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Non-Tariff Measures in China:

Cases of Thailand-China Fruit Trade and CCC Mark Requirements on Industrial Products

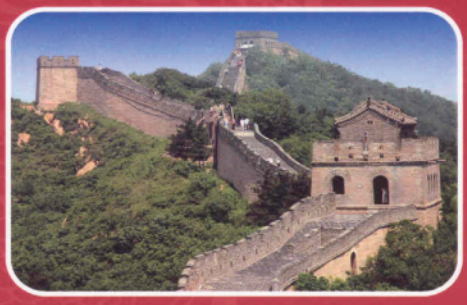

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Table of Content

Chapter 4) China Compulsory Certification (CCC) Market Requirement on Industrial Products

Chapter 5) Policy Recommendations and Implementation

List of Tables

List of Figures

List of Box

Abbreviation (1)

ACB	Accredited/Authorised Certifying Body
ACFS	National Bureau of Agricultural Commodity and Food Standards (Thailand)
ACFTA	ASEAN-China Free Trade Agreement
ADB	Asian Development Bank
AQSIQ	China's General Administration of Quality Supervision, Inspection and Quarantine
ASEAN	Association of South East Asian Nations
CCC	China Compulsory Certificate (Mark on Industrial Products)
CCEE	China Commission for Conformity Certification of Electrical Equipment
CCIB	China Commodity Inspection Bureau
CCIP	China Council for the Promotion of International Trade
CIQ	China Inspection and Quarantine
CNCA	Certification and Accreditation Administration of the People's Republic of China
CODEX	Codex Alimentarius Commission
CPC	Communist Party of China
CPCS	Compulsory Product Certification System (China)
CQC	China Quality Certification Center for Import and Export Commodities
CSBTS	China State Bureau of Quality and Technical Supervision
CSTCM/TCMCS	Coding System of Trade Control Measures (UNCTAD)
DOA	Department of Agriculture, Ministry of Agriculture and Cooperatives (Thailand)
DSB	Dispute Settlement Body
EIP	Electronic Information Products
FTA	Free Trade Agreement
GAP	Good Agricultural Practice
GATT	General Agreement on Tariffs and Trade
GMS	Greater Mekong Subregion
HS	Harmonised System Code (Commodity Classification)
IEC	International Electrotechnical Commission
IECEE	IEC System for Conformity testing and Certification of Electrical Equipment
ISO	International Standards Organisation
ISPM	International Standards for Phytosanitary Measures
ITU	International Telecommunication Union
JCCT	Joint Commission on Commerce and Trade
MCB	Mini Circuit Breakers
MFN	Most Favoured Nations
MOAC	Ministry of Agriculture and Cooperatives
MOFCOM	Ministry of Commerce of the People's Republic of China
MOU	Memorandum of Understanding
MRA	Mutual Recognition Agreement
MRL	Maximum Residue Limits

Abbreviation (2)

NAFTA	North American Free Trade Agreement
NAMA	Non-Agriculture Market Access
NDRC	National Development and Reform Commission
NPC	National People's Congress (China)
NTMs	Non-Tariff Measures
ppm	Parts Per Million
QIP	Quarantine Import permit
RCCB	Residual Current Operated Circuit Breakers
RCBO	Residue Current Circuit Breaker with Overcurrent Protection
SAC	Standardization Administration of China
SAQSIQ	State Administration of Quality Supervision, Inspection and Quarantine
SAIQ	State Administration for Entry-Exit Inspection and Quarantine
SARs	Special Administration Regions
SCM	Subsidies and Countervailing Measures
SMEs	Small and Medium-Sized Enterprises
SO_2	Sulfur Dioxide
SPS	Sanitary and Phytosanitary Measures
TBT	Technical Barriers to Trade
TCBC	Thailand-China Business Council
TISI	Thailand Industry Standard Institute
TNC	Trade Negotiation Committee
TRIMs	Trade-Related Investment Measures
TRM	Transitional Review Mechanism
TRQ	Tariff-Rate Quota
USDA	United States Department of Agriculture
USTR	United States Trade Representative
VAT	Value-Added Tax
WTO	World Trade Organisation

Non-Tariff Measures in China:

Case Studies on CCC Mark Requirements on Industrial Products and Thailand-China Fruit Trade

Executive Summary

Executive Summary

China is today the world's third largest trader, after the United States and Germany. For Thailand, China has also been one of the most important trading partners for over a decade. The country is among Thailand's largest trading partners, sharing about 10% of Thailand's international trade, approximately the same size as the United States and EU, in 2006 compared with 3% in 1996.

The importance of accession to the Chinese market has led Thailand, as an ASEAN member, to sign a Framework Agreement of ASEAN-China Comprehensive Economic Cooperation in November 2002 which led to the "ASEAN-China FTA (ACFTA)". The ACFTA covered all agricultural and industrial goods (HS01-99) and tariffs will be eliminated to 0% in 2010. Although Thailand's exports to China have increased by almost double, as a result of tariff cuts, since the ACFTA started to enter into force in 2003, market access obstacles still remain. Many non-tariff measures such as quantitative restrictions, laws and regulations on standards for goods, trading and distribution rights, import licensing, and SPS issues are considered as impediments to trade.

This study, therefore, aims to promote improved market access for Thai agricultural and industrial exports to China under the ASEAN-China FTA (ACFTA) by identifying non-tariff measures implemented by China, as well as reviewing their consistency with the WTO Agreements and the ACFTA, and recommending appropriate measures to the government and private sector adjustments to such measures. The study involves 2 case studies: the issue of CCC Mark required on industrial products; as well as China's SPS and non-SPS measures applied to Thai fruits.

Between October 21 and 29, 2007, the research team visited 2 Chinese cities i.e. Guangzhou (Guangdong Province) and Kunming (Yunnan Province) to conduct interviews with Thai Consuls in Guangzhou and Kunming, as well as attend a meeting with Chinese government officials from various departments including the Yunnan Entry-Exit Inspection And Quarantine Bureau, Kunming Customs Control and Inspection, and Ministry of Commerce. A survey of Jiangnan Wholesale Fruits and Vegetables Market in Guangzhou – was also conducted during the trip.

Upon an investigation of the Thailand-China Fruit Protocols under the ASEAN-China FTA framework, it was found that SPS requirements on Thai fruits exported to China seem to be more stringent than those on Chinese fruits exported to Thailand. Other requirements such as orchard registration, and SPS as well as non-SPS regulations on certain fruits listed in the 'Thai Fruits Entering China' Protocol also appear to be stricter than the regulations on non-listed Thai fruits. Furthermore, Chinese regulations on import licensing, quarantine permits, quarantine inspection, customs valuation, and the Value Added Tax system are additional but significant trade barriers to exports from Thailand and other countries. In addition, counterfeit labels of fruits originated from outside China are discovered during the researchers' survey of Jiangnan Market. All of these factors require prompt rectification if expansion of trade from Thailand to China is to take place.

Regarding China's Compulsory Certification or the CCC system, concerns on complexity of procedures and costs burden arising from the CCC certification have been raised by several countries, especially major industrialised economies such as the US, EU, and Japan. Major areas of concerns are recognitions of international standards for the product testing and the factory inspection, designation of China-based and local based foreign-owned certification body, duplication of certification of imported parts intended for incorporation in CCC certified final products, and national treatment issue. Thai consulting company and exporters of electrical appliances also voiced similar views on the complexity and additional costs of CCC compliance, since the type testing and factory inspection is allowed to be performed only by the Chinese Accredited Certifying Body (ACB). Furthermore, even though China is a member of IECEE, the country still recognises the test from other members only in the areas of electrical safety.

The study concludes that Thailand must effectively address the issue of non-tariff measures to China at various forums, either bilaterally, regionally, or multilaterally, in

order that these persisting and trade-obstructing problems are rectified. However, Thailand cannot adopt an offensive approach to accessing the Chinese market alone, as the influx of Chinese imports has also greatly impacted domestic industries in Thailand. Consequently, Thailand must also guard its defensive interests when trading with China. In the case of fruit trade, the Thai government must urgently implement effective food quality monitoring and inspection schemes, to ensure the safety of imported food from China and to protect Thai consumers. Similarly, the CCC mark problem also demands that Thailand allies its product standards with international standards in order to rid of problems of inconsistency in standards and quality of domestically produced goods compared to those produced abroad. It is expected that this offensive strategy will enhance export opportunities of Thai products and will become one of the solutions to the problem of accessing the Chinese market, which many Thai entrepreneurs currently face.

1. Introduction:
Thailand-China Trade Relations

1

1.1 Introduction

Ongoing economic reforms and openness policy following its WTO accession made China the world's third largest trader, after the United States and Germany, with its trade surplus jumping 74% from 2005 to 2006, to a record $177.47 billion on the back of a 27.2% surge in exports. It is therefore undeniable that China has now become one of the most influential economies in the regional and global markets. For Thailand, China has also been one of the most important trading partners for over a decade. It is among Thailand's largest trading partners, sharing about 10% of Thailand's international trade, approximately the same size as the country's trade with the United States and the EU in 2006. This compares with the 3% figure in 1996.

Considering the importance of accession to the Chinese market, Thailand as a member of ASEAN has signed the Framework Agreement of ASEAN-China Comprehensive Economic Cooperation in November 2002, which led to the "ASEAN-China FTA (ACFTA)". The ACFTA covered all agricultural and industrial goods (HS01-99), and tariffs will be eliminated to 0% in 2010. Although Thailand's exports to China have almost doubled as a result of tariff cuts since the ACFTA entered into force in 2003,

some market access obstacles still remain. Many non-tariff measures are considered as impediments to trade, such as quantitative restrictions, laws and regulations on product standards, trading and distribution rights and import licensing, as well as the actual practices of government authorities.

This study, therefore, aims to promote improved market access for Thai agricultural and industrial exports to China under the ASEAN-China FTA (ACFTA) by identifying non-tariff measures in China, reviewing their consistency with the WTO and ACFTA Agreements, and recommending appropriate measures to the government as well as private sector adjustments to such measures. In-depth analysis will be provided by two case studies: the issue of CCC Mark required on industrial products; and China's SPS and non-SPS measures applied to Thai fruits.

1.2 Overview of Thailand's Trade Relations with China

1.2.1 Trade Structures

1.2.1.1 Thailand-China International Trade

Table 1.1 demonstrates that, in term of trading partners, Thailand's international trade structure has been gradually shifting from Western countries toward Asian countries over the last decade. In 1996, Thailand's largest trading partners were Japan, ASEAN, EU and the US, listed here in order of their trade volumes with Thailand. However, in 2006, this ranking has changed to 1) ASEAN, 2) Japan, 3) EU, 4) US, and 5) China, with a gradual fall of the EU's and the US's shares in Thailand's total international trade to about 10%, which was approximately the same percentage as that of Thailand-China trade.

In 2006, Thailand-China trade volume increased from $20.33 billion to $25.17 billion, accounting for 9.8% of Thailand's total international trade, as a result of expansion of both exports and imports. Thailand exports to China rose by 27.88% from $ 9.17 billion in 2005 to $11.72 billion in 2006. Meanwhile, the imports also increased by 20.5% from $11.16 billion in 2005 to $13.45 billion in 2006. The trade surplus with Thailand that China enjoyed amounted to $1.72 billion in 2006.

Table 1.1: Thailand Trade Classified by Country *(Billions of US Dollars)*

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Total exports	**55.98**	**58.43**	**54.48**	**58.50**	**69.78**	**65.19**	**68.16**	**80.04**	**96.53**	**110.95**	**129.95**
Japan	9.42	8.85	7.47	8.26	10.28	9.95	9.95	11.36	13.50	15.10	16.46
United States of America	10.06	11.36	12.17	12.66	14.87	13.20	13.51	13.60	15.51	17.00	19.50
EU	9.29	9.68	10.01	10.11	11.38	10.91	10.59	12.22	14.45	15.10	18.04
ASEAN	12.11	12.76	9.90	10.87	13.50	12.60	13.57	16.49	21.24	24.40	27.08
Middle East	2.14	1.95	1.85	2.04	2.11	2.15	2.45	2.88	3.70	4.47	5.72
Hong Kong	3.26	3.47	2.78	2.98	3.52	3.31	3.69	4.32	4.94	6.17	7.17
China	1.88	1.78	1.77	1.86	2.84	2.87	3.56	5.69	7.12	9.17	11.72
Others	7.83	8.58	8.54	9.71	11.28	10.20	10.84	13.50	16.08	19.56	24.25
Total imports	**72.25**	**63.29**	**42.40**	**49.92**	**62.18**	**61.75**	**64.24**	**75.04**	**94.04**	**118.19**	**126.85**
Japan	20.42	16.27	10.03	12.15	15.38	13.77	14.80	18.08	22.29	26.04	25.48
United States of America	9.03	8.73	5.96	6.39	7.32	7.16	6.15	7.09	7.21	8.68	8.51
EU	11.30	9.23	5.40	5.99	6.52	7.82	7.26	7.76	9.41	10.80	11.11
ASEAN	9.64	8.14	6.40	7.91	10.35	10.01	10.82	12.49	15.84	21.63	23.38
Middle East	4.08	4.61	3.33	4.26	6.35	5.96	5.67	7.45	10.81	15.25	18.13
Hong Kong	0.85	0.82	0.76	0.70	0.89	0.82	0.90	1.06	1.33	1.50	1.53
China	1.95	2.28	1.80	2.47	3.39	3.70	4.90	6.00	8.14	11.16	13.45
Others	14.98	13.20	8.72	10.05	11.99	12.50	13.75	15.10	19.01	23.12	25.25
TOTAL TRADE	**128.23**	**121.72**	**96.88**	**108.42**	**131.96**	**126.94**	**132.40**	**155.08**	**190.57**	**229.14**	**256.80**
Japan	29.84	25.12	17.50	20.41	25.66	23.72	24.75	29.43	35.79	41.13	41.95
United States of America	19.09	20.10	18.12	19.04	22.19	20.36	19.66	20.69	22.71	25.68	28.00
EU	20.59	18.90	15.41	16.11	17.90	18.73	17.85	19.97	23.86	25.90	29.15
ASEAN	21.75	20.90	16.29	18.78	23.84	22.61	24.39	28.98	37.08	46.03	50.47
Middle East	6.22	6.57	5.18	6.31	8.46	8.11	8.12	10.34	14.51	19.72	23.85
Hong Kong	4.11	4.29	3.54	3.68	4.40	4.13	4.59	5.38	6.27	7.67	8.71
China	3.83	4.05	3.57	4.33	6.23	6.57	8.45	11.69	15.26	20.33	25.17
Others	22.80	21.79	17.27	19.76	23.27	22.70	24.59	28.60	35.08	42.68	49.50

Source: Bank of Thailand

1.2.1.2 Major exports

Thailand's major exports to China in 2006 were computer and parts, rubber and its products, chemical products, plastic, circuits, crude oil, tapioca, and rice. Most of the products are raw materials or intermediate goods needed for China's domestic production, or agricultural products in which Thailand has comparative advantage.

Exports of final products, fresh fruits and vegetables, and processed foods to China are still limited.

Table 1.2: Top 10 commodities that Thailand export to China in 2006 (Million of Dollars)

Commodities	Export to China (1)	Growth (%)	Export to Rest of the World (2)	Share of (1) on (2) (%)	Rank
1. Computer and Parts	2,471.9	.71	14,876.3	16.62	2
2. Rubber	1,353.3	65.99	5,393.6	25.09	1
3. Chemical	1,185.2	126.83	3,443.2	34.42	1
4. Plastic	909.9	18.96	4,500.7	20.22	1
5. Circuits	654.4	56.63	7,028.7	9.31	6
6. Crude Oil	556.8	3.44	1,560.6	35.68	1
7. Tapioca	518.1	35.13	1,129.4	45.87	1
8. Oil products	340.6	312.85	3,634.8	9.37	3
9. Rubber products	282.7	121.73	3,090.0	9.15	2
10. Rice	276.5	43.12	2,565.4	10.78	1

Source : Customs department, Ministry of Commerce

1.2.1.3 Key Provincial Markets

In 2006, most of Thailand's exports (97%) went to ten major provincial markets, namely Guangdong, Jiangsu, Shanghai, Zhejiang, Shandong, Fujian, Beijing, Tianjin, Liaoning, and Henan, respectively. Guangdong is Thailand's major export destination because of it geographical advantage, being the coast-line province that is located closest to Thailand. Once arrived in Guangdong, Thai products are then distributed to other destinations throughout China. Another important market is Yunnan Province. However, its significance does not appear in the official trade statistics, since most of Thailand's trade with Yunnan is border trade, the statistics of which may not properly collected.

Table 1.3: Top 10 Provincial Market for Thailand exports in 2006 (Million of Dollars)

Rank	Province	Value	Share (%)
1	Guangdong	6,943.91	38.66
2	Jiangsu	3,995.29	22.24
3	Shanghai	3,050.94	16.99
4	Zhejiang	1,056.35	6.05
5	Shandong	855.86	4.76
6	Fujian	546.74	3.04
7	Beijing	341.62	1.90
8	Tianjin	301.80	1.68
9	Liaoning	262.05	1.46
10	Henan	105.74	0.59

Source : Customs department, Ministry of Commerce

1.3 ASEAN-China Free Trade Area

1.3.1 Background

A closer trade relation between ASEAN and China started when both parties decided to undertake an unprecedented initiative aimed at establishing a FTA in 2010 at the ASEAN-China Summit in Bandar Seri Begawan in November 2001. In 2002, the "Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China" was developed as a basis of the FTA. The framework covered three major issues; trade and investment liberalization, economic cooperation, and Early Harvest Scheme.

On the Early Harvest Scheme, Thailand agreed with China to bring tariffs down to 0% for products under HS Code 07-08 (fruits and vegetables) by October 2003. This agreement was also known as the "Thailand-China FTA".

Under the ASEAN-China framework, both parties concluded FTA negotiations and signed the 'Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-operation between ASEAN and China' or the 'ASEAN-China FTA' which came into force in 2004.

1.3.2 Product Coverage under the Tariff Reduction

The ASEAN-China FTA (ACFTA) covered substantially all trade in goods (HS 01-99) classified into four groups; Early Harvest Program, Normal Track, Sensitive Track, and Highly Sensitive Track, with different tariff reduction schedules as follows:

Table 1.4: ASEAN-China FTA Tariff Reduction Schedule

Product Category	Coverage	Schedule
1. Early Harvest	HS 01-08	- 0% in 2006
2. Normal Track		
2.1 With applied MFN tariff rates higher than 20%		- 20% in 2005 - 0% in 2010
2.2 With applied MFN tariff rates lower than 20%		- 0% in 2010
3. Sensitive Track	< 400 tariff lines, and < 10% of total imports	- 20% in 2012 - 0-5% in 2018
4. Highly Sensitive Track	< 40% of the Sensitive Track, or < 100 tariff lines	- 50% in 2015

1.3.3 Non-Tariff Measures

According to Article 8 of the Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-operation between the ASEAN and China, there is no specific agreement on quantitative restrictions and non-tariff barriers. Generally, no quantitative restrictions are allowed unless otherwise permitted under the WTO disciplines, and non-tariff barriers other than such quantitative restrictions must be identified for elimination as soon as possible.

1.4 Other Collaborations and Partnership Programmes

In addition to the ACFTA, there are other collaborations and partnership programs between China and Thailand that can be exploited at consultative forums to facilitate and remove barrier on trade between the two countries.

1.4.1 Regional Cooperation – the Greater Mekong Sub-Region (GMS)

Thailand and China (the Yunnan Province) are 2 of the six GMS members, the remaining of which being Myanmar, Laos, Cambodia, and Vietnam. The programme, aimed at facilitating subreigonal economic cooperation and enhancing economic relations among the members, was initiated by the Asian Development Bank (ADB) in 1992. The program has contributed to the development of infrastructure to enable the development and sharing of the resource base, and promote the freer flow of goods and people in the subregion. It has also led to the international recognition of

the sub-region as a growth area. The cooperation agreed upon lies in 9 areas; transportation, telecommunication, energy, trade, investment, agricultural, environment, tourism, and human resources development.

1.4.2. Bilateral Cooperation

1.4.2.1 Government-to-Government Collaboration

1.4.2.1.1 Thailand-China Joint Committee on Trade, Investment and Economic Cooperation

The first meeting of the Thailand-China Joint Committee on Trade, Investment, and Economic Cooperation was held in July, 2004. The meeting was led by Deputy Prime Ministers of the two countries. It was concluded that both parties would cooperate in the areas of trade, investment, tourism, agriculture, and economic planning by setting up sub-committees on specific issues.

1.4.2.2 Private Sector Collaboration

1.4.2.2.1 Thailand-China Business Council (TCBC)

The Council is a collaboration between three of Thailand's private sector organizations (Thai Chamber of Commerce, Federation of the Thai Industry, and Thai Lawyers Association), and China Council for the Promotion of International Trade (CCIP). It aims to promote private sector cooperation in trade and investment, with a special emphasis on SMEs.

1.4.2.2.2 Thai Chamber of Commerce in China

The Chamber was founded by Thai companies and trade related organizations operating in China under the supervision of the Ministry of Commerce of the People's Republic of China (MOFCOM). It aims to enhance relationships among members, between members and other trade associations, and between members and the Chinese government.

1.5 Conclusion

This chapter outlines Thailand's and China's trade structures and their past and present bilateral economic relationships. Despite its preferential trade agreement signed with China, Thailand has continued to face difficulties in accessing the Chinese market. The next chapter discusses the issue of non-tariff measures practised by the Chinese authorities, which have greatly obstructed Thailand's export to its northern bordering country.

2. Overview of Non-Tariff Measures in China and Its WTO and ACFTA Compliance

2

2.1 Introduction

This chapter discusses existing NTMs in China, with a special emphasis on selected measures that are of particular concern to Thai exporters. The chapter also analyzes China's obligations and commitments under the WTO and ACFTA, and finally concludes with a review of China's compliance to international trade rules, both on the multilateral front (WTO) and at the bilateral level (U.S., EU, and Japan). In addition, a brief discussion on the Chinese legislation and administrative system showing national and sub-national authority levels will be provided in the last part of this chapter.

2.2 NTMs in China

2.2.1 Definition of NTMs

It is necessary to first clarify what definition of NTMs is being referred to in this study. The only group of NTMs explicitly recognized in the WTO agreements on trade in goods is quantitative restrictions, such as quotas and voluntary export restraints[1]. However, there is no legal definition of NTMs in the WTO Agreements and no commonly agreed definition of NTMs among international organizations exists[2]. There are multiple classifications and typological groupings of NTMs arising out of the work programs of various international organizations and countries, including the WTO NAMA negotiations, UNCTAD TRAINS database, EU Market Access Database[3] provided by the European Commission and the USTR's National Trade Estimates Reports of Foreign Trade Barriers of the United States. These typologies are provided in Note – Chapter 2: 2.1.

To comprehensively deal with NTMs and trade-related problems, the working definition of NTMs used in this study is "government measures other than tariffs that restrict trade flows". Within the context of ASEAN-China FTA, classification of NTMs in this study follows the approach of the ASEAN Secretariat, which broadly categorizes NTMs and subdivides the types of NTMs under each broad category

[1] Article XI, GATT 1994 and the WTO Safeguards Agreement.
[2] Background note for UNCTAD's Group of Eminent Persons on Non- Tariff Barriers First meeting (Geneva, 12 July 2006)
[3] For the EU Market Access Database, see http://mkaccdb.eu.int/mkaccdb2/indexPubli.htm

according to their specific characteristics. Special measures for sensitive product categories and technical regulations are subdivided according to their corresponding objectives[4], i.e. for the protection of human and animal health and life, plant health, protection of the environment and wildlife, control of drug abuse, to ensure human safety and for national security purposes.

