailand provides data protection in accordance with the TRIPS Agreement. Data exclusivity and patent linkage are subject matters outside the ambit of the TRIPS Agreement and Thailand's domestic law.

	Relevant passage contained in the NTF Report of protection against unfair commercial use for undisclosed rest and other data"	Thailand's clarification
Page 493 Para. 4	"... because the law requires explicit evidence that the GI is protected under the law of the foreign country in order to receive protection in Thailand. In addition, the law raises concerns because the existence of a similar, previously registered trademark does not constitute grounds for refusal of a GI registration in Thailand"	<ul style="list-style-type: none"> The protection of GIs could assume other forms of protection e.g., trademarks, collective or certification marks depending on the system of the country of origin. In the Thai system, geographical indications and trademark are two distinct categories. Prior registration of a trademark in the country does not prejudice the right of others (locals or foreigners) to GI protection in Thailand for products under the same or similar name.
Page 493 Para. 5	"...the US continues to urge Thailand to modernize its copyright legislation to address digital and internet copyright issues, including joining and implementing the World Intellectual Property Organisation (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty"	<ul style="list-style-type: none"> Thailand's Copyright Act B.E. 2537 (1994) is under review. The protection could be extended to copyrighted works on the internet and in digital form. The country's readiness has to be taken into account before pursuing the accession to WCT and WPPT.
Page 493 Para. 6	"...but the process remains time-consuming and costly"	<ul style="list-style-type: none"> The prosecution process in Thailand is not more lengthy than in any other countries. The litigation costs are not unreasonably high. The high costs may be due to legal services consumed. The transaction is based on agreed terms between private parties.

	Relevant passage contained in the NTE Report	Thailand's clarification
Page 493 Para. 6	"They (US pharmaceutical industry) note the lack of sufficient penalties and delays in sentencing for counterfeit drug-related offenses"	<ul style="list-style-type: none"> Presently the police employ Drug Act B.E. 2510 (1967) as a basis for prosecution against patent infringers. The penalties imposed under the Act are stronger than those provided under the Patent and Trademark Act.
Page 492 Para. 1 & Page 493 Para. 7	<p>"In a trend (emphasis added) of particular concern, an increasing volume of pirated and counterfeit products manufactured in Thailand is being exported"</p> <p>"Particular areas of concern to US copyright industries are..., book piracy (emphasis added),..."</p>	<ul style="list-style-type: none"> There is no clear evidence of exportation of infringing products from Thailand. Despite the fact that the scrap paper used in the bookbinding of some of the pirated textbooks bears Thai alphabet, it cannot be concluded with absolute certainty that those books are manufactured in Thailand.
Page 493 Para. 7	"Implementation of the 2005 Optical Disk Manufacturing Control Act has not restrained the rapid growth of optical media piracy in Thailand, and pirate cable providers continue to expand their presence"	<ul style="list-style-type: none"> Thailand has enforced the Film and Video Act B.E. 2551 (2008) in lieu of the Optical Disk Manufacturing Control Act to suppress copyright violation of audiovisual products. The provision on fines is more severe and can reach 200,000 baht (approx. 5,700 USD). The infringer will have to be prosecuted for the offence even if the rights holder decides to withdraw the case before the Court reaches its final decision. The law controlling CD production has produced a deterrent effect to a certain extent. Pirated CDs mostly are smuggled across borders or reproduced illegally by retail consumers.
Pages 493-4 Para. 7	"The Thai government passed new broadcasting legislation in December 2007 but has not yet established the commission that would grant	<ul style="list-style-type: none"> The current Constitution of Thailand B.E. 2550 (2007) requires a merger between the National Telecommunications Commission and the National Broadcasting Commission as

	Relevant passage contained in the NTE Report	Thalband's clarification
	<i>broadcast licenses and revoke licenses for infringers "</i>	part of the convergence policy in the communication sector. The laws governing the telecommunications and media sectors have to be amended to reflect this policy development. The proposed amendment has passed its first reading in the parliament and the establishment of the new regulator i.e., the National Broadcasting and Telecommunications Commission (NBTC) is expected to be realised soon.
Page 494 Para. 1	<i>"Book publishers have raised concerns that the copyright law is being interpreted so as to allow students or those providing them textbooks to copy any work for educational purposes"</i>	<ul style="list-style-type: none"> The authority has not received any complaints on this matter.
Page 494 Para. 2	<i>"... some raids reportedly have been compromised by a tip-off".</i> <i>"... it is sometimes difficult to get search warrants from the Thai Intellectual Property and International Trade Court. Sometimes judges in that court push rights holders toward pursuing civil rather than criminal legal actions, but high evidentiary requirements and low damage awards limit the incentive companies have to pursue civil cases".</i>	<ul style="list-style-type: none"> The search warrant is issued at the discretion of the Court. The issuance is guaranteed upon the production of strong evidence by the rights holder. Forceful measures have been undertaken to curb corruption in government services. A list of police officers involved in the violation of intellectual property rights has been submitted to the Deputy Prime Minister responsible for national security affairs.
Page 494 Para. 3	<i>"However, the court frequently hands down light sentences that do not appear to be a deterrent to repeat offenses... Of 6,965 cases brought before the IP court in 2007, only 17 involved the imposition of prison sentences "</i>	<ul style="list-style-type: none"> This information is of the year 2007 and no longer relevant. The Intellectual Property and International Trade Court places greater emphasis on strong penalties to deter rights violation.

Relevant passage contained in the NTE Report		Thailand's clarification																			
<p>* The important statistics on Thailand enforcement against intellectual property rights violation are as follows;</p> <p>The statistic of arrests and seizures of intellectual property infringing items</p>		<table border="1"> <thead> <tr> <th>Year</th> <th>Arrest Cases</th> <th>Confiscated items</th> <th>Average Confiscated items per case</th> </tr> </thead> <tbody> <tr> <td>2008</td> <td>5,923</td> <td>3,416,316</td> <td>576.78</td> </tr> <tr> <td>2007</td> <td>7,118</td> <td>3,746,036</td> <td>526.28</td> </tr> <tr> <td>2006</td> <td>9,575</td> <td>2,823,588</td> <td>294.89</td> </tr> </tbody> </table>				Year	Arrest Cases	Confiscated items	Average Confiscated items per case	2008	5,923	3,416,316	576.78	2007	7,118	3,746,036	526.28	2006	9,575	2,823,588	294.89
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