Table 2.1 ASEAN Classification of Non-Tariff Measures

Category/ Sub-Category	Description
1. Para-Tariff Measures	Measures that increase the cost of imports in a manner similar to tariff measures
1.1 Customs surcharges/import surcharges	Additional duty which is an ad hoc trade policy instrument to raise fiscal revenue or to protect domestic industry
1.2 Additional charges	Various taxes and fees levied on imported goods on top of customs surcharge including the tax on foreign exchange transactions, stamp tax, airport license fee, consular invoice fee, statistical tax, tax on transport facilities and charges for sensitive product categories
1.3 Decreed customs valuation	Customs duties and other charges on selected airports presented as a means to avoid fraud or to protect domestic industry
2. Price Control Measures	Measures to control the prices of imported goods to; 1) sustain domestic prices of certain products when the import price is inferior to the sustained price; 2) to establish the domestic price of certain products because of price fluctuation in the domestic market or price instability in the foreign market; and 3) to counteract the damage caused by the application of unfair practices of foreign trade
2.1 Administrative price fixing of import prices	Imported goods floor and ceiling price limits fixed by an authority by taking into account the domestic prices of the producer or consumer or reverting to determined international market values
2.2 Voluntary export price restraints	A restraint arrangement in which the exporter agrees to keep the price of his goods above a certain level
2.3 Variable charges	Charges that bring the market prices of imported agricultural and food products close to those of corresponding domestic products, for a given period of time, and for a pre-established price.
3. Finance Measures	Measures that regulate the access to and cost of foreign exchange for imports and define the terms of payment
3.1 Advance payment requirements	Advance payment of the value of the import transaction and /or related imported taxes, which is required at the moment of the application for, or the issuance of, the import license

[4] These objectives are based on TBT and SPS Agreements and the General Exemption of GATT 1994

Category/ Sub-Category	Description
3.2 Advance import deposits	Obligation to deposit a percentage of the value of the import transaction for a given time period in advance of the imports, with no allowance for interest to be accrued on the deposit
3.3 Cash margin requirements	Obligation to deposit the total amount corresponding to the transaction value, or a specified part of it, in a commercial bank, before the opening of a letter of credit; payment to be required in foreign currency
3.4 Advance payment of customs duties	Advance payment of the total or a part of customs duties, with no allowance for interest to be accrued.
3.5 Refundable deposits for sensitive product categories	The deposit charged which can be refunded when the used products or its containers are returned to a collection system
3.6 Regulations concerning terms of payment for imports	Special regulations regarding the terms of payment of imports and the obtaining and use of credit (foreign or domestic) to finance imports
3.7 Transfer delays, queuing	Minimum permitted delays between the date of delivery of goods and that of final settlement of the import
4. Monopolistic Measures	Measures which create a monopolistic situation, by giving exclusive rights to one or a limited group of economic operators for earlier? social, fiscal or economic reasons.
4.1 Single channel for imports	All imports or imports of selected commodities channeled through state-owned agencies , state-controlled enterprises, or specified private company
4.2 Compulsory national services	Government-sanctioned exclusive rights of national insurance and shipping companies on all or a specified share of imports.
5. Technical Measures	Measures referring to product characteristics such as quality, safety or dimensions, including the applicable administrative provisions, terminology symbols, testing and test methods, packaging, marking and labelling requirements
5.1 Technical regulations	Regulations that provide technical requirements, either directly or by referring to or incorporating the content of a standard, technical specification or code of practice, such as SPS regulation, a requirement of prior recognition of the exporter or certificate issuing service by the importing country
5.2 Product characteristics requirements	Technical specifications prescribing technical requirements to be fulfilled by a product
5.3 Marking requirements	Measures defining the information for transport and customs, that the packaging of goods should carry (country of origin, weight, special symbols for dangerous substances, etc.)
5.4 Labelling requirements	Measures regulating the kind and size of printing, or information on packages and labels
5.5 Packaging requirements	Measures regulating the mode in which goods must be or cannot be packed, and defining the packaging materials to be used

Category/ Sub-Category	Description
5.6 Testing, inspection and quarantine requirements	Compulsory testing of product samples by a designated laboratory in the importing country, inspection of goods by health authorities prior to release from customs or a quarantine requirement in respect of live animals and plants
5.7 Pre-shipment inspection	Compulsory quality, quantity and price control of goods prior to shipment from the exporting country, effected by an inspecting agency mandated by the authorities of the importing country
5.8 Special customs formalities	Formalities which are not clearly related to the administration of any measure applied by the given importing country such as the obligation to submit more detailed product information than normally required on the basis of a customs declaration, the requirement to use specific points of entry

Source: ASEAN Secretariat; www.aseansec.org

2.2.2 Key NTMs in China and concerns of Thai exporters

China's use of NTMs is widely recognized in the global market especially since its accession to the WTO in 2001. There have been various cases brought to the attention of WTO committees and also studies on China's NTMs conducted by WTO Member countries. For example, Ando and Fuji (2003) have examined NTMs in APEC member countries, including China. Research findings have confirmed that countries imposing low import tariffs tend to use more NTMs. For China, the most NTMs imposed are technical measures, including TBT and SPS measures. The sector of the Chinese economy that employs the most technical measures is the steel industry. Approximately 30% of NTMs are applied to all product lines in this sector. Other sectors in which technical measures are intensively used include machinery, transportation, and agriculture, respectively.

Considering that China is an important export destination for and an FTA partner of Thailand, both the Thai government and the private sector have monitored the issues closely. Exporters may consult the Federation of Thai Industries at monthly meetings organized around specific product groups and may also directly file complaints with a Remedies Center operated by the Department of Foreign Trade, Ministry of Commerce. NTM issues raised in these two forums by Thai exporters may be summarized as follows:

2.2.2.1 Use of Sanitary and Phytosanitary (SPS) Measures

China has been using SPS measures for many groups of products including:

- **Fruits and vegetables**: requiring registration of farm and packing houses, labelling, and levels of residues.
- **Pharmaceutical products**: requiring compliance with "Good Manufacturing Practices" for both final products and manufacturing processes.
- **Cosmetics, soap, and skin care products**: requiring three (3) certifications:
  1) Safety and Health Quality Tests;
  2) Certificate for Imported Cosmetics; and
  3) Certificate for Labelling of Import and Export Cosmetics.
- **Wood packaging materials and papers**: processing procedures to conform to International Standards for Phytosanitary Measures (ISPM) No. 15.
- **Fish, crustaceans and mollusks**: requiring a Health Certificate from the Thai Fishery Department and double-check and random inspection by China customs.
- **Foods**: applying food safety standards and inspection by China State Administration for Industry and Commerce, requiring traceability.

2.2.2.2 Use of Technical Barriers to Trade (TBT) Measures

TBT measures are one of the major NTMs faced by Thai exporters dealing with China. Such measures are mainly imposed on industrial products. Examples on China's TBT are as follows:

- **China Compulsory Certificate (CCC) mark on industrial products**: requiring that the mark be attached to 155 products, with expansion of the product coverage to be expected. The product must be certified by Accredited Certification Bodies in order to ensure consumer health and safety
- **Ceramics**: applying product standards based on ISO 10545-1 to 17.
- **Instant food and pre-packaged food**: specifying certain packaging and labelling requirements.
- **Electrical appliances and electronics**: imposing China Regulation on Hazardous Substances RoHs on electronic products to protect consumer health and the environment. China notified the WTO Technical Barriers to Trade (TBT) Committee on this new rule on September 28, 2005 (Notification No. G/TBT/N/CHN/140). An official ministerial order was later announced on

February 28, 2006 (Ministry of Information Industry Order # 39 on 'Management Measures for Controlling Pollution caused by Electronic Information Products) which bars poisonous substances from being used in Electronic Information Products (EIP) such as radars, communication appliances, radio, television sets, computers, household appliances, and electronic parts, electronic materials, software, etc. The rule became effective on March 1, 2007[5].

2.2.2.3 Import Licensing and Tariff Rate Quotas

There are three categories of import licensing in China (a complete list of products subject to each category of import licensing is provided in Appendix 2.2).

Import License Administration is applicable to all products subject to import restrictions. This type of license is non-automatic and needs approval from the MOFCOM. As of October 2007, there are ten products listed in this category. All of them are organic chemicals or chemical products.

Automatic Import Licensing is applicable to products free from import restrictions but the importation of which is monitored for statistical purposes. Exporters must submit all required documents, which can be done online, and the license will be granted automatically. The list of products required automatic import licensing has been continuously updated and are announced at least 21 days prior to enforcement[6], which is in accordance with the WTO Import Licensing Procedures Agreement. The list announced as of October 2007 includes 616 tariff lines covering a wide range of products including meat, vegetable oils, tobacco, ores, plastic, rubber, iron and steel, aluminum, copper, and machinery. Validity of this license is only for 6 months[7].

Import Tariff Rate Quota Administration is applicable to 45 tariff lines including grain, cotton, sugar, wool, and chemical fertilizers.

[5] Thai Regulation on Hazardous Substances website (www.thairohs.org) http://www.thairohs.org/index.php?option=com_content&task=view&id=66&Itemid=124&PHPSESSID=5384c2c3f3d239d6bbc100d715f5b72f

[6] in accordance with the WTO Import Licensing Procedures Agreement

[7] According to notification of China to WTO Committee on Import Licensing, 5 Oct 2007

2.2.2.4 Value Added Tax (VAT)

Value added taxpayers in China fall into 3 groups of individuals. Those who: 1) sell goods; 2) render services, such as processing, repair and spare parts replacement: and 3) import goods. The rates are 17% for processed/manufacturing products and services and 13% for 19 agricultural products such as fresh fruits and vegetables. This is certainly a trade barrier as it imposes a significant additional cost burden to importers even though the tariff rate is low. VAT is not collected from the exporter and there are also other regulations that provide incentives to domestic producers; for example, VAT rebates for integrated circuits that produced or designed domestically which was a WTO case complained by the US and China finally agreed to eliminate such practice.

Among the above-cited NTMs, measures of serious concern to Thai exporters are SPS measures imposed on the export of fruits and vegetables and the requirement of the CCC mark on electrical appliances. In-depth analysis through case studies of these two NTM problems will be undertaken in Chapter 3 and 4.

2.3 Obligations of China under ACFTA and WTO Frameworks

2.3.1 NTMs in ACFTA

There are four (4) agreements made between ASEAN and China pursuant to ACFTA[8]:

- Framework Agreement on Comprehensive Economic Co-operation, November 2002
- Protocol to Amend the Framework Agreement on Comprehensive Economic Co-operation, Bali, 6 October 2003
- Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-operation, Vientiane, 29 November 2004
- Agreement on Dispute Settlement Mechanism of the Framework Agreement, Vientiane, 29 November 2004

NTMs issues are referred to in the Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-operation between ASEAN and China, under Article 18 on quantitative restrictions and non-tariff barriers. There is no specific agreement on these issues. Generally, all quantitative restrictions are not allowed unless otherwise permitted under the WTO disciplines, and non-tariff barriers other than such quantitative restrictions must be identified for elimination as soon as possible.

[8] All legal texts and ministerial declarations can be downloaded at http://www.aseansec.org/4979.htm

What is useful in this regard about ACFTA is its dispute settlement mechanism. The dispute settlement agreement provides a channel and outlines a process in dealing with trade problems between ASEAN members and China arising from measures taken by central, regional or local governments or authorities of the two parties. This procedure takes less time than that of WTO Dispute Settlement Body (DSB). A "complaining party" may submit a request for consultations and the "party complained against" must reply and enter into consultations within 30 days. If the consultations fail, an arbitral tribunal will be appointed. Each party will appoint one arbitrator and agree on an additional arbitrator who will serve as Chair. The final report of the arbitral tribunal must be released within 120 days for general cases or within 60 days for cases of urgency, such as cases relating to perishable goods.

2.3.2 China and the WTO[9]

Although China was one of the 23 original founding members of GATT 1947, political fluctuations and the great revolution of 1949 displaced the People's Republic of China from the GATT system. Nearly 40 years later, in 1986, China notified the GATT of its wish to resume its status as a GATT Contracting Party and become a Member of the WTO in December 2001 after 15 years of negotiations.

Obligations of China upon WTO accession were not only to conform to all WTO principles and agreements but also to specific commitments set forth in the Protocol on the Accession of The People's Republic of China[10]. Provisions relate to NTMs and key measures regarded as trade barriers may be summarized in the table below.

[10] Protocol on the Accession of The People's Republic of China , WT/L/432**,** can be downloaded at the WTO website, www.wto.org

Table 2.2 China's Obligations on NTMs and other trade barrier issues under the Protocol

Issue	Obligation	Referring Article
Uniform Administration	All rules and regulations of China at national and sub-national levels must conform to the provisions in WTO Agreement and the Protocol.	Article 2(A)
Special Economic Areas	Laws, regulations and other measures relating to special economic areas must be notified to the WTO. All taxes, charges and measures applied to imported products introduced into other parts of China from the special economic areas must be the same as those normally applied to imports entering other parts of China.	Article 2(B)
Transparency	All trade related laws and regulations must be published and made available to other WTO Members. Enquiry point must be established.	Article 2(C)
Non-Discrimination (National Treatment)	Foreign individuals and enterprises must be treated no less favorably that local counterparts in respect of: Procurement of goods and services needed for production Price of goods and services supplied by national and sub-national authorities in the areas of transportation, energy, basic telecommunications, and other utilities.	Article 3
Right to Trade	All foreign and local enterprises in China must have the right to trade, export, and import all goods throughout the country within 3 years upon accession (2004). Exemption is allowed for products in the list provided in Annex 2A1, 2A2.	Article 5
Non-Tariff Measures	Quantitative and price control measures listed in Annex 3 must be phased-out/eliminated. Import and export prohibitions and restrictions, and licensing requirements, affecting imports and exports can only be imposed and enforced by national authorities or sub-national authorities with authorization from national authorities The distribution of import licenses, quotas, tariff rate quotas must not be conditioned on export performance, transfer of technology, R&D, and local content. All NTMs allowed under WTO Agreements must be allocated and administered with a strict conformity to such agreements	Article 7
Import Licensing	Import licensing measures must be operated in compliance with the WTO Agreement on Import Licensing Procedures. On a regular basis, China must publish official journal of list of products, authority in charge, and procedures and criteria for obtaining import and export permits. The journal must be forward to WTO Committee on Import Licensing in an WTO official language within 75 days	Article 8

Issue	Obligation	Referring Article
	Automatic import licensing procedures must be notified annually to WTO Committee on Import Licensing Minimum duration of validity of import licenses is 6 months	
Price Controls	Prices for traded goods and services in every sector must be determined by market forces, and multi-tier pricing practices for such goods and services must be eliminated. Price controls are allowed for products listed on Annex 4.	Article 9
Subsidies	All practices must strictly conform to SCM (Subsidies and Countervailing Measures) Agreement. China must notify WTO of subsidies falling within the scope of SCM Agreement, including government direct transfers, loans, funding, supply of goods and services, and government revenue that is not collected.	
Internal Taxes charged to import and export (Including VAT)	The charge applied or administered by national or sub-national authorities must be in conformity with Article III, GATT 1994 on National Treatment on Internal Taxation and Regulation that Charges should not be applied as a means to protect domestic production. Rates should not be higher when applied to imported products than to domestic products.	Article 11
Agriculture	All export subsidies on agricultural products can not be maintained. Fiscal or other transfers between or amongst state-owned enterprises and other enterprises that operate as state trading enterprises in the agricultural sector must be notified through Transitional Review Mechanism.	Article 12
TBT	All TBTs must be published in an official journal. All technical regulations, standards, and conformity assessment procedures must comply with the TBT Agreement and must be applied to both imported and domestic products. Imported products must not be subject to more than one conformity assessment.	Article 13
SPS	All laws, regulations and other measures relating to SPS must be notified to the WTO in areas of product coverage and relevant international standards, guidelines and recommendations.	Article 14
Transitional Review Mechanism	Trade policy and measures of China are subject to review annually by other WTO Members through the General Council of the WTO in light of its compliance with WTO Agreement and the Protocol. The review will take place after accession in each year for 8 years (2002-2009)	Article 18

2.3.3 WTO Compliance Reviews

China's accession to the WTO has attracted the attention of the global trading system, firstly because of the size of its economy and its possible impacts on world trade. This is due to the fact that China is both a major export destination and a source for imports for many countries. WTO members saw a huge export opportunity to access 1.3 billion consumers as the Chinese domestic market opened up and trade barriers were reduced or removed. However, in return, China also gained free access to the world market through acceding to the WTO. China's WTO membership could also be viewed as a threat by other countries which consider it as a trade rival, because of its massive labour resources and lower costs of production, resulting in its ability to offer low-priced products. Consequently, several WTO members tried to ensure that the China market is really 'open', i.e. its policies, measures, and regulations are formulated in accordance with its WTO obligations and commitments.

Secondly, the Chinese economy has been centrally-planned and "closed" long before its WTO accession. Most importantly, China became a WTO Member before all of its trade-related laws and regulations were made compatible with WTO requirements. Because of its unique market structure and its vast administrative bureaucracy, it has certainly proven to be a massive and difficult task for the Chinese government to comply with all of the provisions in WTO agreements and its Accession Protocol. Reforms are needed in many areas of China's policy formulation, structure of state administration, and regulatory enforcement system. Since 2001, although certain WTO non-compliance practices remain, significant structural reforms have been impressively undertaken[11]. China has repealed, revised or enacted more than one thousand laws, regulations and other measures and tariff rates, while non-tariff barriers have been reduced annually.

In 2007, the deadlines for almost all of China's commitments have passed. Moreover, China's transition period as a new WTO Member will expire in less than 2 years. Attempts of WTO members to scrutinize China's compliance with WTO obligations and commitments have been intense and have focused recently on more complicated issues as China's laws and regulations have been revised and improved and have been brought into formal compliance with WTO agreements and exemptions. Multilateral compliance reviews have been performed formally through the WTO Transitional

[11] (2006) 'Foreign Trade Barriers – China', the United States Trade Representative (USTR), p.101. http://www.ustr.gov/assets/Document_Library/Reports_Publications/2006/2006_NTE_Report/asset_upload_file684_9235.pdf

Review Mechanism (TRM). Other than through formal WTO procedures, China's compliance process has also been monitored by public and private organizations of individual countries, particularly, the U.S., and reported to national governmental bodies regularly.

As set forth in Article 18 of the Protocol on Accession, China agreed to an annual review of its progress in implementing its WTO obligations and commitments. The review is called 'Transitional Review Mechanism' (TRM) which is conducted for eight consecutive years from 2002 – a year after China's WTO Accession. The final review will be delivered at the end of the tenth year of its accession, or 2011.

Under the TRM, 16 subsidiary bodies (committees) have a mandate to review China's WTO commitments. China has committed to provide relevant information, including economic data and economic policy information as specified in Annex 1A of the Protocol, to each subsidiary body in advance of the review. Different trade topics and trade policies are required to be notified to and reviewed by each of the subsidiary bodies as follows:

Table 2.3: Various WTO Committees Responsible for Trade-Related Issues

Issues	WTO Committee
1. Tariff Rate Quota	Committee on Market Access
2. Non-Tariff Measures including Quantitative Import Restrictions	Committee on Market Access
3. Import Licensing	Committee on Import Licensing
4. Customs Valuation	Committee on Customs Valuation
5. Export Restrictions	Council for Trade in Goods
6. Safeguards	Committee on Safeguards
7. TBT	Committee on TBT
8. Trade-Related Investment Measures	Committee on Trade-Related Investment Measures
9. State Trading Entities	Council for Trade in Goods
10. Government Procurement	Council for Trade in Goods
11. Policy affecting Trade in Services	Council for Trade in Services
12. Trade-Related Intellectual Property Regime	Council for Trade-Related Aspects of Intellectual Property Rights
13. Specific questions in the context of TRM	General Council

The TRM is a continuing process throughout the year. WTO Members who wish to raise non-compliance issues or to seek clarification of measures adopted by China can submit questions to the WTO committee in charge of the issue concerned. At year's

end, each WTO committee conducts a meeting concerning the China TRM and reports to the General Council which provides an annual final review.

The latest General Council review meeting was conducted in December 2006 and circulated to the public in March 2007[12]. Representatives from six countries participated in the General Council meeting: the US, EU, Japan, Cuba, Benin (as a representative of the African Group), and China. The meeting clearly disclosed divergent viewpoints as between the group of developed countries and the developing countries. The US, EU, and Japan viewed the TRM in 2006 to be less than satisfactory as they were disappointed by the lack of sufficient information provided in China's replies to their questions made through various committees. More specifically, the US raised its concern over China's industrial policies that are trade-distorting, such as local content requirements, import and export restrictions, discriminatory regulations, and prohibited subsidies. Moreover, the US has expressed serious concern about the unpredictable practices of Chinese customs and quarantine officials in the area of agriculture as well as the application of SPS standards with questionable scientific bases.

However, Cuba and Benin retorted that China had performed impressively. Cuba also added that one had to bear in mind the size and complexity of the Chinese economy and that China had assumed, in some areas, higher commitments than even developed countries. China's efforts in fulfilling its WTO commitments were clearly evidenced by its modification and amendment of more than 2,000 regulations and its moving from an average applied tariff of 43.2% in 1992 to 9.9% in 2006.

At the committee level, throughout 2006-2007, there were about 80 written questions in all areas submitted in advance before the review meeting by only five countries: the US, EU, Japan, Canada, and Australia. The US has been the most active country in participating in the TRM , followed by the EU and Japan.

In the area of trade in goods, the Council for Trade in Goods collected reports from its subsidiary committees including, Market Access, Agriculture, Custom Valuation, SPS, TBT, Import Licensing, Rules of Origin, Anti-Dumping, SCM, Safeguards, and Trade-Related Investment Measures (TRIMs). The Council for Trade in Goods then organized a review meeting and produced a summary report to the General Council to finalize the TRM.

[12] See WTO document: WT/GC/M/106

Table 2.4: Countries participating in the TRM for Trade in Goods

Committee	Countries that submit questions in advance of the review meeting	Countries that participate verbally in the review meeting
Council for Trade in Goods	US, EU, Japan	China, US, EU, Japan
Committee on Market Access	US, EU, Japan	China, US, EU, Japan, Australia, Cuba
Committee on Agriculture	US	China, US
Committee on Customs Valuation	None	China, US, EU
Committee on SPS	US, EU	China, US, EU, Australia, Brazil
Committee on TBT	US, EU, Japan	China, US, EU, Japan
Committee on Import Licensing	US, Australia	China, US, Australia
Committee on Rules of Origin	None	None
Committee on Anti-dumping	US, EU, Japan	China, US, EU, Japan
Committee on SCM	US, EU	China, US, EU, Japan, Canada
Committee on Safeguards	Japan	China (no question on information submitted by China)
Committee on TRIMs	US, EU	China, US, EU, Korea, Malaysia

The U.S. expressed serious concern over China's compliance with respect to trade in goods. This was highlighted in various areas and the U.S. attempted to raise such goods-related NTMs issues with a number of different committees, including Market Access, TRIMs, Import Licensing, and Subsidies Committees. One common issue which arose was China's industrial policies. The U.S. gave examples of policies that limit market access to China as follows:

- A comprehensive automobile industrial policy that includes provisions discouraging use of imported parts and encourage the use of domestic technology.
- State management of steel policy
- A unique national standard in many areas of high technology even where international standard already existed.
- Prohibited export subsidies or import substitution subsidies
- Excessive government intervention such as in the area of agricultural trade
- SPS standards with questionable scientific bases

The EU also flagged six areas of concern as follows:

- ❖ Transparency of notice of significant changes to trade regulations
- ❖ Implementation and procedures of China's Compulsory Certification (CCC) system
- ❖ Limitations on foreign participation in joint ventures regarding automotive industry
- ❖ Clarification of responsible authorities for measures regarding steel industrial policy
- ❖ Preparation for accession to the WTO Government Procurement Agreement

Similar to the US and the EU, Japan raised questions to China on the import licensing scheme and import prohibition for used goods. Australia, on the other hand, was concerned that import licensing procedures for iron and copper ore may not consistent to WTO provisions. To these questions, China responded that some measures raised in this meeting were WTO consistent. Export restrictions were mainly aimed at the protection of environment and natural resources and the VAT rebate for steel exports was definitely not an export subsidy. Regarding transparency, all trade-related laws, regulations, and rules are published in the "Chinese Foreign Trade Co-operation Gazette" and available on the MOFCOM website. For the CCC Mark, China considered the CCC system to be in full conformity with WTO rules and that it had greatly facilitated trade as it was a system that was put in place to unify the two recognition systems. Further discussion on the CCC Mark will be presented in Chapter 4.

In short, the use of multilateral compliance review under the TRM by developing countries is still limited. Only the US, EU, and Japan have actively participated in the TRM process and posed questions to China. One explanation could be that since the US and EU have already submitted comprehensive questions and comments so that there was no need to repeat them so as to avoid any unnecessary conflicts. However, developing countries should bear in mind that there is another aspect of the TRM rather than pointing out illegal or inconsistent measures and asking for remedies. TRM may be an effective forum for bringing up issues that need clarification, whether they are consistent or inconsistent with WTO obligations/commitments, and ask for data or information that is difficult to access or in areas where transparency is insufficient. Dealing with measures believed to be inconsistent with WTO commitments or considered as trade barriers could be done more effectively through bilateral consultations provided through regional cooperation frameworks or FTAs.

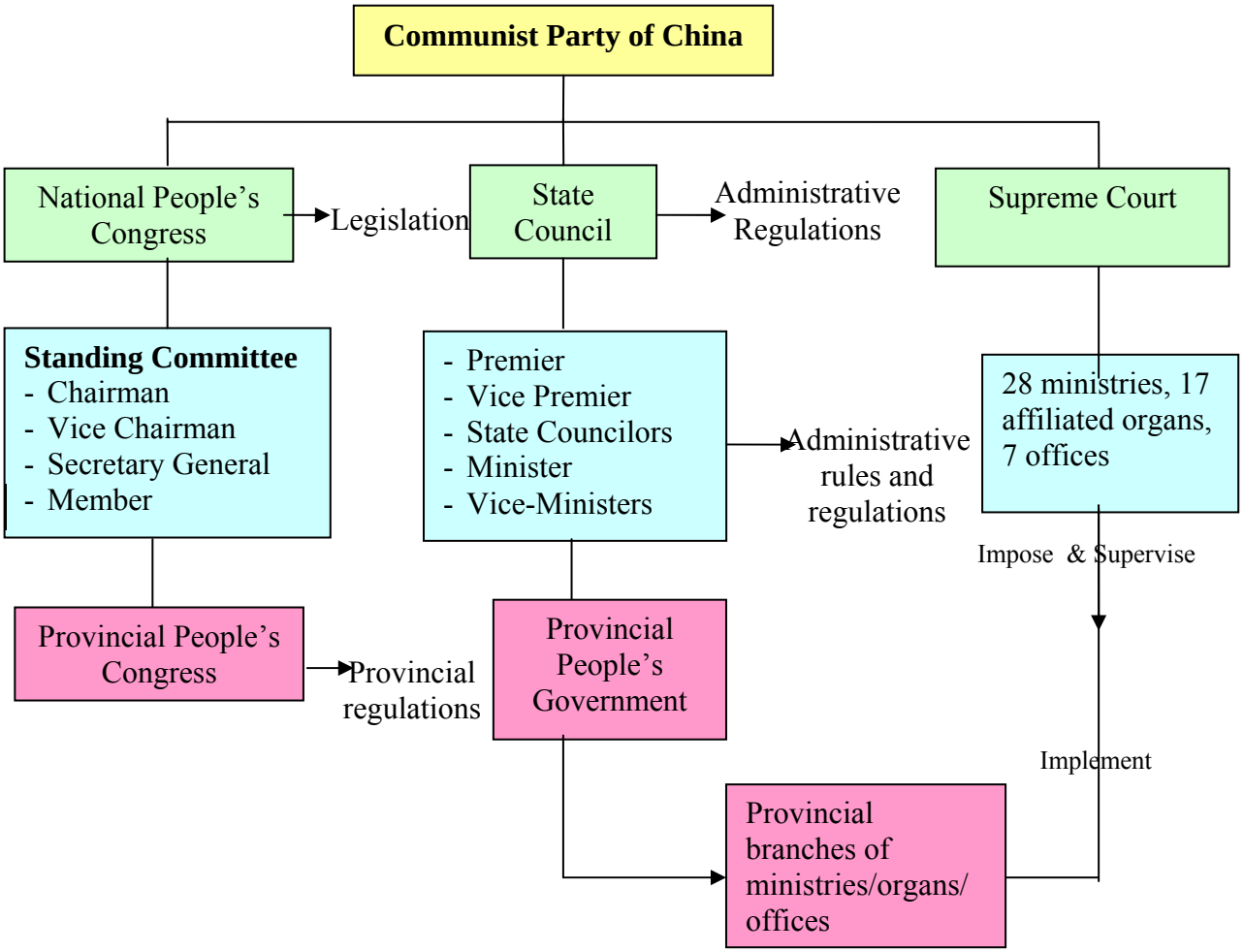
2.4 National vs. Provincial Laws and Importance of their Actual Practices at Provincial Level

To analyze Chinese laws and regulations, it is necessary to first understand the administrative system of China. China's administrative system is decentralized and consists of two tiers: national and sub-national. Supreme political power is vested in the Communist Party of China (CPC), which has both central and local organizations. The CPC operates in tandem with the State. The State is also vertically structured with central and local levels. At the national level, the Central People's Government is divided into three unequal parts: legislative (National People's Congress: NPC), administrative (State Council), and judicial (Supreme Court) branches. There are four levels of sub-national administration: 1) province/autonomous regions and centrally-directed municipalities; 2) municipalities; 3) districts; and 4) townships and villages. Each province has its own legislature and executive organs called the Provincial People's Congress and Provincial People's Government, respectively. In addition, China also has two Special Administration Regions (SARs), Hong Kong and Macau, which have their own independent economic and social policies, as well as judicial power, although international affairs and defense policy are subject to supervision by China's national administration.

Regarding the legal system, the National People's Congress has the legislative power and supervision powers as regards law implementation and enforcement. Regulations promulgated by the State Council are called "administrative law" or "regulatory law" and may not conflict with national legislation. Examples of such regulations are those relating to customs, tariffs, and value added tax. At the provincial level, the Provincial People's Congress has accountability in imposing local regulations and the Provincial People's Government has the authority to promulgate local administrative rules and regulations. All local rules and regulations must not conflict with national laws and regulations, otherwise they will be held to be void.

China's administrative and legal systems may be illustrated by the following diagram:

Figure 2.1 China's national and provincial organs of power



Provincial authority does not have legislative powers in some areas, such as telecommunication services, foreign affairs, foreign trade policy, and economic policy affecting foreigners or foreign countries. However, the national authorities may delegate powers of enforcement and implementation of the laws and regulations to the provincial authorities. For example, customs regulation is imposed by the national government (Customs General Administration) and local governments in their practices must follow rules and procedures outlined in such national laws and regulations. However, the national government delegates authority to the local authorities (i.e. provincial and municipal customs offices) in making decisions, among others, to confiscate, seize, or destroy goods that are illegally imported or may cause harm to the people.

According to TRMs conducted to date, as referred to in the previous section, many problems have arisen concerning unpredictability in the practices of customs and quarantine officers at sub-national levels in China. The role of the Chinese government in eliminating WTO illegal or inconsistent practices is another interesting issue to be monitored.

Table 2.5: Division of powers between national and provincial governments

Matters that national government has power of legislation and administration	
1) Foreign affairs	8) Demarcation of national, provincial, and hsien revenues
2) National defense and military affairs concerning national defense	9) State-operated economic enterprises
3) Nationality law and criminal, civil, and commercial law	10) Currency system and state banks
4) Judiciary system	11) Weights and measures
5) Aviation, national highways, state-owned railways, navigation, postal and telecommunication services	12) Financial and economic matters affecting foreigners or foreign countries
6) Central Government finance and national revenues	13) Other matters relating to the Central Government as provided by the Constitution
7) Foreign trade policies	
Matters that national government has power of legislation but may delegate administration power to provincial government	
1) General principles of provincial self-government	11) Registration, employment, supervision, and security of tenure of officials in Central and local governments
2) Division of administrative areas	12) Land legislation
3) Forestry, industry, mining, and commerce	13) Labor legislation and other special legislation
4) Educational system	14) Eminent domain
5) Banking and exchange system	15) Census-taking and compilation of population statistics for the whole country
6) Shipping and deep-sea fishery	16) Immigration and land reclamation
7) Public utilities	17) Police system
8) Cooperative enterprises	18) Public health
9) Water and land communication and transportation covering two or more provinces	19) Relief, pecuniary aid in case of death and aid in case of unemployment
10) Water conservancy, waterways, agriculture and pastoral enterprises covering two or more provinces	20) Preservation of ancient books and articles and sites of cultural value

Matters that provincial government has power of legislation and administration	
1) Provincial education, public health, industries, and communications	7) Provincial finance and revenues
2) Management and disposal of provincial property	8) Provincial debts
3) Administration of municipalities under provincial jurisdiction	9) Provincial banks
4) Province-operated enterprises	10) Provincial police administration
5) Provincial cooperative enterprises	11) Provincial charitible and public welfare works
6) Provincial agriculture, forestry, water conservancy, fishery, animal husbandry, and public works	12) Other matters delegated to the provinces in accordance with national laws

Source: Constitution of the Republic of China

In conclusion, the working definition of NTMs in this study is "government measures other than tariffs that restrict trade flows", which follows the definition provided by the ASEAN Secretariat that groups NTMs into five categories, namely para-tariff measures, price control measures, finance measures, monopolistic measures and technical measures. After accession to WTO in 2001, China's tendency to use NTMs is constantly on the rise, especially the use of technical measures. However, there has been a mechanism in place to review Chinese laws, regulations, policies, and practices in terms of their WTO compliance called "Transitional Review Mechanism" which is a continual process for eight consecutive years. The TRM results in 2006 highlighted global concerns about NTMs issues as follows:

- *Automobile Parts NTMs*
  - Discouraging use of imported parts, i.e. if imported automobile parts exceed a specified threshold, the Chinese government will assess a charge on the imported auto parts equal to the tariff on complete vehicles, rather than the lower tariff otherwise applied to auto parts. (US)
- *Transparency*
  - Transparency in notice of significant changes to trade regulations (EU)
- *TBT Issues*
  - Implementation and procedures of China's Compulsory Certification system (US, EU, Japan)
  - Unique national standards in many areas of high technology even where international standards already exist (US)

- ♦ *Agriculture Trade*
    - SPS standards with questionable scientific bases (US)
    - Unpredictable practices of Chinese customs and quarantine officials in the area of agriculture (US)

Concerns over SPS and TBT issues, transparency of import licensing system, and national treatment on VAT enforcement have been raised by Thai exporters. Among these NTMs, the most important barriers are the SPS and TBT, in particular the case of exporting fruits and vegetables and the CCC requirements on industrial products. Both issues will be explored in detail in Chapter 3 and 4.

Note
Ch.2

Note – Chapter 2
a) 2.1: Working Definition of NTMs in International Organizations and Countries[13]

1. TRAINS (Trade Analysis and Information System) Definition

The NTB data incorporated in TRAINS is based on categories of NTMs according to UNCTAD Coding System of Trade Control Measures (CSTCM). The CSTM uses the terminology "Non-Tariff Measures", instead of "Non-Tariff Barriers", and provides working definition for each category according to its classification. Non-Tariff Measures are categorized with a set of working definitions, and are listed wherever information from reliable sources is available (e.g. official journals, circulars, notifications to the WTO and inputs from intergovernmental institutions). TRAINS also makes distinction between Core-Measures and Non-Core Measures. Core Measures are those that are principally intended to protect local producers. Non-Core Measures intend to protect local consumers.

2. WTO Agreements

There is no legal definition of NTMs in the WTO Agreements. Member countries define measures which affect trade in goods as NTMs in a manner consistent with the Agreements. In other words, the major criterion of NTMs is WTO consistency in accordance with the provisions of relevant agreements, as well as decisions taken under the Dispute Settlement Understanding. In the Doha negotiations, notifications of NTMs are submitted by interested Members according to an agreed inventory. This inventory is distinct from UNCTAD's TCMCS (or CSTCM), and negotiating approaches to NTMs are identified on the basis of the following five categories:

1) dispute settlement
2) request/offer, bilateral, or plurilateral
3) vertical or sectorial approaches
4) horizontal or multilateral approaches
5) tariffication of NTMs

[13] Background note for UNCTAD's Group of Eminent Persons on Non- Tariff Barriers First meeting (Geneva, 12 July 2006)

3. EU Market Access Database

The database does not contain definition of NTMs, but information is collected on the basis of European exporters' reports on barriers which they consider as harmful for their business activities.

4. Annual National Trade Estimates Reports of Foreign Trade Barriers of the United States

NTMs are broadly defined as government laws, regulations, policies, or practices that either protect domestic products from foreign competition or artificially stimulate exports of particular domestic products. Information is also based on the US exporters' reports

Note – Chapter 2

b) 2.2: Coverage of Chinese Licensing Notified to WTO

As of October 2007[14]

Import license administration

Tariff Headings:

29031910, 29033090, 29034100, 29034200, 29034300, 29034400, 29034510, 29034600, 29034910, 3824710

Automatic import licensing

Tariff Headings:

02071100, 02071200, 02071311, 02071319, 02071321, 02071329, 02071411, 02071419, 02071421, 02071422, 02071429, 05040021, 15071000, 15079000, 15111000, 15119010, 15119090, 15141100, 15141900, 15149110, 15149190, 15149900, 24011010, 24011090, 24012010, 24012090, 24013000, 24021000, 24022000, 24029000, 24031000, 24039100, 24039900, 48131000, 48132000, 48139000, 56012210, 26030000, 27011100, 27011210, 27011290, 27011900, 39011000, 39012000, 39019020, 39021000, 39031100, 39031900, 39041000, 39042100, 39042200, 40011000, 40012100, 40012200, 40012900, 47071000, 47072000, 47073000, 47079000, 55020010, 72041000, 72042100, 72042900, 72043000, 72044100, 72044900, 72045000, 74020000, 74031100, 74031200, 74031300, 74031900, 74032100, 74032200, 74032900, 74040000, 74061010, 74061020, 74061090, 74062010, 74062020, 74062090, 74071000, 74072100, 74072900, 74081100, 74081900, 74082100, 74082200, 74082900, 74091100, 74091900, 74092100, 74092900, 74093100, 74093900, 74094000, 74099000, 74101100, 74101210, 74101290, 74102100, 74102210, 74102290, 74111011, 74111019, 74111090, 74112110, 74112190, 74112200, 74112900, 76020000, 84021190, 84021200, 84021900, 84022000, 84031010, 84031090, 84041010, 84042000, 84068110, 84068120, 84068130, 84068200, 84073300, 84073410,

[14] (2007) 'Responses to Questionnaire on Import Licensing Procedures' Notification Pursuant to Article 7.3 of the Agreement on Import Licensing Procedures, People's Republic of China, October 8. G/LIC/N/3/CHN/6
http://docsonline.wto.org/GEN_viewerwindow.asp?http://docsonline.wto.org:80/DDFDocuments/t/G/LIC/N3CHN6.doc

84073420, 84079090, 84081000, 84082010, 84082090, 84089010, 84089092, 84089093, 84099191, 84099999, 84109010, 84109090, 84118200, 84122910, 84122990, 84123900, 84137090, 84143090, 84171000, 84178030, 84178090, 84194090, 84195000, 84196090, 84212910, 84223019, 84223030, 84261929, 84261930, 84261942, 84262000, 84263000, 84264110, 84264190, 84264910, 84271010, 84271090, 84281010, 84284000, 84291110, 84291190, 84292090, 84294011, 84294019, 84294090, 84295211, 84295212, 84295219, 84295290, 84295900, 84303100, 84314100, 84314990, 84391000, 84392000, 84393000, 84414000, 84418090, 84431100, 84431310, 84431390, 84431921, 84431922, 84431922, 84431929, 84431980, 84439110, 84439190, 84439910, 84451111, 84451112, 84451113, 84451119, 84451120, 84451210, 84451220, 84452031, 84452041, 84454010, 84459010, 84459020, 84459090, 84463020, 84463030, 84463040, 84463050, 84463090, 84471100, 84471200, 84472010, 84472020, 84481100, 84514000, 84515000, 84552120, 84552130, 84552190, 84552210, 84561000, 84563010, 84569910, 84569990, 84571010, 84571020, 84571030, 84571090, 84572000, 84573000, 84581100, 84589100, 84592100, 84593100, 84594010, 84595100, 84596110, 84596190, 84601100, 84602110, 84602120, 84602190, 84602910, 84602920, 84614010, 84621010, 84621090, 84622190, 84622990, 84623110, 84623120, 84623190, 84624119, 84629110, 84629910, 84714110, 84714120, 84714190, 84714910, 84714920, 84714991, 84715020, 84717030, 84719000, 84771010, 84771010, 84781000, 84789000, 84791021, 84791029, 84798200, 84798961, 84798990, 84807100, 84807100, 84861010, 84861020, 84861030, 84861040, 84861090, 84862010, 84862021, 84862022, 84862029, 84862031, 84862039, 84862041, 84862049, 84862050, 84862090, 84863010, 84863021, 84863022, 84863029, 84863031, 84863039, 84863041, 84863049, 84863090, 84864010, 84864021, 84864022, 84864029, 84864031, 84864039, 85016100, 85016200, 85016300, 85016410, 85016420, 85016430, 85021200, 85021310, 85021320, 85042100, 85042200, 85042311, 85042312, 85042313, 85042329, 85043110, 85043190, 85043290, 85043300, 85043400, 85152190, 85153190, 85153900, 85171210, 85171290, 85176110, 85176190, 85176212, 85176221, 85176222, 85176229, 85176232, 85176234, 85176239, 85176291, 85176299, 85176910, 85177020, 85177030, 85177090, 85219090, 85255000, 85256010, 85256090, 85258013, 85261010, 85261090, 85269190, 85269200, 85285110, 85287110, 85287221, 85287222, 85287229, 85287231, 85287232, 85287239, 85287291, 85287292, 85287299, 85291010, 85291090, 85291090, 85299010, 85299050, 85299090, 85301000, 85308000, 85311090,

85352900, 85371011, 85371019, 85371090, 85372010, 85401100, 85404000, 85437092, 85437099, 85437099, 86011020, 86011090, 86031000, 86040019, 87012000, 87021020, 87021091, 87021092, 87021093, 87029010, 87029020, 87029030, 87032130, 87032190, 87032230, 87032240, 87032250, 87032290, 87032314, 87032315, 87032316, 87032319, 87032334, 87032335, 87032336, 87032339, 87032430, 87032440, 87032450, 87032490, 87033130, 87033140, 87033150, 87033190, 87033230, 87033240, 87033250, 87033290, 87033330, 87033340, 87033350, 87033390, 87039000, 87041030, 87041090, 87042100, 87042230, 87042240, 87042300, 87043100, 87043230, 87043240, 87049000, 87051021, 87051022, 87051023, 87051091, 87051092, 87051093, 87052000, 87053010, 87053090, 87054000, 87059010, 87059020, 87059030, 87059040, 87059051, 87059059, 87059060, 87059070, 87059080, 87059090, 87060021, 87060022, 87060030, 87060040, 87060090, 87071000, 87079010, 87079090, 87083099, 87084091, 87084099, 87085072, 87085074, 87085075, 87085076, 87085079, 87085089, 87089991, 88021100, 88021210, 88022000, 88023000, 88024010, 88024020, 88052900, 89011010, 89012011, 89012021, 89012031, 89012090, 89019021, 89019031, 89019041, 89019050, 89019080, 89019090, 89020010, 89040000, 89051000, 89052000, 89059010, 89059090, 90148000, 90181100, 90181291, 90181300, 90221200, 90221300, 90221400, 90221910, 90229090, 90304090, 90314990, 95041000, 95043010, 95043090, 84431100, 84431910, 84431990, 89011010, 89019090, 89020010, 89052000, 89059010, 89059090, 27090000, 27101110, 27101120, 27101911, 27101912, 27101921, 27101922, 27101929, 28182000, 28342110, 31022100, 31022900, 31024000, 31025000, 31026000, 31028000, 31029010, 31029090, 31031000, 31031090, 31039000, 31042010, 31042090, 31043000, 31049010, 31049090, 31051000, 31054000, 31055100, 31055900, 31056000, 31059000, 72181000, 72189100, 72189900, 72191100, 72191200, 72191319, 72191321, 72191329, 72191411, 72191419, 72191421, 72191429, 72192100, 72192200, 72192300, 72192410, 72192420, 72192430, 72193100, 72193200, 72193300, 72193400, 72193500, 72199000, 72201100, 72201200, 72202010, 72202090, 72209000, 72210000, 72221100, 72221900, 72222000, 72223000, 72224000, 72230000, 72251100, 72261100, 73041110, 73041120, 73041130, 73041190, 73042210, 73042290, 73042400, 73044110, 73044190, 73044910, 73044990, 73061100, 73062100, 73064000, 26011110, 26011120, 26011190, 26011200, 26012000, 26060000.

Import tariff rate quota

Tariff Headings:

10011000, 10019010, 10019090, 11010000, 11031100, 11032010, 10051000, 10059000, 11022000, 11031300, 11042300, 10061019, 10061099, 10062090, 10063090, 10064090, 11023090, 11031929, 10061011, 10061091, 10062010, 10063010, 10064010, 11023010, 11031921, 17011100, 17011200, 17019100, 17019910, 17019920, 17019990, 51011100, 51011900, 51012100, 51012900, 51013000, 51031010, 52010000, 52030000, 31053000, 31021000, 31052000, 51052000, 51052100, 51052900.

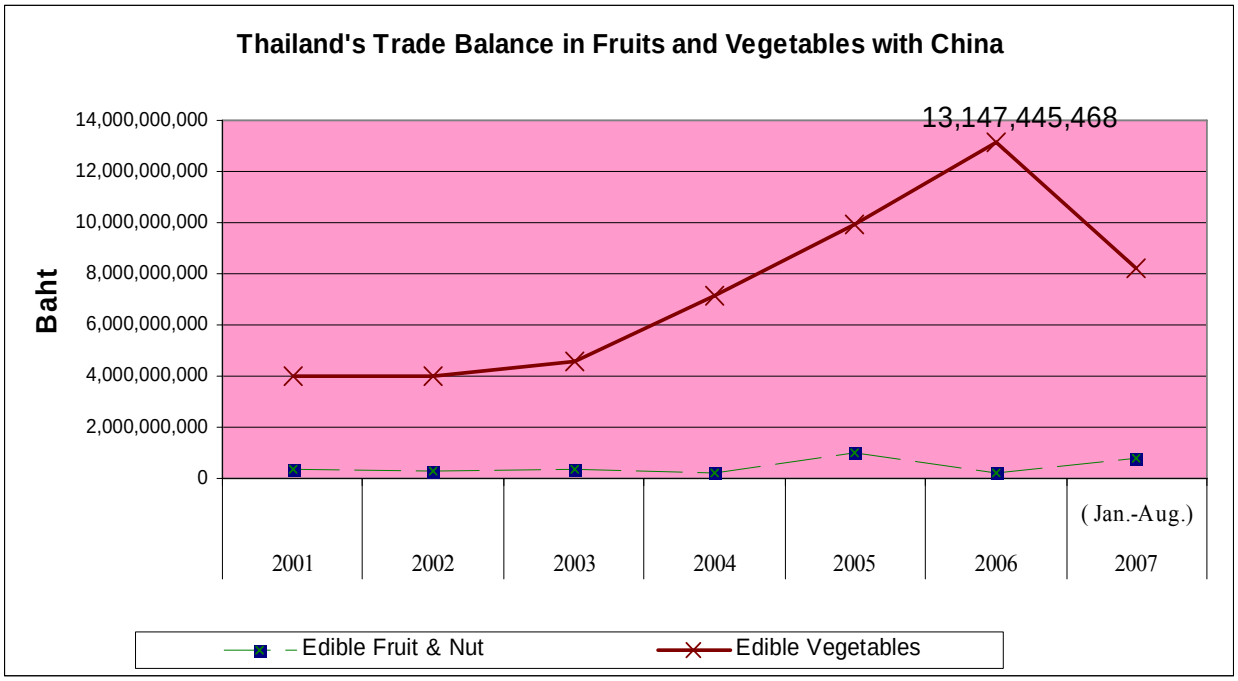
3. Thailand-China Fruit Trade and China's Non-Tariff Measures

3

3.1 Overview of Thailand-China Fruit and Vegetable Trade

When the Early Harvest programme under the ASEAN-China Free Trade Agreements came into effect on October 1, 2003, the tariffs on imported fruits and vegetables (HS 07-08) between Thailand and China were reduced to 0%. As a result, trade in fruits and vegetables between the two countries has flourished to an unprecedented level. The value of Thailand's vegetable imports from China (HS 07) rose more than 10 fold within 5 years, from 249 million baht in 2001 to 2.6 billion baht in 2006. Similarly, Thailand's export of vegetables to China almost quadrupled during the same period, from 4.2 billion baht in 2001 to 15.7 billion baht in 2006. As for fresh fruits, the trade between the two countries was already at a considerably high level during the pre-ACFTA period. Thailand's import of fresh fruits from China was worth 1.03 billion baht in 2001, but tripled to 3.5 billion baht in 2006. The explosion of fruit trade between the two was not confined to just the import of fruits from China alone. Thailand's export of fruits to China almost tripled, from 1.38 billion baht in 2001, to 3.74 billion baht in 2006 (See Table 3.2 in Note – Chapter 3 at the end of this chapter[15]).

Figure 3.1 Thailand's Trade Balance in Fruits and Vegetables with China

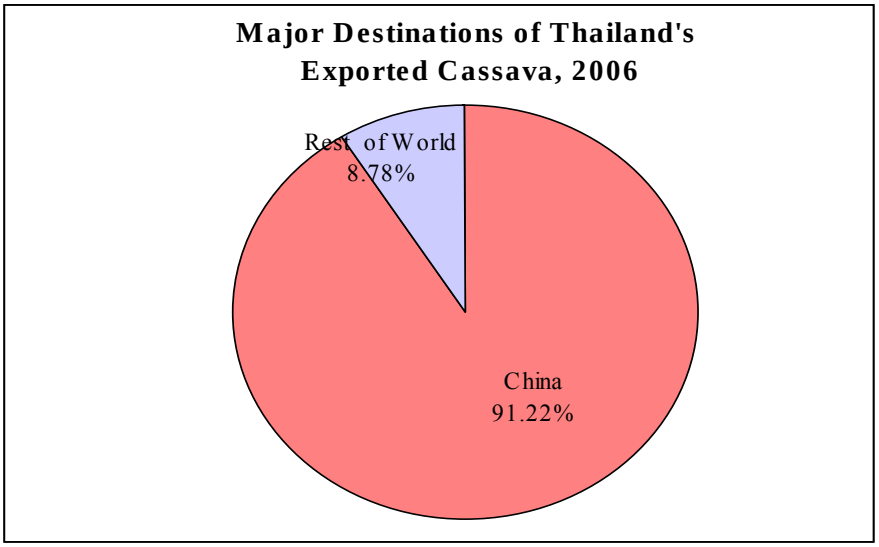


Source: Thailand Customs Department

[15] For Table 3.1-3.9, and Table 3.15, See 'Note – Chapter 3' at the end of this chapter.

Despite the high volume of Thailand's fruit and vegetable exports to China, most exports concentrated on only a few product lines. In the vegetable group, manioc (cassava: HS 07.14) dominates Thailand's vegetable export to China. In 2006, the value of manioc export to China reached 15.7 billion baht, and during the first 8 months of 2007 (January-August), the figure reached 10 billion baht (See Table 3.3). Compared to the value of Thailand's total manioc export to the world, which amounted to 15.7 billion in 2006, the Chinese market accounted for 91% of Thailand's total manioc export (Table 3.4).

Figure 3.2: Major Destinations of Thailand's Exported Cassava, 2006



China imports manioc from Thailand in the form of manioc pith or dried chips (HS 0714.1011.000), which is used as a raw material for the production of alcohol – a product with high domestic demand in China16. The country also imports from Thailand a large amount of manioc pellets for the production of animal feed to respond to its growing agri-business industry17. The growth of Chinese agribusinesses is not only caused by the rise in demand for Chinese animal products abroad, but also by the increasing domestic demand for meat. The expanding affluent urban population as a result of China's economic boom is reflected in a change in the Chinese people's diet, from the traditional diet which consists mostly of starchy staples – a typical characteristic of developing countries' food consumption pattern –, to one which involves greater calorie intake from increasing consumption of meat, dairy products,

[16] 'Thailand's Cassava Industry after China's Accession to the WTO' (อุตสาหกรรมมันสำปะหลังภายหลังจีนเข้าเป็นสมาชิกองค์การการค้าโลก), Department of Trade Negotiations, Ministry of Commerce, Thailand. http://www.thaifta.com/thaifta/Portals/0/File/ascn_potato2.doc

[17] ibid. Cassava pellets are mixed with soybean meals and fish protein before being produced as animal feed.

fruit and vegetables, and vegetable oils but lower quantities of food grains18. Based on FAO statistics, the average consumption of animal products in China rose from 135 calories in 1975 to 618 calories in 200219. China's average intake of meat products, in terms of calories, had risen to the highest level for any country in East, South, or South East Asian regions20. With the rising demand for animal products comes an increasing need for animal feed, of which manioc, corns and soybeans are the main ingredients, and which is the market to which Thailand and other Asian countries compete for access. Thailand's Minister of Commerce Krirk-krai Jeerapate estimated that China's import of manioc piths, dried manioc chips and pellets would rise to over 1 million tonnes annually in the next 2-3 years. However, he also discovered that even though China viewed the price of Thai manioc as reasonable, it also considered manioc from Vietnam to be of a better quality21. In addition, Laos and Cambodia are also seeking market access for their corn and cassava exports to China. The fierce competition in these cash crop exports poses a threat to Thailand's exportability of cassava to China in the near future.

Second to manioc in terms of export value in the vegetable group is dried vegetables (HS 07.13); however, the volume of export of this category is substantially lower than that of manioc (Table 3.3). Thailand's export of fresh vegetables to China is virtually non-existent, mainly because of China's self-sufficiency in this area. Regions such as Yunnan, with its year-round temperate climate, produce fresh vegetables for both domestic and foreign markets. Hence, rather than exporting vegetables to China, Thailand imports a large amount of fresh vegetables from the country, mostly in the HS 07.06 category such as carrots, turnips, salad beetroot etc., the HS 07.03 category such as onions, shallots, garlic etc., and the HS 07.04 category e.g. cabbages and cauliflowers. The value of Chinese carrots and related roots imported to Thailand was 637.3 million baht in 2006, while that of onions, shallots, garlic etc., as well as cabbages and cauliflowers were 372.7 and 256.8 million baht respectively (Table 3.7). Though the value of Thailand's vegetable export to China far exceeds that of its vegetable import from the country, resulting in a trade surplus with China for Thailand in that sector, even before the inception of the ACFTA, the surplus is nonetheless generated almost exclusively by cassava exports rather than by any other

[18] Australian Government Department of Agriculture, Fisheries and Forestry (2006) 'Agriculture in China: Developments and Significance for Australia' ABARE Research Report 06.2, March, 14-5.
[19] Ibid, 15
[20] Ibid., 14.
[21] Krirk-krai Jeerapate (2007) 'Opening Remarks: 'Clean Cassava Village' Seminar', Boling Village No. 10, None-somboon sub-district, Serng-sang District, Nakorn-ratchasima, July 21. http://www.moc.go.th/MocCMS/fileupload/ETC/18182.doc

vegetables. Once excluding cassava from the vegetable trade between the two countries, Thailand's total vegetable export revenue to China amounted to only 40 million baht (40,869,752 Baht) in 2006 (Table 3.3). This compares with 2.6 billion baht's worth of vegetable imports from China during the same period (Table 3.7), most of which being crops for consumption rather than raw materials for the agro-industrial sector.

Regarding fruit trade, Thailand has also enjoyed a trade surplus with China even before the beginning of ACFTA. The leading fruits that command high market shares in the Chinese market are Durian, Longan, Dried Longan, and Lychee, although they are not without competition. With increasing trade between China and Taiwan, Taiwanese fruits which are similar to many of the leading tropical Thai fruits, such as durian, are gaining access to the Chinese market. Their similar quality but with a better packaging and marketing scheme help the more expensively-priced Taiwanese fruits capture an increasing market share in China[22]. Other neighbouring countries such as Vietnam are also Thailand's competitors in the area of fruit export, although the quality of their fruits remains lower than that of the Thai equivalents. In addition, production of tropical fruits within China itself such as Longan and pomelo also poses as a challenge for Thailand in maintaining its market share in China. Even though Thailand exported 160,000 tonnes of longan to China in 2004, the domestic longan production in China also reached 1 million tonnes in the same year. Production of tropical fruits in China mostly concentrate in the South, such as the provinces of Hainan, Guangdong, Fujian, Yunnan, and Guangxi Zhuang Autonomous Region. A 2003 report by the Agriculture Section of the Thai Consulate in Beijing stated that most commercial tropical fruits can now be grown in China[23]. In terms of import, Thailand mainly imports from China temperate fruits such as apples, pears, grapes, and citrus fruits like oranges, mandarins, tangerines, and lemons, with the import value of 3.2 billion baht in 2006 (Table 3.8, See Note – Chapter 3).

In conclusion, Thailand's offensive interest in China's agricultural market lies mainly in the trade of fresh and dried fruits rather than in vegetables. Export of fresh vegetables from Thailand to China is miniscule, due to the fact that China is a major fresh vegetable producer itself and a large number of its vegetable produces are

[22] Personal Communication with a Thai government officer formerly based in Shanghai, October 15, 2007.
[23] (2003) 'Summary of the Tropical Fruit Production in Hainan and Guangdong provinces of China', Agriculture Section of the Thai Consulate, Beijing.
http://www.doa.go.th/onestop/news/nov/nov_1.htm

exported to Thailand. Fruits, on the other hand, offer Thailand great export opportunities due to their seasonal varieties and unique tastes not found in traditional Chinese fruits. Despite this great potential, Thai fruits have faced several barriers to entering the Chinese market during the initial stage of the Early Harvest programme between the two countries. Most problems stem from strict Sanitary and Phytosanitary measures imposed by the Chinese quarantine authorities, while other problems lie in the area of complex quarantine and inspection procedures, as well as the complex issue of China's Value Added Tax (VAT) system which Thailand did not anticipate. The following section discusses the problems of non-tariff measures practised by China that affects the exportability of Thai fruits to the Chinese market.

Table 3.10: Thailand's Defensive and Offensive Positions in Fruits and Vegetables Trade with China[24]

Country	Category	Offensive Position (Export to China)	Defensive Position (Import from China)
Thailand	Fruits (HS 07)	**Tropical Fruits** 1. Durian 2. Longan 3. Dried Longan 4. Lychee	**Temperate Fruits** 1. Apples 2. Pears 3. Grapes 4. Citrus Fruits
	Vegetables (HS 08)	**Root Vegetables – for Agribusinesses** 1. Manioc (Cassava: HS 07.14)	**Fresh Vegetables – for Consumption** 1. Carrots, turnips, salad beetroot etc. (HS 07.06) 2. Onions, Shallots, Garlic, Leek etc. (HS 07.03)

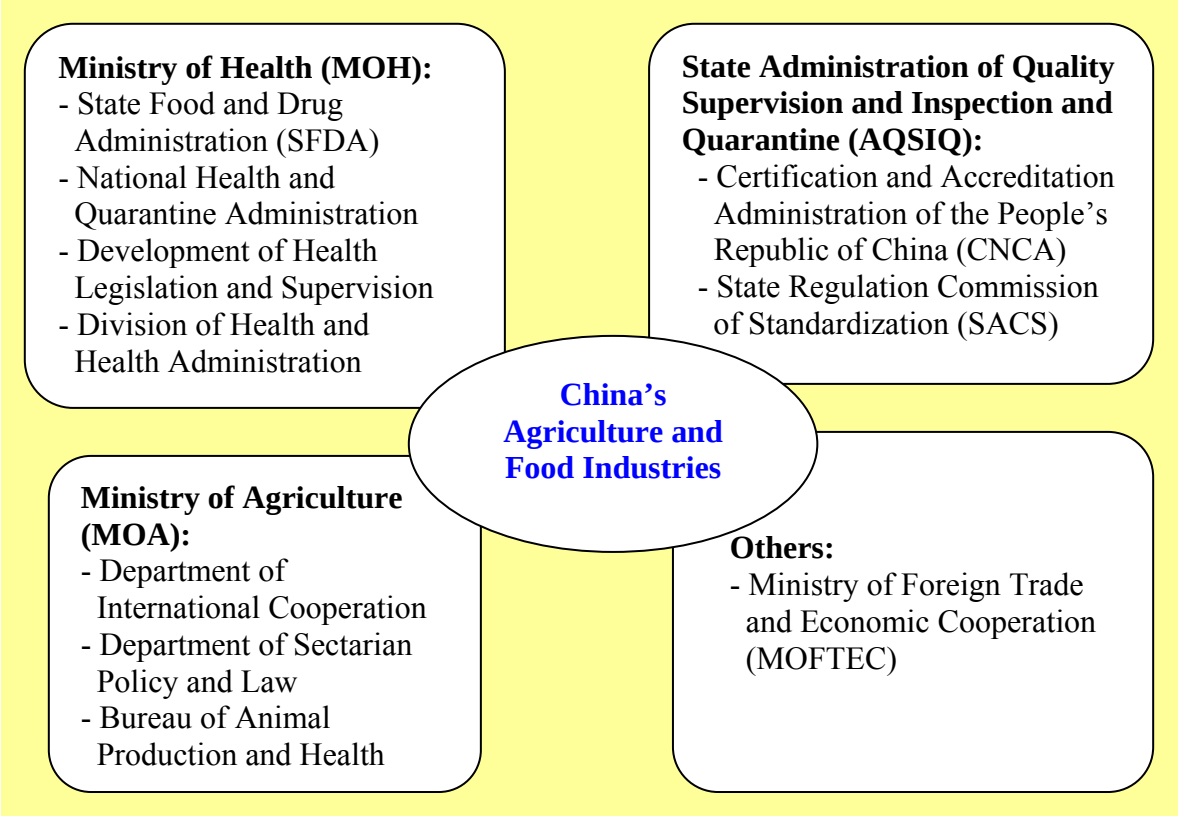
3.2 China's Regulations on Imported Foods and Agricultural Products[25]

China's regulations on food standards and food safety have been developed through the restructuring of organisations that control and regulate the law on the agricultural and food industry. The State council is the highest government function whose authority is assigned by the National People's Congress (NPC) to oversee all administrative units responsible for the regulations on food imports to the country, which are:

[24] (For Table 3.1-3.9, please see Note – Chapter 3 at the end of this chapter)
[25] This section is extracted from 'Rules and Regulations on China's Product Standards: the Importation of Agricultural Industrial Products and Food into China' and 'China: Thailand's Main Export Market', National Food Institute of Thailand. http://www.nfi.or.th/stat/file/full_China.pdf

1. The General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (AQSIQ), which is divided into:
   - the Certification and Accreditation Administration of the People's Republic of China (CNCA)
   - the State Administration of China of Standardization
2. The Ministry of Agriculture (MOA)
   - Department of International Cooperation
   - Department of Sectarian Policy and Law
   - Bureau of Animal Production and Health
3. Ministry of Health (MOH)
   - The State Food and Drug Administration (SFDA)
   - The National Heath and Quarantine Administration
4. The Ministry of Foreign Trade and Economic Cooperation (MOFTEC)

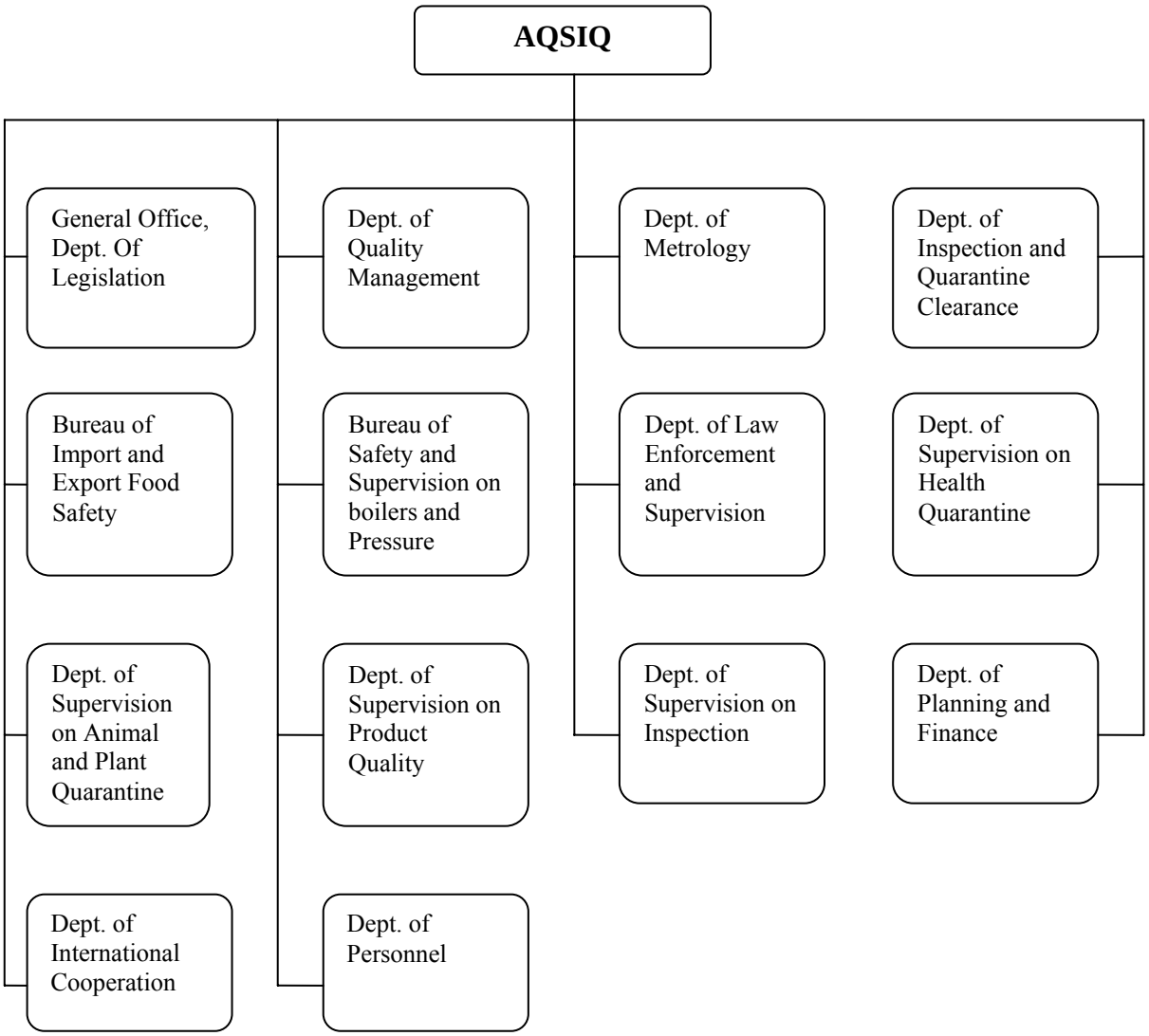
Figure 3.3: Government Agencies Responsible for Food Import Regulations in China



Despite close interconnection between the above governmental functions responsible for food standards and inspection, the only office that oversees the entire control and inspection regulations of agricultural and food products is the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China

(AQSIQ), although the organisation oversees the standards and inspection of both agricultural and industrial products. At the international level, AQSIQ engages in negotiations with China's trading partners on issues related to food and agricultural products and food standards. AQSIQ has product inspection and quarantine offices at various border locations across the country. These offices will report inspection results to the AQSIQ central office in Beijing, which subsequently reports directly to the State Council. The AQSIQ organisational chart is presented below.

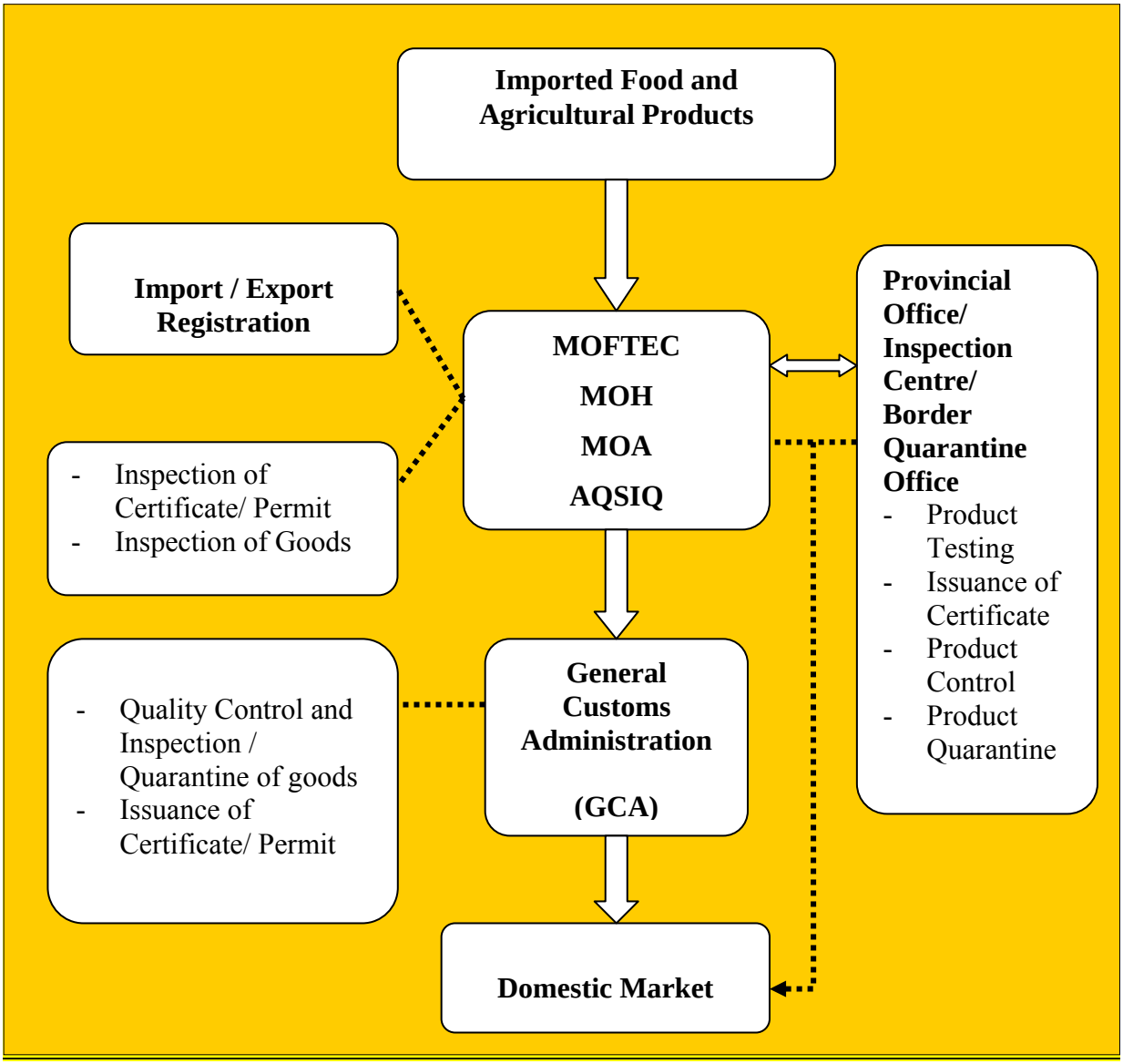
Figure 3.4: AQSIQ Organisational Structure



Apart from AQSIQ, other organisations are also involved in the establishment of product standards and quality control. For example, quality of imported foods must also be in line with the standards set by China's Ministry of Health under the Food Sanitation law. In addition, enterprises wishing to import products from abroad must first register their intention to import with the Ministry of Foreign Trade and Economic Cooperation (MOFTEC). MOFTEC will later grant import permits to the

applying enterprises, after which products can be imported into the country. The structure of organisations responsible for food quality monitoring and inspection in China can be summarised below.

Figure 3.5: China's Imported Food and Agricultural Products Inspection Procedures



3.2.1 Food Standards and Food Related-Laws in China

Since its accession to the WTO in 2001, China has amended a large number of its own laws and regulations to make them in line with WTO regulations. However, some of the amended laws are beyond the requirements set by the WTO. The amended laws put greater emphasis on issues related to food safety and food standards. These standards are set at different levels:

1. State Standards set by the Central Government
2. Professional Standards set by Ministries

} Applied to the entire country

3. Local Standards set by Provincial Governments – applied only to the provinces issuing the standards

In addition to product standards, several laws and regulations manage importation of foods and agricultural products, which are listed in the following table:

Table 3.11: China's Laws and Regulations on Food and Agricultural Products

Laws/Regulations	Responsible Organisation
Main Laws Related to Food	
1. Food Hygiene Law	NPC, MOH
2. Commodity Inspection Law of the People's Republic of China	AQSIQ
3. Import and Export of Animal and Plant Quarantine Regulation of the People's Republic of China	MOA
Other Related Laws on Food and Agricultural Products	
1. Administrative Measures for GM Food Hygiene	MOH
2. Frontier Health and Quarantine Law	MOH
3. Agriculture Law	NPC
4. China's Food Labelling Law	MOH
5. Agriculture GMO Labelling	MOA, AQSIQ
6. Agricultural Genetically Modified Organisms Safety Administration Regulation	State Council
7. MOA Assess the Import of Biotech Regulation	MOA
8. Administrative Measures for Food Additive Hygiene	MOH
9. Health Food Standards	State Council
10. Green Food Standards	MOA
11. Consumer Protection Law	NPC
12. Imported Feed and Feed Additive Registration Regulation	MOA
13. Regulation on Animal Origin Feed Products	MOA, AQSIQ
14. Administrative Measures for Exit-Entry Inspection and Quarantine of Grain and Feed Stuff	AQSIQ
15. Fruit Entry Quarantine Regulation	AQSIQ
16. Seed Law	MOA
17. Forestry Law	State Council
18. Fisheries Law	State Council
19. Administrative Measures for Import and Export of Aquatic Products Inspection and Quarantine	AQSIQ
20. Fairs Product Specific	MOH
- Fresh and Frozen Beef Cuts Standards	MOA
- Food Additive Hygiene	MOH
- Milk Products	MOH
- Fishery Products	MOH
- Fat and Oil	MOH
- Cereal Products	MOH
- Fruit and Vegetable Products	MOH
- Beverages	MOH
- Meat and Poultry Products	MOH
- Confectionery	MOH
- Other Products	MOH

3.3 Barriers to Thai Fruits Entering China

Although Thailand has enjoyed an overall surplus with China in fruit trade before the inception of the ACFTA, the immediate impact of the Early Harvest programme saw Thailand encountering a trade deficit with China when 507 million baht's worth of Chinese fruits flooded the Thai market in the first month after the Thailand-China FTA became effective in October 2003. This compared to 86 million baht's worth of Thai fruits entering China in October of the same year[26]. The Thai media attributed this problem to 1) China's 13% Value Added Tax are collected from importers as well as at consumption point, whereas Thailand collected VAT at consumption point alone; 2) different sets of sanitary standards and import regulations set by each province; and 3) the requirement that Thai exporters must submit the names of plantations registered with Thailand's Department of Agriculture for Good Agricultural Practice (GAP) certification to the Beijing government for examination before each shipment is approved[27]. The complex structure of China's food quarantine and inspection agencies, as presented in Section 3.2, is also a major contributing factor that prevents a free flow of Thai products to China as expected when the FTA was signed.

Vikorm Kromadit, Vice-Chariman of the Thai-Chinese Business Council commented that China's strict customs regulations posed as a trade barrier, as Thai products must go through extensive inspection procedures by Chinese quarantine officers before they were issued product qualification certificates[28]. A large amount of Thai products lay around Chinese ports rotting during the inspection process. On February 26, 2003, China banned all types of Thai longan from entering the country without advance notification to the Thai party, citing excessive residues as a reason. As a prompt response to China's action, the Thai government announced 4 weeks later that all Thai exporters of fruits to China and 5 other countries must be certified by the Department of Agriculture before being able to do so. The effective date of this new measure was 10 days after the announcement date, the result of which was confusion and problems to Thai longan growers when buyers refused to purchase longans from uncertified farms. Another incident occurred after a Mutual Recognition Agreement (MRA) on fruits and vegetables between Thailand and China was signed in June 2003. However, on August 11, 2003, quarantine officers in Zhejiang and Shanghai burned over 10 tonnes of Thai longan, claiming to have found a level of sulphur

[26] (2003) 'Chinese Fruit Floods in under New Pact' Bangkok Post, November 6.
[27] Ibid.
[28] (2004) 'Free-Trade Deal with China Leaves Growers at a Loss' The Nation, February 11.

dioxide in the Thai produces that was beyond the level agreed in the MRA. Such a drastic action was taken even though the mutually agreed measure was to notify the Thai counterpart rather than destroying the products. Later, however, the Agriculture Section of the Thai Consulate in Beijing found that Thai longan exhibit such a problem as claimed by the Chinese authority. It was in fact the Chinese quarantine officers who mistook SO_2 for Metamidophos[29]. The Consul of the Agricultural Section of the Thai Consulate in Guangzhou confirmed that Metamidophos has been officially banned from usage and sale in Thailand for some time now[30], although some producers may have used the substance illegally. The level of Metamidophos found in pre-export fruits and vegetables has substantially decreased from 4.79% in 2003 to 0.05% in 2006.

The Chinese authorities' action also violated China's own Law of the Entry and Exit Animal and Plant Quarantine (1992). Article 17 stated that upon the finding of contamination in import plants, plant products, or other quarantine objects with diseases, pests or weeds dangerous to plants, the port animal and plant quarantine office shall *issue the Quarantine Treatment Notice notifying the owner or his or her agent to conduct such treatment as disinfection and disinfestations, returning or destruction* (author's emphasis). Nowhere does the law grant the quarantine authority the power to destroy the plants immediately after contamination was found.

Montri Congtrakultien, President and CEO of Charoen Pokphand Trade Group's crop integration business – a subsidiary of Thailand's largest agribusiness conglomerate – commented that China's complicated quarantine procedures, including second inspections of Thai products for chemicals and diseases despite the products having been certified by the Thai authorities, created difficulties for Thai produces to enter the Chinese market[31]. A large quantity of products perished while being quarantined for the second inspection at the port.

China's strict SPS requirement may come from cases of excessive levels of residues and chemicals found in Thai fruits on some occasions, such as the excess level of Sulfur Dioxide (SO_2) and pesticide Metamidophos found in fresh longan, or the

[29] Aksornsri Panichsarn (2003) 'New Angle: Agreement on Tariff-Free Fruit and Vegetable Trade' (มองมุมใหม่: ข้อตกลงการค้าผัก-ผลไม้ปลอดภาษี ไทย-จีน) *Manager Newspaper*, October 15-16. www.soc.cmu.ac.th/~yunnan/investment/newvision_0tax.html

[30] Interview with Ms. Urai Suwanwong, Consul to the Agriculture Section, Royal Thai Consulate-General, Guangzhou, October 22, 2007.

[31] (2004) 'China FTA 'Not Helping'' The Nation, February 19.

forging of customs and quarantine documentation by Thai companies. Note that SO_2 is a chemical used to preserve the quality of fresh fruits and prevent them from browning, but an excessive dose of which is often linked to allergies such as asthma and migraines. According to the Department of Agriculture, Thailand has received 13 SPS notifications from China between January 2000 and August 7, 2007, 9 cases of which were related to excessive SO_2 in longan and oranges while 3 of which were in connection with the presence of Metamidophos in oranges, mangoes, and longan[32].

Apart from strict quarantine inspection requirements, the Chinese government also demanded that companies wishing to export durian and mangoes to China must first register their orchards with Thailand's Department of Agriculture, and the list of registered orchards must also be sent to the Chinese government for its approval. Exported fruits must only come from these approved and registered orchards. This condition was specified in the Protocol on plant quarantine requirements of Thai export of Tropical Fruits to China dated September 3, 1997. However, at the time of the protocol signing, only 8 durian orchards and 2 mango orchards met the requirements, which were registered and approved as such. This created problems for other unregistered orchards in Thailand wishing to export to China, due to the long registration process which required the Chinese government's approval. The Thai government attempted on several occasions to submit an additional list of registered orchards to the Chinese government for approval, but failed to receive responses from the Chinese counterpart. Eventually, both countries were able to reach a mutual agreement and the Memorandum of Understanding on fruits and vegetables trade between Thailand and China was signed in 2004[33].

3.4 Memorandum of Understanding for Thailand-China Fruit and Vegetable Trade

The Memorandum of Understanding (MOU) on the Cooperation in Sanitary and Phytosanitary Measures[34], signed between Thailand's Ministry of Agriculture and Cooperatives (MOAC) and China's General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) on April 12th, 2004, outlined in Article IV an

[32] 'Number of Notification Thailand Received from Trading Partners, by Country and Types of Problems' Department of Agriculture, Ministry of Agriculture and Cooperatives. http://www.doa.go.th/onestop/suspend/cont&vtop%20Q.htm.

[33] Department of Agriculture, 'Chapter 2: Some Conditions on Fruits and Vegetables Export' in *Exporters' Munual*. http://www.doa.go.th/onestop/manual/คู่มือผู้ประกอบการส่งออกบทที่2.pdf

[34] 'The Memorandum of Understanding on Cooperation in Sanitary and Phytosanitary Measures between the Ministry of Agriculture and Cooperatives of the Kingdom of Thailand and the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China', April 12, 2004.

agreement by both parties to develop a traceability system of SPS issues. Article III of the MOU also designated that 'consignments of animals, animal products, plants, plant products and food products exported by the Parties shall be accompanied with Sanitary or Phytosanitary Certificates issued by the Inspection and Quarantine Authority of the exporting Party.'. The idea was to solve the SPS problems in fruit trade between the two countries by establishing a clear traceability system that would facilitate a faster quarantine and inspection process.

3.4.1 Protocols on Imports of Fruits between Thailand and China

The MOU was accompanied by 2 additional protocols: the 'Protocol on the Inspection and Quarantine Conditions of Tropical Fruits to be Exported from Thailand to China'[35], and the 'Protocol on the Inspection and Quarantine Conditions of Fruits to be Exported from China to Thailand'. Both were signed on October 29, 2004, 6 months after which they became effective (April 29, 2005). Both protocols were aimed at facilitating trade in fruits between the two countries through establishment of the traceability scheme which leads to transparency in the inspection and quarantine system of both nations. The protocols applied to only certain types of fruits: 5 tropical fruits from Thailand, namely mango, durian, longan, lychee, and mangosteen in the case of Thailand; and 5 temperate fruits from China namely apples, pears, citrus fruits [(including oranges (C. Sinensis), pomelo (C. Paradisi), tangerine (C. Reticulata), and lemon (C. Limon)], grapes, and jujube.

One positive outcome for Thailand that emerged from the Protocol was the expansion of the number of registered Thai orchards that must be approved by the Chinese government before they were able to export to China. Prior to the protocol, only 2 and 8 mango and durian orchards that were registered and approved by the Chinese government were able to export their products. The protocol abolished this requirement by changing the number of Thai orchards to be allowed to export to China from 10 to unlimited, as long as they were registered with Thailand's Department of Agriculture.

[35] 'Protocol on the Inspection and Quarantine Conditions of Tropical Fruits to Be Exported from Thailand to China between the Ministry of Agriculture and Cooperatives of the Kingdom of Thailand and the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China', October 29, 2004.

Other requirements on imported fruits between the two countries are outlined in the protocols. Generally, fruits can be exported only if they come from orchards, packing houses, and exporters that have been registered with the agricultural and quarantine authorities in the respective countries, i.e. the Ministry of Agriculture and Cooperatives in Thailand and the AQSIQ in China. Imported fruits must be free from insects, diseases, must not contain any branches, leaves, and soil, while their levels of pesticide and chemical residues must not exceed the standards set in the law and regulations of the importing Party. In the absence of such national standards, Codex standards or the standards agreed by both the MOAC and AQSIQ shall be used as a reference. In addition, the quarantine and inspection authorities shall collect 3% of the imported fruits from the batch for sampling. Fruits must also be accompanied by Phytosanitary certificates. At the port, the authorities shall examine valid Phytosanitary certificates, Pesticide Residue Certificate (for Thai longan entering china), labels, integrity of the consignment, in addition to conducting sampling quarantine inspection.

3.4.2 The Two Protocols Compared: Some Observations

A closer look of the protocols reveals that the differences in their contents on several points, which are listed below:

3.4.2.1 Requirement on the Length of Twig of Thai Longan

Article II in both protocols contains a similar statement, outlining that fruits must be free from insects and pests. However, in the 'Thailand Fruits Entering China' protocol, there exists an extra clause specifying that lychee and longan exported from Thailand must contain twigs no longer than fifteen centimetres in length. Although the 15-cm twig requirement corresponds to the international standards, namely the 'Presentation' specification of the CODEX Standard for Longans[36], this standard, as its description suggests, is simply set for the purpose of presentation rather than for any apparent food hygiene reason, and is not based on any scientific basis for the protection of human, plant, or animal health. What is more is that no equivalent requirement is imposed on any of the 5 Chinese fruits in the 'Chinese Fruits Entering Thailand' protocol, which implies that requirements on fruit imports from Thailand to China seem more strict than the requirements on Chinese products entering Thailand. For example, the CODEX also specifies some 'presentation' requirements on grapes – one of the 5 fruits from China that is listed in the 'Chinese Fruits Entering Thailand'

[36] Codex Alimentarius, 'Codex Standard for Longans' (Codex Stan 220-1999, AMD 1-2005) www.codexalimentarius.net/download/standards/346/CXS_220e.pdf

protocol, that the length of vine shoot left on the stem of the bunch of table grapes should not exceed 5 centimetres[37]. Nevertheless, such standard is not stated anywhere in the 'Chinese Fruits' protocol. Since these specifications of twig length are only for the presentation purpose, there appears to be no need for such requirement to be included in the protocol. The options for the Thai government should then be either demanding the removal of such specification from the 'Thai Fruits Entering China' protocol, or imposing similar requirements on listed fruits from China imported into Thailand to make it a leverage to negotiate with the Chinese government to relax the rules on Thai fruit imports.

3.4.2.2 Registration of Orchards for Fruit and Vegetable Export

Article V specifies that fruits for export to China and Thailand must be sourced from export orchards and packing houses that have been registered with both countries' respective authorities: the MOAC in the case of Thailand and AQSIQ in the case of China. Exported products must be packed and labelled with information specified in the protocols. An example of the label is as follows:

Figure 3.6: A sample of Required Label on the Package of Listed Fruits in the Protocol

Name of the exporting company:
Fruit type:
Orchard register number:
Packing house register number:
Packing date:
Export to the People's Republic of China:

The new protocol does not require that the list of registered Thai orchards be sent to China for approval before exporting to China can begin, as in the case during the initial stage of the Thailand-China FTA, thereby easing the orchard registration procedures to an extent, compared to the pre-Protocol period. However, this does not mean that all orchards are granted with a registration certificate, since only the orchards that pass the Department of Agriculture (DOA)'s 'Good Agricultural Practice' (GAP) will be granted the certificate and allowed to export. In order to obtain a GAP certificate, farmers must pass certain criteria such as irrigated water

[37] CODEX Alimentarius Commission (2002) 'Joint FAO/WHO Food Standards Programme, CODEX committee on Fresh Fruits and Vegetables' 10th Session, Mexico City, Mexico, June 10-14, p. 22. ftp://ftp.fao.org/codex/ccffv10/ff02_04e.pdf

must not be contaminated with chemicals or dangerous substances, an appropriate level of chemicals and pesticides must be used, and soil must be in a good condition.

As of April 2005, 94,000 orchards in Thailand had been registered[38]. The number has, however, risen to 224,340 orchards as of October 30, 2007, although many of these registrations have expired, some since 2006[39]. Possible reasons for farmers not renewing their orchard registration are the short validity of the certificate (2 years for fruit orchards and 1 year for vegetable farms) and the farmers' discontinuation of export of the registered crops. One point that is worth noting is that although the system is called 'orchard registration', the registration number is assigned not to the orchard itself but to the crops grown in the orchard which the farmers wish to apply for the 'Good Agricultural Practice' registration. If farmers grow several crops on one piece of land, the registration will be given to the crops grown the most on the land. The orchard registration is free of charge, although the time required to complete the process is quite considerable, ranging up to 2-3 months due to a long line up of farms wishing to be registered and the limited number of Department of Agriculture farm inspectors[40]. Apart from farm registration, farmers wishing to export their products must also apply for a chemical residue inspection and obtain a MRL (Maximum Residue Limit) Inspection Certificate from the Department of Agriculture (Announcement on 'Exporting Fruits and Vegetables to outside the Kingdom of Thailand' dated 2003 by the Department of Foreign Trade, Ministry of Commerce). An MRL lab test fee of 3,500 baht will be applied to the farmers. Moreover, small farmers in Thailand do not generally export their produces to foreign markets themselves. Rather, they sell their produces to large commodity traders/exporters who deal with certification processes. Consequently, many farmers may not see the need to apply for farm registration, although by-law, traders cannot buy produces from farms that do not have farm registration numbers. The long waiting list, the short validity of the farm registration certificate, along with the nature of small farms in Thailand may be contributing factors to a significant number of expired farm registrations, which raises the question of how effective the system of

[38] (2005) 'New Requirement Imposed on Fruit Exports to China' *Bangkok Post*, April 7. http://www.bilateals.org/article-print.php3?id_article=1611

[39] Technical Onestop Service Center website, Department of Agriculture, Ministry of Agriculture and Cooperatives. http://www.doa.go.th/onestop/search/Connections/search.asp?grp=9&province=&keyword=&Submit=%A4%C5%D4%E9%A1%B7%D5%E8%B9%D5%E8%E0%BE%D7%E8%CD%A4%E9%B9%A2%E9%CD%C1%D9%C5

[40] Phone enquiry with an officer of the Technical Onestop Services Centre of the Department of Agriculture, November 26, 2007. http://www.doa.go.th/onestop

farm registration is and what additional benefits it adds to the exportability of Thai agricultural products.

In addition, the orchard registration requirement is beyond the CODEX standard on labelling, which requires only details of exporter, packer and/or dispatcher, and country of origin (with national, regional or local place name only as optional information), but without orchard registration[41]. Under Paragraph 3 of Article 3 of the WTO SPS agreement, countries may introduce or maintain SPS measures that lead to a higher level of SPS protection which would be achieved by measures of international standards. However, adoption of such measures must be based on scientific evidence. The orchard registration requirement, though a tool to ensure food traceability, is not based on any scientific proof that effectively guarantees food safety. Nor should it be implemented only on a bilateral basis (though orchard registration is also a requirement under the Australia-Thailand FTA). The fact that the orchard registration measure is not applied to all of China's and Thailand's trading partners becomes a burden to exporters of the two countries when additional requirement is needed while exporters of countries outside the protocol are not obliged to follow such a requirement.

3.4.2.3. Additional Requirement on the Limit of Residues in Thai longan.

While the 'Chinese Fruits Entering Thailand' protocol contains no specific requirement on allowable levels of chemical residues in imported fruits from China to Thailand, Article 9 of the 'Thai Fruits Entering China' protocol specifies that the level of SO_2 in Thai longan exported to China must not exceed 50 ppm (parts per million, or milligramme per 1 kilogramme), as mentioned above. This requirement is an extra clause added to the 'Thai Fruits Entering China' protocol with no equivalent clause included in the Chinese Fruits Entering Thailand' protocol. Certainly, this is not because Thai fruits are found to contain greater levels of chemical and pesticide residues compared to Chinese produces. On the contrary, recent scandals related to Chinese food exported to the world market confirms that this problem is also highly prevalent, if not more, among Chinese products. A USDA report describes that Chinese fruits and vegetables often have high levels of pesticide residues, heavy metals, and other contaminants. Heavy industrialisation and lax environmental

[41] 'CODEX Standard for Longan (CODEX Stan 220-1999, AMD 1-2005)' in *Report of the Seventh Session of the CODEX Committee on Fresh Fruits and Vegetables*, Joint FAO/WHO food Standards programme, CODEX Alimentarius Commission, 23rd Session, June 28-July 3, 1999, Rome. http://www.fao.org/docrep/meeting/005/W7169E/w7169e00.htm#Contents

regulation results in water, soil and air pollution in many rural areas. Intensive agriculture in China has also resulted in heavy chemical use, while Chinese farmers rely extensively on chemical fertilizer to 'coax high yields out of soil that has little organic matter'. In addition, pesticides are applied in high doses to control pest infestations as a result of monocropping. On top of that, Chinese farmers are often not knowledgeable of the proper use of fertilizers and pesticides. Pesticides, fertilizers, and seeds purchased by farmers are often fake or mislabelled[42]. As a result, Chinese vegetables faced market access problems with major trading partners such as Japan, which banned frozen spinach from China in 2002 following the government testing of 944 batches of spinach, 42 of which were found to be overdose with pesticides. From these 42 samples, 41 of which were from China[43], although Chinese authorities counter-argued that Japan's drastic move was a kind of protectionism, since 99% of Japan's import of frozen spinach came from China[44]. nevertheless, as recent as last year (2006), Greenpeace found 25% of vegetable and fruit samples collected from supermarkets in Hong Kong to be contaminated with banned pesticides such as Lindane, which was found in 70% of tomatoes tested[45]. This is on top of a large number of cases concerning lax food safety standards of many of Chinese food products exported to several countries, such as exported toys to the US and toothpaste to Panama, the details of which will be discussed later in the chapter. A USDA report went further to state that Chinese consumers were willing to pay more for imported products because they were considered safer than domestic produce, which was often thought to have excess pesticide residues[46]. Therefore, demanding stricter inspection of imported Chinese food is not without a basis, nor is this suggestion based on a retaliatory principle. On the contrary, it is in the interest of Thai consumers that the Thai government imposes stricter SPS rules on Chinese food products. Hence, if a specific SPS requirement for Thai longan is included in the 'Thai Fruit Entering China' Protocol, an equivalent requirement on selected Chinese fruits such as citrus (oranges and tangerines), the cultivation of which is well-known

[42] Sophia Huang and Fred Gale (2006) 'China's Rising Fruit and Vegetable Exports Challenge U.S. Industries' United States Department of Agriculture (USDA) Outlook Report, FTS-320-01, February, p.17.
http://www.ers.usda.gov/Publications/FTS/2006/02Feb/FTS32001/fts32001.pdf
[43] (2002) 'Japan to Legislate Ban on Vegetables from China' *Beijing Time*, July 19.
http://english.peopledaily.com.cn/200207/19/eng20020719_100000.shtml
[44] (2002) 'Japan's Practice, a Kind of 'Trade Protectionism': Official' *Beijing Time*, August 16.
http://english.peopledaily.com.cn/200208/16/eng20020816_101572.shtml
[45] Dominique Patton (2006) 'Greenpeace Raises Alert over Pesticides in Guangzhou Fresh Produce' *AP-Food Technology*
http://www.ap-foodtechnology.com/news/ng.asp?id=68538
[46] Lynda Jiang and Joshua Emmanuel Lagos (2004) 'Republic of China Market Development Reports: Jiangnan – an Emerging Fresh Fruit Wholesale Market in South China' *GAIN Report* CH 4618, USDA Foreign Agricultural Service, October 25. http://www.fas.usda.gov/gainfiles/200411/146118125.pdf

to rely heavily on chemicals and pesticides, should also be included in the 'Chinese Fruit Entering Thailand' protocol, for reasons stated above.

3.4.3 Number of Thai Fruits Allowed to Enter China

At the initial stage of the Thailand-China Early Harvest programme, only 13 Thai fruits were allowed to enter China. This means that despite the tariff reduction for all products within HS-code 07-08 to zero under the above-mentioned programme, a very limited range of Thai fruits can enjoy the zero tariff privilege under the FTA. This is on top of the complicated processes of obtaining various import permits before fruits can be imported into China. Although China has later expanded the list of permissible fruits from Thailand from 13 to 23 items, the range of products is still restricted. Compared to a wide range of fruits and vegetables from Mexico – a NAFTA[47] member – which are granted permission to enter the U.S. as opposed to products from countries that are not partners of the US FTAs[48], the list of Thai fruits allowed entry to China appears to be extremely inadequate. For exporters wishing to export fruits outside this scope, they must notify their intention to the Ministry of Agriculture and Cooperatives, upon which a discussion within the ministry shall take place and if a decision to proceed with the exporters' request is reached, the ministry will notify the Chinese authority, who will conduct pest assessment for the said fruits. If no problem is discovered, the fruit may be added to the list. Further investigations on whether the limitation of Thai fruits export to China is based on pest and risk assessment, and on the follow-up request by the Thai authority for China to expand the list, are needed.

[47] NAFTA = The North American Free Trade Agreement
[48] See USDA *Fresh Fruits and Vegetables Import Manual*.

Table 3.12: 23 Types of Fruits Granted Permission to Enter China

No.	Types of Fruits	Country of Origin
1.	Durian	**Thailand**
2.	Longan	**Thailand**, Malaysia, Indonesia, Vietnam, Myanmar
3.	Mangosteen	**Thailand**, Malaysia, Indonesia, Myanmar
4.	Pineapple	**Thailand**
5ไ		**Thailand**
6.	Banana	**Thailand**, the Philippines, Vietnam, Indonesia, Ecuador, Colombia, Costa Rica, Panama
7.	Passion fruit	**Thailand**
8.	Lychee	**Thailand**, Malaysia, Vietnam, Myanmar
9.	Coconut	**Thailand**, Malaysia
	Water melon	Vietnam, Malaysia
10.	Custard apple	**Thailand**
11.	Tamarind	**Thailand**
12.	Papaya	**Thailand** Malaysia
13.	Star fruit	**Thailand** Taiwan
14.	Mango	**Thailand**, Philippines, Vietnam, India, Pakistan, Taiwan
15.	Guava	**Thailand**
16.	Rambutan	**Thailand**, Malaysia, Vietnam, Myanmar
17.	Rose apple	**Thailand** Taiwan
	Dragon fruit	Vietnam
18.	Jackfruit	**Thailand** Vietnam, Myanmar
19.	Zalacca edulis (สละ)	**Thailand**
20.	Long Kong (*Lansium domesticum Corr*)	**Thailand**
	Betel nut	Taiwan
21.	Tangerine (ส้มเขียวหวาน)	**Thailand** New Zealand, U.S. (some cities in California, Florida, Arizona, Texas), Uruguay
22.	Orange	**Thailand** New Zealand, U.S. (some cities in California, Florida, Arizona, Texas)
23.	Pomelo	**Thailand**, U.S. (some cities in California, Florida, Arizona, Texas), Uruguay, Taiwan

Source: Department of Agriculture
http://www.doa.go.th/onestop/fs/issue9/china.pdf^

Table 3.13: The 2 Protocols Compared

'Thailand → China' Fruit Protocol		**'China → Thailand' Fruit Protocol**		**Reasons for Extra Clause**
1. **Article II – fruits must be free from insects and pests**				
Longan and lychee must contain twigs no longer than 15 cms.	✓	No such requirement on listed Chinese fruits	X	**For Presentation purpose only,** not SPS-related. (according to CODEX standards on longan) - **Comments**: Not necessary in the Protocol
2. Article V: Registration of Orchards	✓	**2. Article V: Registration of Orchards**	✓	**For Food Traceability Purpose** **Comments:** Good, but 1. requirement beyond CODEX 2. not applied to other trading partners of both Thailand and China (except in the Thailand-Australia FTA)
3. Article 9: SO_2 level in longan must not be beyond 50 ppm	✓	**3. No requirement on level of residues on listed Chinese fruits**	X	Justified for Thai Longan, with history of over-limit SO_2; **but** - Requirement on MRL (Maximum Residue Limits) on Chinese fruits also necessary, esp. after recent Chinese food scandals. e.g. citrus fruits often contain high level of residues and chemicals.

3.5 Field Work Research in China: October 21-28, 2007

To understand the problems of trade in fresh fruits and vegetables between Thailand and China, the researchers visited two Chinese cities – Guangzhou and Kunming – during October 21-28, 2007. The city of Guangzhou in the province of Guangdong is a major transport hub for agricultural produces from Thailand, with 3 ports (Guangzhou, Huangpu, and Shihang), a new airport (Guangzhou Baiyun International Airport), as well as a good system of roads and rail. Most of Thai products arrive in Guangzhou by sea. Kunming, another city visited by the researchers, is located with close proximity to the Thai border and is therefore another major destination of Thai produces, most of which are products from Northern Thailand transported to Kunming by road.

The field research in China involved interviews with Thai Consuls of both Agriculture and Commercial Section of the Thai Consulate in Guangzhou, as well as Thai Consul of the Commercial Section in Kunming; and a survey of the Jiangnan Fresh Fruit Wholesale Market in Guangzhou. A meeting with Chinese officials in Yunnan Province, namely from Ministry of Commerce, Department of Agriculture, Customs Division, Food and Drug Administration, and Yunnan Entry-Exit Inspection and Quarantine Bureau, also took place in Kunming on October 26. Details of the interviewees for this research can be found in the Appendix.

3.5.1 Research Findings

3.5.1.1 Orchard Registration

The Fruit Protocols between Thailand and China require that exported fruits between the two countries must be accompanied by a designated label containing details on registration numbers of orchards, packing house, among others. During the researchers' visit to the Jiangnan Wholesale Market in Guangzhou, however, we found that most products from other countries contained only the registration of packing houses and not orchard registration number on the labels. Although it is a common practice of some fruit exporters, especially those from developed countries such as the US, to print details of exporters such as address and phone number on the package, information on orchard registration number is neither available nor required on their packages. This prompts one to question why a stricter labelling requirement is needed on Thai fruits entering the Chinese market compared to imports from other countries.

Figure 3.7: Jiangnan Wholesale Fresh Fruit Market, Guangzhou

Figure 3.8: Boxes of Imported Fruits from Various Countries, all without Orchard Registration Number

Figure 3.9: Thai Fruits Sold at Jiangnan Market

3.9.1 Durian

3.9.2: Thai Longan

3.9.3: Thai Mango with a Label

3.9.4: Rose Apples

3.9.5: Pomelo

3.9.6: Banana

The above question arises despite the fact that the same requirement is also imposed on Chinese fruits entering Thailand on a reciprocal basis, although on some occasions, such a required label was not found on the package of listed Chinese fruits imported to Thailand. A precise case is the imported Chinese pears with no label of orchard registration and other required details on their packages. We found boxes of Chinese pears sold at a Thai market without the required label (See Figure 3.11.2). On the contrary, we found all Thai fruits sold at Jiangnan Market with the required label on their packages. Similarly, Thai bananas found at Jiangnan Market were also properly labelled with details of orchards, packing houses, and exporters (Figure 3.10). Though providing this information on products is a good practice for traceability, the lack of consistency in labelling products must be monitored especially when fruits that must be labelled are not. This is in order to ensure that certain standards can be expected from fruits and vegetables traded between the two countries, particularly those that have been specified in the Protocols to meet certain standards.

Figure 3.10: Label on the Package of Thai Bananas, with Orchard Registration Number and Other Details

Figure 3.11: Label for Imported Chinese Apples Sold in Thailand

3.11.1: Box of Imported Chinese Apples <u>with</u> the Required Label

3.11.2: Box of Imported Chinese Pears <u>without</u> the Required Label

While orchard registration is a good way to encourage food traceability, restricting the practice only to Thailand and China may delay Thailand's chance to further access the Chinese market (through the formal channel) and vice versa, especially when Thailand must face competition from neighbouring ASEAN countries, with many fruits and vegetables of Thailand also being grown in other ASEAN members. Hence, the traceability system can be better managed and fairer if China and Thailand demand that orchard registration be adopted by all countries wishing to export to both Parties.

<u>3.5.1.2 Quarantine Inspection</u>

In general, Thai officials believed that Thailand-China Fruit Protocols benefited Thailand. Thai Consuls in Guangzhou and Kunming interviewed for this research seemed confident that the protocol on Thai tropical fruits was an effective tool to facilitate the expansion of the export of Thailand's top 5 fruits to China. Under the Protocol, the Thai fruits would

pass through the Chinese quarantine inspection procedure on a fast track basis, that is the fruits will be inspected only randomly and released to the Chinese market immediately after sample collection and before the test result is available. If problems were found in the fruits that have already been released, the AQSIQ officer would notify the Thai counterpart of the problems and impose stricter quarantine and inspection measures on the next lot of the fruit with problems which is exported by the company in question. In short, the Thai Consuls believed that the protocol had eased the complex Chinese customs and quarantine procedures on the 5 Thai fruits.

According to China Trade Policy Review 2006, China reported three methods of inspection carried out at the border for goods subject to SPS measures:

Method 1: Authorities at the border inspect documents before releasing goods to the destination. SPS inspection is then carried out at the final destination within the country. The length for customs clearance in this case takes 1 day (i.e. goods are released on the following day).

Method 2: Inspection at the border is carried out "using sense organs" (i.e. Customs officers inspect the goods using their 'sensory organs'). SPS inspection is then carried out at the destination, as in the first case. Custom clearance at the border under this method takes 3-5 days.

Method 3: SPS inspection is carried out at the border before customs clearance is given; the time taken for clearance varies depending on the type of products being imported and the risks involved.

Despite the above information, the WTO Secretariat reported that no details on the kinds of products covered by the three methods were provided. Also, it was unclear what percentage of imports subject to SPS requirements were cleared under the 3 methods[49].

From our interview with a Chinese quarantine officer at Yunnan Entry-Exit Inspection and Quarantine Bureau[50], we found that the Fruit Protocol may not necessarily facilitate Thailand's fruit export to China to the extent that many perceive it to be. The Chinese quarantine officer confirmed that in practice, the 5 tropical fruits from Thailand would have to go through random preliminary inspection upon their arrivals at Chinese ports. The process would take approximately 30 minutes to complete before the release of the

[49] WTO China Trade Policy Review, June 26, 2006, (WT/TPR/S/161/Rev.1), p.93.
[50] The interview with Chinese government officials took place at the Yunnan Ministry of Commerce, Kunming, on October 26, 2007. The meeting involved Chinese officials from various agencies. See the Appendix for a full detail of the interviewed Chinese officials.

fruits to the market. However, he mentioned that fruits not included in the protocol could also be exported to China[51] and tended to face fewer quarantine inspection procedures. For example, the 5 fruits listed in the protocol need to fulfill several requirements before they can be exported to China whereas those outside the protocol are not subject to any of such regulations e.g. orchard registration, pest-free certificates, maximum residue limit as in the case of the requirement for the SO_2 in longan must not be beyond 50 ppm, as well as several other SPS rules specified in the protocol. Thai officers in China also confirmed this point, stating that fruits outside the protocol can be exported to China without any special requirements or accompanying certificates. At the port, Chinese quarantine officers will randomly inspect the produces and collect some samples for lab test. If diseases or pests are discovered, notification to the Thai Consul in China will be made, and the produces from the company in question will be blacklisted. Should the problem persists, the company will be banned from exporting to China. Hence, no requirements such as label, orchard registration, etc. appear to have been imposed on fruits outside the protocol, which suggests that special market access privileges believed to be granted to the within-Protocol fruits may have been misunderstood.

3.5.2 China's Food Safety Scandals

Recent problems of contamination in Chinese food and non-agricultural exports to the US, EU and other countries have led to the question of the credibility of Chinese products, which threatens the country's exportability. Traditionally, China has been a low-cost producer and exporter of food to the world. One of the factors contributing to China's low-cost production of agricultural produces is the abundant rural labour supply, which means low wage. A NDRC (National Development and Reform Commission) survey found that farm-gate price for vegetables in 2004 was approximately 5 (US) cents per lb., whereas the production costs were less than 3 cents per lb[52]. These low prices come at a cost. Chinese companies were found to violate the food safety clause of many food-importing countries. Dangerous chemicals and residues were found in products such as toothpaste, toys, drugs, pet food, and powdered milk. In 2001 alone, it was estimated that 192,000 people in China died from the use of counterfeit drugs[53]. Fake drugs such as a sub-standard antibiotic, Xinfu, which was not properly sterilised, led to the deaths of 11

[51] Although only 23 types of Thai fruits are currently allowed to enter China. exporters who wish to export other types of fruits not included in the list must consult Thailand's Ministry of Agriculture, which will in turn seeks advice from the Chinese authority.
[52] Sophia Huang and Fred Gale (2006) 'China's Rising Fruit and Vegetable Exports Challenge U.S. Industries' FTS-320-01, Economic Research Service/ United States Department of Agriculture, February, 12. http://www.ers.usda.gov/Publications/FTS/2006/02Feb/FTS32001/fts32001.pdf
[53] (2007) 'Poisonous Fake Products: China's Lessons for Thailand' August 10. Kasikorn Bank Research Centre.

Chinese people in 2006. In the same year, 9 people in Guangdong province died at a hospital after being injected with fake Armillarisni A – a drug which treats gall bladder, liver and gastric disorders[54]. In 2004, 13 babies died of malnutrition after they were fed milk power that had no nutrition[55]. In November 2006, Chinese farmers were found to have used a dye to feed their ducks in order to make their eggs look fresher. The dye was found to contain cancer-causing properties, and 5,000 ducks were culled[56]. In March 2007, Melamine – a substance rich in nitrogen which makes food appear to have more protein than it actually does and which is an illegal food additive ingredient in the US – was found in wheat gluten exports from China for use in pet food, leading to the death of a number of cats and dogs in the US. Over 100 pet food brands, amounting to more than 60 million boxes of pet food, were recalled[57].

A series of scandals related to Chinese products also took place in other developing countries. Panama and the Dominican Republic have also reported finding diethylene glycol, a chemical used in engine coolants, in imported toothpaste from China in May 2007. As a result, both countries ordered a recall of thousands of tubes of Chinese toothpaste brands Excel and Mr. Cool from their markets. The New York Times reported that a Chinese chemical maker had sold diethylene glycol as glycerine, which is often used as a moistener in products such as toothpaste, soap, and cosmetics. Diethylene glycol is sometimes used as a low-cost substitute for glycerine and some Chinese toothpaste makers claimed that small amounts of the chemical were harmless in toothpaste[58]. In addition, Panama reported that cough syrup imported from China, which contained diethylene glycol, had killed more than 50 people in its country in 2006. The latest scandal of Chinese products involved exported toys to the US and the EU. In August 2007, Mattel – a toy company – recalled 253,000 Sarge toy cars in the US and 183,000 from the rest of the world, after having found that the paint used on these toys contained excessive level of lead, a toxic substance[59]. Chinese food scandals led the

[54] (2006) 'Nine Killed by Fake Chinese Drug' *BBC News*, May 22.
http://news.bbc.co.uk/2/hi/asia-pacific/5003548.stm
[55] (2007) 'China Tightens Net on Fake Drugs' *BBC News*, February 9.
http://news.bbc.co.uk/2/hi/asia-pacific/6345165.stm
[56] (2007) 'China Cracks down on Food Safety' *BBC News*, May 9.
http://news.bbc.co.uk/2/hi/business/6638113.stm
[57] ibid.
[58] (2007) 'US Checks Toothpaste for Toxins' *BBC News*, May 24.
http://news.bbc.co.uk/2/hi/americas/6686627.stm
[59] (2007) 'Toy Woes Prompt China Checks Call' *BBC News*, August 15.
http://news.bbc.co.uk/2/hi/business/6947420.stm

country's own autonomous region like Hong Kong to impose stricter quarantine and inspection requirements on fresh produces imported from Mainland China[60].

In Thailand, excessive residues and chemicals were also found in food imported from China during an investigation by the Department of Medical Sciences, Ministry of Public Health, following the global Chinese food scares. Through the random inspection of 11,473 Chinese food samples between 2004-2007 at the Chiang Saen port on the Thai border of Chieng Rai province, it was found that Chinese cabbage, pears, salad leaves, Chinese broccoli, carrots, celeries, spinach, and lotus roots, contained over-the-limit pesticide residue. A high level of SO_2 was also found in imported Chinese ingredients such as day lily/lemon lily *(Hemerocallis Flava)*, White Judas's Ear Fungus/Jelly Ear Fungus *(Auricularia auricula Judae)*, Dried chrysanthemum, strawberries in salted water, dried bamboo fibre, and Chinese plums. Dye not allowed to be used in food such as Allura Red and Quinolene Yellow was also found in chewing gums and candies, drinks, and chocolate. Other substances found to have contaminated Chinese food imports included Zaccharine in dried fruits such as dried plums; Alpha Toxin in dried chilli; mercury level beyond the allowed limit in Grouper (*Epinephelus spp.)* fish heads, sword fish, tuna meat, dried squids; and excessive lead in dried shark fins, seaweeds etc.[61] All of the above scandals concerning Chinese products within the span of a few years emphasised the need for Thailand to impose more rigorous inspection regulations on Chinese food imports. A good start is perhaps to modify the 'Chinese Fruits Entering Thailand' protocol to include more stringent requirements on imported Chinese fruits such as table grapes in order to ensure food safety and better protect Thai consumers.

The problems of Thailand's inspection of Chinese food lie in several areas. One is the easily perishable nature of fresh fruit and vegetable imports which cannot withstand a long process of quarantine inspection. As a result, inspection at the port can only be done on a random basis. Should suspicion of food contamination arises, product samples will be forwarded to a lab of the Department of Medical Sciences in Chiang Rai province. If the problem continues to be found in the lab, the food in question will be returned to the country of origin or destroyed. This long process may result in a large number of foods entering the domestic market long before problems are found. In addition, illegally smuggled food and drugs from China that enter Thailand at the borders are difficult to

[60] (2007) Hong Kong Retailers Stricter on Imported Chinese Vegetables, Imposing Traceability System. Organic Food Sales Increased' Than Settakij, August 3.

[61] (2007) 'Blacklisting Imported Chinese Fruits and Vegetables Full of Mercury and Lead' (สั่งขึ้นบัญชีดำผัก-ผลไม้จีน ตะกั่ว-ปรอทอื้อ) *Kom Chad Leuk Newspaper*, August 17.

control, and the magnitude of such trade can be much larger than the official figures can tell. For example, the actual value of border trade between Thailand and China far surpasses the official figure. Tao Sinhua, former Chairman of the Xishuangbanna[62] Chamber of Commerce in Yunnan Province, revealed that trade between Southern China and Chiang Rai province of Thailand in 2006 totalled 2,400 million Yuan, or 120 billon baht. 80% of this figure is the value of Chinese exports to Thailand[63]. This compares to the Thai official figure provided by Mr. Pattana Sittisombat, Chairman of Chiang Rai Chamber of Commerce, who claimed that Thailand exports leaving the Chiang Saen port for Southern China only amounted to approximately 6 billion baht while imports from China only totalled 1.162 billion baht. With such a vast difference in trade figures, it is difficult to correctly estimate the extent of smuggled sub-standard food from China that has entered Thailand, as well as its impacts on Thai consumers.

USDA *Amber Wave* states that producing safer food for export is expensive and reduces China's cost advantage. However, with widespread scandals of its food exports, the Chinese government can no longer ignore this problem. Measures have been taken to ensure its food safety and regain worldwide confidence of its food products, including the implementation of the 'CIQ' label (China Inspection and Quarantine) – a mark that guarantees the quality and safety – on all food exports from China. The label contains information of food producers, address, product registration number, and production date. The measure is aimed at enforcing food traceability and will allow importers of Chinese food to 'tell certified products from fakes'[64].

Thailand, on the other hand, has also attempted to solve the quality problems of its agricultural exports. In 2003 and subsequently 2006, the Department of Foreign Trade, Ministry of Commerce, has announced a requirement that selected agricultural produces destined for export to some countries including China must receive a MRL (Maximum Residue Limits)-inspection certificate from the Department of Agriculture. The 5 Thai fruits listed in the protocol signed with China have been included in the first announcement of the MRL Certificate requirement in June 2003. The lists of the fruits and vegetables that must be certified are as follows:

[62] Or 'Sibsong Panna' in Thai
[63] (2007) 'Shocked! Xishuangbanna Chamber of Commerce China-Chiang Rai Trade Figure Surpassed 100 Billion Baht' (ตะลึง! ตัวเลขค้าเชียงราย-จีน หอสิบสองปันนาชี้ทะลุแสนล้าน) *Prachachart Turakit*, July 19.
[64] George Reynolds (2007) 'Packaging Mark to Authenticate Chinese Food' *Food Production Daily*, August 23. http://www.foodproductiondaily.com/news/ng.asp?id=79196-shipments-inspection-exports

Table 3.14: Fruits and Vegetables Requiring MRL Certification

Fruits and Vegetables Required for MRL Certification	Export Destination
1. Longan 2. Durian 3. Lychee 4. Mangosteen 5. Tamarind 6. Mango 7. Pomelo 8. Asparagus 9. Ginger 10. Fresh Okra 11. Baby corn 12. Chilli	- Singapore - Malaysia - Japan - **People's Republic of China** - Hong Kong - European Union - U.S.
1. Coriander 2. Parsley 3. Basil Leaves (กระเพรา) 4. Sweet Basil Leaves (โหระพา) 5. *Limnophila aromatica* (Lomk.) Merr (ผักแขยง) 6. Kitchen Mint (ใบสะระแหน่) 7. *Polygonum odoratum Lour.*, or *Heliotropium indicum* L. (ผักแพรว) 8. Green Onion 9. Celery 10. Chinese Chives (*Allium tuberosum Rottl. ex Spreng* – ใบกุยไช่) 11. *AcaciaPennata(L.)Willd.Subsp. InsuavisNielsen"* (ชะอม) 12. Lemon Grass 13. Morning Glory (ผักบุ้ง) 14. *Marsilia crenata* Presl. (ผักแว่น) 15. *Neptunia Fabaceae* (ผักกระเฉด) 16. Tiger Herbal *(Centella asiatica Urban* - ใบบัวบก) 17. *Piper sarmentosum Roxb* (ใบชะพลู) 18. Red Spinach (ผักโขมแดง) 19. Green Beans (ถั่วฝักยาว) 20. Asparagus (หน่อไม้ฝรั่ง) 21. Chilli (พริกขี้หนู) 22. *Basella alba Linn* (ผักปลัง)	- Norway - Iceland - European Union

Department of Foreign Trade, Ministry of Commerce
http://www.dft.moc.go.th/level4Frame.asp?sPage=the_files/$$8/level4/goods_101.html&level4=59

3.6 Non-SPS Concerns over Fruit and Vegetable Trade with China

Apart from SPS measures, other non-SPS regulations related to the import of goods pose as an impediment for accessing the Chinese market. Some of such regulations are:

3.6.1. Import Licensing and Quarantine Import Permits

All agricultural products entering China must acquire quarantine import permits from the General Administration for Quality Supervision, Inspection, and Quarantine (AQSIQ). Though the country has committed to reforming the process of acquiring the quarantine import permit to make it less burdensome and more facilitating to trade, following its WTO accession commitment, improvement on the procedure is still lacking.

3.6.1.1 Quarantine Import Permits

The Chinese government Measures for the Administration of Inspection, Quarantine, and Supervision on the Fruit Entering China[65] effective from July 5, 2005 specifies in Article 5:

> 'Before concluding a contract or agreement on the trade of the fruit, one shall file an application to the SAQSIQ [66] for gong through the examination and approval formalities for the quarantine and inspection of the fruit and shall obtain an Entry Animal and Plant Quarantine License of the People's Republic of China (hereinafter referred to as the EAPQL)'.

The Chinese government grants the Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) extraordinary discretion over the issuance of import permits.
The American Chamber of Commerce has voiced complaints that several commodities such as soybeans, cotton, meat, and poultry have experienced significant restrictions on imports to China due to AQSIQ's strict rules on the issuance of Import of Animal and Plant Quarantine permits, as well as its stringent inspection procedures[67]. A quarantine officer at Yunnan Entry-Exit Inspection and Quarantine Bureau, however, informed us that the application process for the quarantine permit can now be done online, takes only 1

[65] Source: http://faolex.fao.org/docs/texts/chn53643.doc
Also available at
http://www.fdi.gov.cn/pub/FDI_EN/Laws/GeneralLawsandRegulations/MinisterialRulings/P020060620326152187707.pdf
[66] The State Administration of Quality Supervision, Inspection and Quarantine.
[67] The American Chamber of Commerce, People's Republic of China (2004) 2004 White Paper – Agriculture and Food, http://www.amcham-china.org.cn/amcham/show/content.php?Id=363

day before the permit is issued to the applicant, and is free of charge. This seems to suggest that acquiring quarantine import license is a straight-forward and simple process.

The USDA report on China's Quarantine Import permit (QIP)[68], however, argues otherwise, stating that the QIP application process takes a total of 20 working days for AQSIQ to reply to the QIP application[69]. This figure corresponds to the WTO China Trade Policy Review report (2006) which states that under the Administrative Permission Law of 2004, AQSIQ is required to issue the permit or notice of refusal within 20 working days of receipt of the application, once it is accepted by the local CIQ. However, the WTO Secretariat reviewing China's trade policy continues to state, 'it is not clear to the Secretariat how long it takes the local CIQ office to clear the application.'[70] In addition, information on the period of QIP validity varies: under the Administrative Permission Law, the permit is valid for 6 months; however, under the Administrative Measures on Examination and Approval of Entry Animal and Plant Quarantine, the permit is valid only for the calendar year it was issued in[71]. 1 permit per fruit rule applies[72] and permits can neither be transferred nor sold[73]. The cost of applying or renewing the permit is 300 yuan[74]. Furthermore, the permit must be reapplied if the quantity shipped exceeds the quantity indicated in the permit by 5%, if the species indicated on the permit is altered, or if there is an alteration of the exporting country or region, entry port, designated port, or transport routes.

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[68] USDA (2007) 'People's Republic of China: Food and Agricultural Import Regulations and Standards – AQSIQ Quarantine Import Permit Changes 2007' *GAIN Report* CH7043, USDA Foreign Agricultural Services, June 13.
http://www.fas.usda.gov/gainfiles/200706/146291376.doc
Similar comments can be found in a USTR 2003 report
http://www.ustr.gov/assets/Document_Library/Reports_Publications/2003/asset_upload_file425_4313.pdf

[69] ibid., Appendix I, p.5.
According to the USDA report, the QIP application process involves:
1. Importers apply for the Quarantine Import Permit directly with local CIQ offices or download the application, by attaching an import document to the application.
2. Upon verification, local CIQs will forward the application to the Import and Export Food Safety Bureau of AQSIQ.

[70] WTO China Trade Policy Review, June 26, 2006, (WT/TPR/S/161/Rev.1), p.92.

[71] Ibid., p.92-3.

[72] (2007) 'China's Rules, Standards, and Regulations on Importation of Agricultural Industrial Products and Food' Thailand National Food Institute (NFI).
http://www.nfi.or.th/filefoodlaw/pdffile/CH_%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%99%E0%B8%B3%E0%B9%80%E0%B8%82%E0%B9%89%E0%B8%B2%E0%B8%AA%E0%B8%B4%E0%B8%99%E0%B8%84%E0%B9%89%E0%B8%B2%E0%B8%AD%E0%B8%B8%E0%B8%95%E0%B8%AA%E0%B8%B2%E0%B8%AB%E0%B8%81%E0%B8%A3%E0%B8%A3%E0%B8%A1%E0%B9%80%E0%B8%81%E0%B8%A9%E0%B8%95%E0%B8%A3%E0%B9%81%E0%B8%A5%E0%B8%B0%E0%B8%AD%E0%B8%B2%E0%B8%AB%E0%B8%B2%E0%B8%A3-%E0%B9%80%E0%B8%A1%E0%B8%A9%E0%B8%B2%E0%B8%A2%E0%B8%9950.pdf

[73] WTO China Trade Policy Review, June 26, 2006, p93.

[74] (2007) 'China's Rules, Standards, and Regulations on Importation of Agricultural Industrial Products and Food'

Despite the Chinese government having extended the validity period of the QIP from 3 to 6 months, following China's commitment made during the April 2004 JCCT (Joint Commission on Commerce and Trade) meeting and as specified in AQSIQ-issued Decree 73 on *Items on Handling the Review and Approval for Entry Animal and Plant Quarantine*, the 6-month validity of QIP still locks purchasers into a very narrow period to purchase, transport and discharge cargos or containers, considering the QIP must be applied for prior to an import or purchasing contract between importers and exporters can be concluded. The report continues to comment that even though a QIP should be acquired before placing an order, in practice, this is unfeasible 'because of the commercial necessity to contract commodity shipments when prices are beneficial. In addition, traders report that shipment quantities are often closely scrutinized and are at risk for disapproval if considered too large. Moreover, AQSIQ can slow down or even suspend issuance of QIPs at its discretion, without notifying traders in advance or explaining its reasons, resulting in significant commercial uncertainty.'[75]

Another point of the QIP system criticised in the report is the unofficially imposed quantity requirements practised by the AQSIQ. There have been reports that AQSIQ has used the quantity requirement during peak harvest periods to limit the flow of certain competing commodity imports. In 2006, traders reported that AQSIQ not only limited QIP quantities, but also required some companies to use up the majority of a QIP before being issued another one and required other companies to use up their QIPs or risk being "de-listed." Many WTO members argued that the QIP system was unnecessary and was not based on any scientific evidence; however, AQSIQ insisted that the system was necessary to ensure that an adequate number of examiners were on duty at ports when shipments arrive to certify ad inspect products for quality and quantity

3.6.1.2 Import Licenses

As mentioned in the previous chapter, there are 3 types of import licensing schemes in China: import licences, automatic import licences, and tariff rate quotas (TRQs) for imports. Import quotas were abolished on 10 December 2004[76]. The process of acquiring import licenses is rather complicated. Prior to applying for an import license, applicants must apply for an import permit, which is issued by different entities according to the products. For example, permits for chemicals licensed under the Chemical Weapons Convention must be applied to the Office of Implementing the Convention on the

[75] USDA (2007) 'People's Republic of China: Food and Agricultural Import Regulations and Standards – AQSIQ Quarantine Import Permit Changes 2007', p.3.
[76] WTO document G/LIC/W/25, 19 September 2005.

Prohibition of the Development of Chemical Weapons, based in the National Development and Reform Commission (NDRC); permits for chemicals used to produce narcotics must be applied to MOFCOM; whereas permits for ozone-depleting substances are issued by the State Environmental Protection Administration. In addition, various documents are required for submission, such as the business certificate of registered companies and "record registration form" of foreign trade operators; certificates of foreign invested enterprises; and "related documents of MOFCOM or the departments concerned" in the case of state-owned enterprises. Upon approval of the import permit, the importer will be granted a licence automatically by MOFCOM. However, because of the "one licence one customs" licensing system, the import licence can be used only once during its period of validity at only one customs post, although a "non-lot licence" may be used up to 12 times within its period of validity[77].

The whole application process normally takes 3 working days, according to the 'Measures on Administration of Import Licenses for Goods', which came into force on January 10, 2005. However, if the justification for importation is believed to be 'unconvincing', according to China's notification to the WTO, the application may be refused, although it is not clear how 'unconvincing' is defined[78].

The USDA report praises China's effort to reform its import license measures by substantially reducing the number of products subject to import licensing requirements since the early 1990s. According to China's notifications to the WTO, the number of tariff lines fully subject to import licensing declined from 185 (2.53% of the tariff) in 2002 to 90 (1.20%) in 2004. The number of lines partly subject to import licensing increased from 29 to 32 during the same period. In total, the number of lines partially and fully covered by import licensing declined from 214 in 2002 to 82 in 2005.[79] The products relate mainly to chemicals and chemical products (78 lines)[80]. In addition, the country began to allow more than one shipment per license in 2002 instead of following the one-shipment per license system as in the past. Nevertheless, this change was only temporary following the US intervention. To date, no official modification of the system has been carried out by the Chinese authority.

[77] WTO China Trade Policy Review, June 26, 2006, (WT/TPR/S/161/Rev.1), p.77.
[78] Ibid.
[79] Figures for 2002 include products subject to import tendering, many of which have, as of 2004, been moved to the automatic import licensing list; excluding products subject to import tendering the 2002 figure is 172 (2.35% of the tariff).
[80] The data provided for 2005 do not appear to distinguish between lines that are partially subject to licensing and those fully subject to licensing.

3.6.2 Value Added Tax (VAT)

According to the Chinese law, Value Added Tax is imposed at the national level, which means that every province needs to follow this rule introduced by the Central Administration. China requires that importers of goods must pay VAT, unlike Thailand which does not impose VAT on importers. Three rates of VAT were introduced:

1) 0% VAT on exported products, in order to offer local producers an incentive to export.
2) 13% VAT on 19 product groups, including non-processed agricultural products such as fresh fruits.
3) 17% VAT on all other products, including processed food, as well as processed fruits and vegetables (such as dried longan).

In the case of Thai fruits, fresh fruits such as longan and durian are subject to 13% VAT whereas dried longan, one of the major Thai fruit exports, is subject to 17% VAT. This is despite the zero tariff rate scheme on products traded between China and Thailand under the Thailand-China Early Harvest programme of the ASEAN-China FTA. This VAT imposition became one of the major obstacles for Thai exports to access the Chinese market. Although Chinese producers are also subject to the above VAT payment, the Chinese law offers greater allowance to local producers than it does importers. For example, Chinese SMEs with operating fund below 1 million Yuan are subject to a lum sum VAT payment of 6% whereas small shops can enjoy a lum sum VAT payment of 4%. Also, in practice, Chinese producers may avoid paying the VAT by not issuing a receipt for any business transaction and opt to pay a lum sum VAT rate of 6%, which is lower than the usual VAT rates of 13% and 17%[81]. In addition, China grants preferential treatment to border trade. Residents within a 15-20 kilometre area of the border may import products worth up to 3,000 Yuan per person per day free of duty through designated places or fairs. Normal MFN tariffs and VAT rates are charged for all items in excess of this value; and enterprises registered in approved prefectures, counties, and cities along the border, that are granted the right to conduct border trade, are subject to a 50% reduction in the tariff and VAT rates on their imports, except on cigarettes, alcohol, cosmetics, and products under import quotas (discontinued as at 1 January 2005), tariff rate quotas and import licensing[82].

[81] Aksornsri Panichsarn (2007) *The Economy of the Chinese Provinces* (Bangkok: Centre for China Studies, Asia Studies Institute, Chulalongkorn University: Bangkok, 15).
[82] WTO China Trade Policy Review, June 26, 2006, p72. WT/TPR/S/161/Rev.1

Despite the fact that China's VAT scheme is imposed on a MFN basis, i.e. all countries exporting to China are subject to VAT payment, it may nevertheless violate the National Treatment rule of the WTO when local producers receive privileges in the reduction and sometimes exemption of the VAT payment. China reasoned that small agricultural producers who sold their produces directly to the consumers were exempted from the VAT payment, since the vast number of the agricultural population in China, together with its current VAT scheme, made it difficult for the government to collect the tax from these small producers. In response of Costa Rica's address that China's VAT system could violate the WTO regulations, China answered that its VAT was applied equally to domestic and imported products, which made the scheme in line with the WTO National Treatment principle[83].

3.6.3 Custom Valuation

Custom Valuation by Chinese officials continues to be a problem to Thai fruit exporters. Valuation of imports is solely subject to the discretion of Chinese Customs officers, who often assess the value of Thai fruits to be higher than they actually are. This makes fruits exported from Thailand subject to higher VAT amount payment. Sometimes, the officers decide to raise the value of imports without basis e.g. the price of Thai durian was raised from 700 baht in 2005 to 900 baht in 2006[84]. The USTR report on China's non-tariff measures asserts the problematic method of customs valuation by China. Although China's 2002 regulations and 2003 implementing rules provide that import valuation is done on the basis of the transaction price of the goods i.e. the price the importer actually pays, many Chinese customs officials continue to improperly use 'reference pricing', resulting in a higher dutiable value[85]. In addition, Thai Fruits are sold under the consignment system without the letter of credit. Prices of the products are not set by Thai exporters; thus, custom valuation is wholly subject to Chinese customs officials. The USTR report also cites China's inefficient and inconsistent customs clearance procedures as a major concern of US exporters. It continues to report that there is no unified customs clearance practice as the procedures vary from port to port, and the fees charged appear to be excessive and are rising rapidly[86].

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[83] WTO (2007) 'Trade Policy Review: People's Republic of China – Minutes of meeting (Addendum)' January 16. (WT/TPR/M/161/Add.3), 82.
[84] (2006) 'Problems with Exporting Fruits to China' *Prachachart Turakij*, April 3-5. http://www.exim.go.th/info/movement_by_product.asp?product_type=A&offset=1330v
[85] (2006) 'Foreign Trade Barriers – China', the United States Trade Representative (USTR), p.101. http://www.ustr.gov/assets/Document_Library/Reports_Publications/2006/2006_NTE_Report/asset_upload_file684_9235.pdf
[86] (2006) 'Foreign Trade Barriers – China', the United States Trade Representative (USTR), p.80. http://www.ustr.gov/assets/Document_Library/Reports_Publications/2007/2007_NTE_Report/asset_upload_file554_10935.pdf, p.87.

3.6.4 Counterfeit Labels

The problem with counterfeit labels of imported food is rampant in China. Labels of major fruit brands such as Washington apples, New Zealand's Zespri kiwi, Dole navel (oranges), and Valencia Sunkist oranges are sold at Jiangnan market in Guangzhou. A counterfeit label on tropical fruits such as mangos from the Philippines was also found at the market. It is therefore a serious concern that such labels for Thai tropical fruits may also be available in the Chinese market. In fact, this problem was raised by the Thailand Fruit and Vegetable Exporters Association at the 2004 meeting between government officials and the relevant private sector on the impacts of Thailand-China FTA on Thai fruit and vegetable exports. Representatives from the association expressed the concern that counterfeit labels of Thai fruits were used in China on low-quality products which damage Thailand's reputation[87].

Figure 3.12: Counterfeit Labels of Imported Fruits Found in Jiangnan Market

Figure 3.13: Counterfeit 'Dole Navel' Label

[87] Minute of the 1/2547 Consultative Meeting on the Impacts of China-Thai FTA on Fruits and Vegetables, April 1, 2004.
http://www.ftamonitoring.org/Thai_china/talk/%BA%D1%B9%B7%D6%A1%A1%D2%C3%BB%C3%D0%AA%D8%C1%20FTA%20%E4%B7%C2-%A8%D5%B9%201-04-04.doc

Figure 3.14: Counterfeit Label of Philippines Mangos

3.7 Conclusion

The ASEAN-China FTA was created with an objective of trade expansion between China and its ASEAN partners. However, barriers to trade which are supposed to have been dismantled after China's accession to the WTO continue to be faced by Thai exporters who aim at accessing the Chinese market. One of the major causes of such barriers is the lack of transparency in policy making and policy implementation of the Chinese government. This lack of transparency counts as a major non-tariff barrier to Thai exports to the country. The USTR report summarises China's inconsistent practices on various issues, such as the lack of effective IPR enforcement, resulting in the high level of counterfeiting and IP piracy in China; 'capricious practices by Chinese customs and quarantine officials' which can delay or halt shipments of agricultural products into China; and SPS measures that are based on questionable scientific bases; as well as 'opaque regulatory regime (that) frequently bedevil traders in agricultural commodities'[88] such as 'overly burdensome licensing and operating requirements'[89]. The problem of trade barriers to accessing the Chinese market faced by Thai exporters is not restricted to the fruit sector alone. Exporters of electrical products also face complicated rules of applying for the CCC mark certification from the Chinese authority. A full elaboration of problems with CCC mark will be discussed in the next chapter. Chapter 5 will examine some policy recommendations and suggestion for their implementation to counter the Chinese market access problems encountered by both the fruit and electrical product sectors.

[88] (2006) 'Foreign Trade Barriers – China', the United States Trade Representative (USTR), p.80. http://www.ustr.gov/assets/Document_Library/Reports_Publications/2007/2007_NTE_Report/asset_upload_file554_10935.pdf
[89] Ibid., p.81.

Note – Chapter 3

Thailand-China Fruit and Vegetable Trade Statistics

Table 3.1: Thailand-China Trade Balance: 2001 - 2007 (August)

		2001	2002	2003	2004	2005	2006	2007 (Jan.-Aug.)
Trade of All Products	Thailand's Total Import from China	165,060,681,723	211,706,558,802	251,071,503,303	329,661,616,062	448,991,188,015	515,704,847,681	370,255,011,752
	Thailand's Total Export to China	126,863,486,788	152,473,674,926	235,765,440,024	285,471,572,733	366,968,682,603	444,899,198,034	319,095,387,800
	Trade Balance	-38,197,194,935	-59,232,883,876	-15,306,063,279	-44,190,043,329	-82,022,505,412	-70,805,649,647	-51,159,623,952

Table 3.2: Fruits and Vegetables Trade between China and Thailand: 2001- Aug. 2007 (Unit: Baht)

		2001	2002	2003	2004	2005	2006	2007 (Jan.-Aug.)
Edible Vegetables (HS 07)	Thailand's Import from China	249,751,393	388,827,202	840,322,898	1,442,523,307	1,972,132,336	2,625,025,322	1,847,868,217
	Thailand's Export to China	4,270,083,544	4,408,040,366	5,405,893,883	8,599,700,832	11,911,118,610	15,772,470,790	10,027,300,891
	Trade Balance	**4,020,332,151**	**4,019,213,164**	**4,565,570,985**	**7,157,177,525**	**9,938,986,274**	**13,147,445,468**	**8,179,432,674**
Edible Fruit & Nut (HS 08)	Thailand's Import from China	1,039,029,757	1,184,484,138	2,478,548,052	2,703,216,349	2,937,358,268	3,536,374,649	2,030,225,734
	Thailand's Export to China	1,384,063,518	1,486,470,031	2,822,371,464	2,933,787,658	3,912,208,700	3,747,701,680	2,821,549,726
	Trade Balance	**345,033,761**	**301,985,893**	**343,823,412**	**230,571,309**	**974,850,432**	**211,327,031**	**791,323,992**

Source: The Customs Department of Thailand. http://www.customs.go.th/Statistic/StatisticIndex.jsp

Table 3.3: Thailand's Export of Vegetables (HS 07) to China: 2006-2007

Thailand's Total Vegetable Exports to China			
		2006	**2007 (Jan - Aug)**
HS-CODE	**Description**	**FOB Value** (Baht)	**FOB Value** (Baht)
07 - EDIBLE VEGETABLE			
07.03 ...more	Onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled.	0	1,672,840
07.05 ...more	Lettuce (Lactuca sativa) and chicory (Cichorium spp.), fresh or chilled.	0	1,620
07.09 ...more	Other vegetables, fresh or chilled.	5,194,509	3,905,747
07.10 ...more	Vegetables (uncooked or cooked by steaming or boiling in water), frozen.	8,862,526	5,452,430
07.12 ...more	Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared.	799,432	1,454,917
07.13 ...more	Dried leguminous vegetables, shelled, whether or not skinned or split.	26,013,285	8,655,524
07.14 ...more	**Manioc** (cassava), arrowroot, salep, Jerusalem artichokes, sweet potatoes and similar roots and tubers with high starch or inulin content, fresh, chilled, frozen or dried, whether or not sliced or in the form of pellets; sago pith.	15,731,601,038	10,006,157,813
	Total	**15,772,470,790**	**10,027,300,891**
	Thailand's Export of Vegetables to China, Excluding Manioc	**40,869,752**	**21,143,078**

Source: The Customs Department of Thailand.
http://www.customs.go.th/Statistic/StatisticIndex.jsp

Table 3.4: Thailand's Export of Manioc to the World: 2006-2007

COUNTRY	2006	Jan-Aug. 2007
China	15,731,601,038	10,006,157,813
Netherlands	2,821,290	1,626,016,660
Spain	579,754,739	1,257,194,443
Belgium	244,619,979	214,330,746
New Zealand	226,369	163,001,091
Taiwan Province of China	13,016,387	144,835,024
Malaysia	137,193,648	108,199,856
Hong Kong	33,817,381	90,746,216
Japan	95,361,226	78,306,719
Rest of the World	**408,230,332**	**32,986,144**
Grand Total	**17,246,642,389**	**13,721,774,712**
Thai Manioc Export to China as a Percentage of Total Export to the World	**91%**	**73%**

Table 3.5: Thailand's Total Export of Fruits (HS08) to China: 2006-2007

Thailand's Total Fruit Exports to China		FOB Value (Baht)	
HS-CODE	**Description**	**2006**	**2007 (Jan - Aug)**
08 - EDIBLE FRUIT AND NUT			
08.01 ...more	Coconuts, Brazil nuts and cashew nuts, fresh or dried, whether or not shelled or peeled.	38,811,024	28,152,022
08.02 ...more	Other nuts, fresh or dried, whether or not shelled or peeled.	3,891,411	30,508,323
08.03 ...more	Bananas, including plantains, fresh or dried.	112,277,767	64,111,540
08.04 ...more	Dates, figs, pineapples, avocados, guavas, mangoes and **mangosteens**, fresh or dried.	184,520,372	312,066,320
08.05 ...more	Citrus fruit, fresh or dried.	140,381,816	73,417,269
08.07 ...more	Melons (including watermelons) and papaws (papayas), fresh.	9,304,188	1,154,662
08.08...more	"Apples, pears and quinces, fresh."	8,552,812	N/A
08.09 ...more	Apricots, cherries, peaches (including nectarines), plums and sloes, fresh.	0	125,920
08.10 ...more	**Other fruit, fresh.**	2,689,405,260	1,905,914,920
08.11...more	"Fruit and nuts, uncooked or cooked by steaming or boiling in water, frozen, whether or not containing added sugar or other sweetening matter."	94,610,930	52,555,372
08.12...more	"Fruit and nuts, provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption."	8,084,390	6,786,606
08.13...more	"**Fruit, dried,** other than that of headings 08.01 to 08.06; mixtures of nuts or dried fruits of this Chapter."	457,679,352	346,756,772
08.14...more	"Peel of citrus fruit or melons (including watermelons), fresh, frozen, dried or provisionally preserved in brine, in sulphur water or in other preservative solutions."	182,358	N/A
	Total	**3,747,701,680**	**2,821,549,726**

Source: The Customs Department of Thailand.
http://www.customs.go.th/Statistic/StatisticIndex.jsp

Table 3.6: Thailand's Major Fruit Exports to China, by Type: 2006-2007

Thailand's Major Fruits Export to China			
Country : CHINA			
		2006	**2007 (Jan - Aug)**
HS-CODE	**Description**	**FOB Value** (Baht)	**FOB Value** (Baht)
0810.6000.000	Durians-Durians	1,356,013,472	1,145,192,337
0810.900.102	Longans	925,372,873	637,729,084
0804.500.301	Mangosteens	180,445,850	301,610,867
0810.900.506	Lychee	122,218,216	39,740,133
0810.900.203	Rambutan	1,084,139	307,147
0804.5020.001	Mangoes, fresh and dried	0	1,320,599

Source: The Customs Department of Thailand.
http://www.customs.go.th/Statistic/StatisticIndex.jsp

Table 3.7: Thailand's Imports of Vegetables (HS-07) from China: 2006-2007

Thailand's Vegetable Import from China		CIF Value (Baht)	
HS-CODE	**Description**	**2006**	**2007 (Jan - Aug)**
07 - EDIBLE VEGETABLE			
07.01 ...more	Potatoes, fresh or chilled.	31,166,773	10,344,228
07.02 ...more	Tomatoes, fresh or chilled.	22,903	232,603
07.03 ...more	Onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled.	372,742,935	177,153,027
07.04 ...more	Cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled.	256,835,126	180,531,609
07.05 ...more	Lettuce (Lactuca sativa) and chicory (Cichorium spp.), fresh or chilled.	20,728,009	16,207,840
07.06 ...more	Carrots, turnips, salad beetroot, salsify, celeriac, radishes and similar edible roots, fresh or chilled.	637,340,834	342,190,508
07.07 ...more	Cucumbers and gherkins, fresh or chilled.	56,656	61,819
07.08 ...more	Leguminous vegetables, shelled or unshelled, fresh or chilled.	95,973,033	78,732,149
07.09...more	"Other vegetables, fresh or chilled."	86,227,416	70,706,567
07.10...more	"Vegetables (uncooked or cooked by steaming or boiling in water), frozen."	78,218,655	52,891,838
07.11...more	"Vegetables provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption."	126,108,276	68,217,698
07.12...more	"Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared."	841,729,771	789,786,427
07.13...more	"Dried leguminous vegetables, shelled, whether or not skinned or split."	62,800,787	43,198,800
07.14...more	"Manioc, arrowroot, salep, Jerusalem artichokes, sweet potatoes and similar roots and tubers with high starch or inulin content, fresh, chilled, frozen or dried, whether or not sliced or in the form of pellets; sago pith."	15,074,148	17,613,104
	Total	**2,625,025,322**	**1,847,868,217**

Source: The Customs Department of Thailand.
http://www.customs.go.th/Statistic/StatisticIndex.jsp

Table 3.8: Thailand's Import of Fruits (HS 08) from China: 2006-2007

Thailand's Fruits Import from China			
		2006	2007 (Jan - Aug)
HS-CODE	Description	CIF Value (Baht)	CIF Value (Baht)
08 - EDIBLE FRUIT AND NUT			
08.01 ...more	Coconuts, Brazil nuts and cashew nuts, fresh or dried, whether or not shelled or peeled.	77,752	85,864
08.02 ...more	Other nuts, fresh or dried, whether or not shelled or peeled.	209,232,133	151,662,041
08.03 ...more	Bananas, including plantains, fresh or dried.	0	2,365,533
08.04 ...more	Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh or dried.	6,956,562	3,446,958
08.05 ...more	Citrus fruit, fresh or dried.	175,893,791	191,954,090
08.06 ...more	Grapes, fresh or dried.	295,638,061	117,500,031
08.07 ...more	Melons (including watermelons) and papaws (papayas), fresh.	4,252,695	3,459,414
08.08 ...more	Apples, pears and quinces, fresh.	2,544,915,281	1,396,593,206
08.09...more	"Apricots, cherries, peaches (including nectarines), plums and sloes, fresh."	2,363,392	0
	Total	**3,239,329,667**	**1,867,067,137**

Source: The Customs Department of Thailand.
http://www.customs.go.th/Statistic/StatisticIndex.jsp

Table 3.9: Major Chinese Fruit Imports to Thailand, by Type: 2006-2007

Major Chinese Fruit Imports to Thailand			
		2006	2007 (Jan - Aug)
HS-CODE	Description	CIF Value (Baht)	CIF Value (Baht)
0808.1000.000	Apples	1,608,185,111	1,006,927,757
0808.2000.000	Pears	936,730,170	389,665,449
08.05...more	Citrus fruits, fresh or dried (Oranges, tangerines, mandarins, grapefruits, and lemons).	175,893,791	191,954,090
08.06 ...more	Grapes, fresh or dried	295,638,061	117,500,031
0802.4000 ...more	Chestnuts (Castaneaspp.)	63,786,963	49,766,640

Source: The Customs Department of Thailand.

***** For Table 3.10-3.14, See inside Chapter 3 *****

Table 3.15: Certified Food Laboratories in Thailand

Order	Number of Certificate	Name	Certification Date	Expiry Date
1	มกอช. 001/2548	TESTING LABORATORY LABORATORY CENTER FOR FOOD AND AGRICULTURAL PRODUCT CO.,LTD.	19/1/2005	18/1/2008
2	มกอช. 0002/2548	TESTING LABORATORY SUN VALLAY (THAILAND) LTD.	12/1/2005	11/1/2008
3	มกอช. 0003/2548	TESTING LABORATORY P.C.R. MAHALARB (9999) CO., LTD.	12/1/2005	11/1/2008
4	มกอช. 0004/2548	TESTING LABORATORY GFPT PUBLIC CO.,LTD.	12/1/2005	11/1/2008
5	มกอช. 0005/2548	TESTING LABORATORY AJINOMOTO FROZEN FOODS (THAILAND) CO., LTD.	17/1/2005	16/1/2008
6	มกอช. 0006/2548	TESTING LABORATORY SAHA FARMS CO., LTD	19/1/2005	18/1/2008
7	มกอช. 0007/2548	TESTING LABORATORY BANGKOK PRODUCE MERCHANDISING PUBLIC CO., LTD.	18/1/2005	17/1/2008
8	มกอช. 0008/2548	TESTING LABORATORY CHEMBLAB SERVICE (THAILAND) LTD	19/1/2005	18/1/2008
9	มกอช. 0009/2548	TESTING LABORATORY SAHA FARMS CO.,LTD (LOP BURI)	19/1/2005	18/1/2008
10	มกอช. 0010/2548	TESTING LABORATORY SOUTH EAST ASIAN LABORATORY SERVICE CO.,LTD	19/1/2005	18/1/2008
11	มกอช. 0011/2548	TESTING LABORATORY ANALYTICAL LABORATORY SERVICE CO.,LTD	21/1/2005	20/1/2008
12	มกอช. 0012/2548	TESTING LABORATORY PHATTHANA SEAFOOD CO.,LTD	21/1/2005	20/1/2008
13	มกอช. 0013/2548	TESTING LABORATORY C.M.Y.K. LTD.	21/1/2005	20/1/2008
14	มกอช. 0014/2548	TESTING LABORATORY DEPARTMENT OF POULTRY DIAGNOSTIC LABORATORY SAHA FARMS CO.,LTD	20/1/2005	19/1/2008
15	มกอช. 0015/2548	TESTING LABORATORY NATIONAL FOOD INSTITUTE	21/1/2005	20/1/2008
16	มกอช. 0016/2548	TESTING LABORATORY SGS (THAILAND) LIMITED	26/1/2005	25/1/2008
17	มกอช. 0017/2548	TESTING LABORATORY GRAMPAIN FOODS SIAM LTD	31/1/2005	30/1/2008
18	มกอช. 0018/2548	TESTING LABORATORY ADINOP CO.,LTD	3/2/2005	2/2/2008

Order	Number of Certificate	Name	Certification Date	Expiry Date
19	มกอช. 0019/2548	TESTING LABORATORY BANGKOK RANCH PUBLIC CO.,LTD	7/2/2005	6/2/2008
20	มกอช. 0020/2548	TESTING LABORATORY S&P SYNDICATE PUBLIC CO.,LTD	8/2/2005	7/2/2008
21	มกอช. 0021/2548	TESTING LABORATORY PSB TEST (THAILAND) CO.,LTD	8/2/2005	7/2/2008
22	มกอช. 0022/2548	TESTING LABORATORY T.C. UNION AGROTECH CO.,LTD	14/2/2005	13/2/2008
23	มกอช. 0023/2548	OSOTSPA CO.,LTD	15/2/2005	14/2/2008
24	มกอช. 0024/2548	TESTING LABORATORY THAI UNION MANUFACTURING CO.,LTD	16/2/2005	15/2/2008
25	มกอช. 0025/2548	BANGKOK LIVESTOCK PROCESSING CO.,LTD	16/2/2005	15/2/2008
26	มกอช. 0026/2548	TESTING LABORATORY NESTLE (THAI) LTD	28/2/2005	27/2/2008
27	มกอช. 0027/2548	TESTING LABORATORY CENTALAB CO.,LTD	4/3/2005	3/3/2008
28	มกอช. 0028/2548	TESTING LABORATORY GLOBO FOODS LTD	3/3/2005	2/3/2008
29	มกอช. 0029/2548	TESTING LABORATORY BANGKOK FARM CO.,LTD	7/3/2005	6/3/2008
30	มกอช. 0030/2548	TESTING LABORATORY THAI AGRI FOODS PUBLIC CO.,LTD	9/3/2005	8/3/2008
31	มกอช. 0031/2548	TESTING LABORATORY THAI UNION FROZEN PRODUCTS PUBLIC CO.,LTD	17/3/2005	17/3/2008
32	มกอช. 0032/2548	TESTING LABORATORY AJINOMOTO BETAGRO FROZEN FOODS(THAILAND)CO.,LTD	17/3/2005	16/3/2008
33	มกอช. 0033/2548	TESTING LABORATORY IQA – NORWEST LABS CO.,LTD	2/5/2005	1/5/2008
34	มกอช. 0034/2548	TESTING LABORATORY THE UNION FROZEN PRODUCT CO.,LTD	29/4/2005	28/4/2008
35	มกอช. 0035/2548	TESTING LABORATORY SUN FOOD INTERNATIONAL CO.,LTD	16/5/2005	15/5/2008
36	มกอช. 0036/2548	TESTING LABORATORY VICCHI CONSOLIDATED CO.,LTD	28/5/2005	27/5/2008
37	มกอช. 0037/2548	TESTING LABORATORY THAI NIPPON FOODS CO.,LTD	20/6/2005	19/6/2008
38	มกอช. 0038/2548	TESTING LABORATORY BETTER FOODS CO.,LTD	26/10/2005	25/10/200

Source: Natural Bureau of Agricultural Commodity and Food Standards
http://www.thailandfoodtraceability.com/Certified%20Laborat.html

4. China Compulsory Certification (CCC) Mark Requirement on Industrial Products

4

4.1 Introduction

The fourth chapter of the study discusses one of the NTMs most concerned by Thai exporters; a requirement of the China Compulsory Certification Mark (CCC Mark) on industrial products. The chapter provides an overview of the CCC System in China, its product coverage, and compliance procedures. Evidences of impacts of the CCC system on global exporters will be highlighted by discussing the CCC issues in the WTO forum, which will be reinforced by the story of Thai exporters of home electrical appliances to China. Results of market surveys in Gunagdong (Gunagzhou) and Yunnan (Kunming) provinces will also be provided. Finally, a conclusion will be given at the last part of this chapter.

4.2 Overview of the China Compulsory Certification System

Before China's WTO accession, imported and domestically produced products sold in China were subject to different certification systems. Certification system of the imported products was regulated and supervised by the State Administration for Entry-Exit Inspection and Quarantine (SAIQ) and executed by China Quality Certification Center for Import and Export Commodities (CQC). The certification mark called "CCIB Mark"[90] (CCIB: China Commodity Inspection Bureau) covering 49 categories of industrial products such as automobiles, home appliances, electric tools, personal computers, and printers.

For domestically produced electrical equipments, the safety certification system was administered by the former China State Bureau of Quality and Technical Supervision (CSBTS) whose authority delegated to the China Commission for Conformity Certification of Electrical Equipment (CCEE) as a designated certification body. The mark was then called "CCEE Mark", or commonly known as the "Great Wall Mark"

[90] The CCIB stands for China Commodities Inspection Bureau,; however, such Bureau has no longer exists.

Attempting to fulfill its WTO obligations, China has restructured its government certification authorities and uniformed the certification system. Since December 2001, the new system called The Compulsory Product Certification System (CPCS) has been jointly introduced and administered by the State General Administration for Quality Supervision and Inspection and Quarantine of the People's Republic of China (AQSIQ) and the Certification and Accreditation Administration of the People's Republic of China (CNCA).

This new system consists of Regulations for Compulsory Product Certification requiring both imported and domestically produced products to have "CCC Mark"; and the Catalogue providing the list of products covered by the regulation. The CCC system was put in place on May 2002 , allowing one year transition period, and came into full implementation on August 2003, initially covering 132 products with 323 tariff headings (at 8 digits). Purpose of the CCC system is to protect human life and health, animals, plants, environmental protection and national security. With the same purpose, other certification systems is also in placed in such big developed markets as the EU (CE Mark) and US (UL Mark[91]) with different requirements of product/factory standards and compliance procedures.

Comparing with the old system, the new system, on the one hand, enhanced National Treatment between imported and domestic products and simplified the certification system into one single scheme for both import inspection and quality control purpose. On the other hand, concerns in many areas are raised regarding product coverage, compliance procedures, and the cost burden. Comparing with 49 categories of imported products subject to the CCIB Mark and 7 categories of those subject to the Great Wall Mark, the CCC Mark is now required on 155 categories of products including components and parts, and scope expansion is expected. Compliance procedures of CCC system covers not only a product type testing but also includes factory inspections which take times and posts high cost burden. All of these concerned issues will be more elaborated in the next section.

[91] Unlike CCC and CE Mark, the UL Mark is not compulsory, it is rather a force of market and consumer's demand

4.3 Product Coverage, Compliance Procedures and Standards, and Cost burden

4.3.1 Product Coverage[92]: Wider and Deeper Aspects of Scope Expansion

The CCC system has been enforced on products being sold in China, whether imported or domestically produced (but not required on exported products), listed on the product Catalogue determined by the CNCA. The first Catalogue was announced on May 2002 and covered wide range of distinct industrial products in 132 categories from final products such as household appliances, electronic tools, computers, printers, and motor vehicles, to components and parts such as, electrical wires, motor, compressor, switch, circuits, and motor vehicle tires. The following Catalogue was announced in 2005 and 2007, extending product coverage to further 23 categories in groups of home decor and remodeling products, safety parts and accessories of motor vehicle and motorcycle, and toy products.

Table 4.1: 22 Groups of products listed in the Catalogue as of January 2007

1. Electrical wires and cables	12. Motor vehicle Tires
2. Circuit switches, electric devices for protection or connection	13. Safety Parts and Accessories of Vehicles and Motorcycles
3. Low-voltage Electrical Apparatus	14. Agricultural Machinery
4. Low power motors	15. Latex Products
5. Electric tools	16. Medical Devices
6. Welding machines	17. Fire Fighting
7. Household and similar electrical appliances	18. Safety Protection Products
8. Audio and video apparatus	19. Home Decor and Remodeling Products
9.Information technology equipments	20. Safety Glasses
10. Lighting apparatus	21. Toy Products
11. Telecommunication Terminal equipments	22. Motor vehicle Tires

[92] See Appendix for full lists of products subject to CCC requirement as of January 2007

Figure 4.1 Wide Range of Products Required the CCC mark

This scope extension was not only "wider" across new categories such as home décor and toy products but also "deeper" as it included parts and accessories of final products already listed in the first Catalogue, i.e. motor vehicle. Examples of motor vehicle subject to wider and deeper product coverage are given in the table below.

Table 4.2: Product Coverage of CCIB Mark and CCC Mark

	CCIB Mark (Before December 2001)	CCC Mark First Catalogue (May 2002)	CCC Mark Current Catalogue (January 2007)
Range of products	49 Categories	132 Categories, the CCIB Catalogue plus, - Components and parts - Non-electric goods	155 Categories, the first Catalogue plus, - Home decor and remodeling products - Motor vehicle and motorcycle parts - Toys
Coverage depth (example of motor vehicle)	- Automobile and glasses, tires, and safety belts - Motorcycle and tires	Same as listed under CCIB Catalogue	Those in the first catalogue plus, - Horns - Retro reflectors - Retro-reflective vehicle markings - Brake hoses - Rearview mirrors - Interior trimming materials - Door lock and door retention components - Fuel tanks - Seat and Seat Headrests - Rearview mirror products - Odometers - Vehicle/Motorcycle external lighting and signaling products

As major exports of Thai industrial products to China are intermediate products including accessories, components, and parts, the deeper scope expansion should be carefully monitored by the Thai government and the business sector.

4.3.2 Compliance Procedures and Standards

As set forth in the Regulations for Compulsory Product Certification, CNCA is in charge of nation-wide certification and accreditation activities, i.e. to specify the implementation rules of product certifications, to designate competent certification bodies, to publish the list of products, and to approve the exemption of products for special use from compulsory certification. Meanwhile, the AQSIQ at local branches are in charge of supervision of the Catalogue and elimination of illegal practices. All of the certification processes, i.e. application, inspection, and approval, are executed

at the Authorized Certification Bodies (ACBs) designated by the CNCA with specified the product scope for each one.

One product category is subject to one Implementation Rules for Compulsory Certification specified by the CNCA. The Implementation Rules outline scope of products, conformity procedures, general requirements for certification including standards, and use of mark for each product categories. However, major processes of certification are the same for all products that do not have the old CCIB mark, following these steps:

1. *Application for certification*

   Application and documents could be submitted to the ACB by the manufacturer itself or its authorized consultant/agent. It is important to know which ACB is assigned to the product seeking certification. The ACB will conduct an initial review and study of the application according to the basic requirements. If the application conforms to the basic requirements, an Acceptance Notice from the ACB will be issued to the applicant[93].

2. *Type testing*

   After receiving Acceptance Notice from the ACB, the manufacturer must send a sample of the product to the Accredited Testing Lab in China. The testing is based on Chinese national standard (GB Standard), which is a set of mandatory and recommended standards regulated by SAC (Standardization Administration of China). Currently, the CNCA does not designate the foreign lab as the Accredited Testing Lab directly, but may accept testing report from the lab accredited by government of country with which China has mutual recognition agreement.

[93] According to the consulting company, although some ACBs may accept application and supporting materials in English, it is obviously more practical and time-saving to submit the application and supporting materials in Chinese.

3. *Initial inspection of the factory*

   Generally, the initial inspection should be implemented after the sample has passed the type testing, but it could also be implemented at the same time as the type testing in special cases. The ACB will send inspectors to inspect and audit the manufacturing facilities in terms of the factory's quality assurance ability and products consistency.

4. *Evaluation of certification results and approval of certification*

   The ACB will evaluate the certification results by assessing the Type Testing Reports and result of the factory inspection. If the evaluation results meet the CCC requirement, the ACB will issue a CCC Certification to the manufacturer. If not, the ACB will inform the applicant about the reasons of failure. The applicant may re-apply for CCC certification after correcting its unqualified items.

5. *Follow-up inspection*

   The ACB exercises regular follow-up inspection normally at least once per year. The first follow-up inspection will normally be implemented 12 months after the certificate was granted. Scope of the follow-up inspection involves re-assessment of factory quality assurance ability and check of consistency of products certified. The type testing may be taken if necessary.

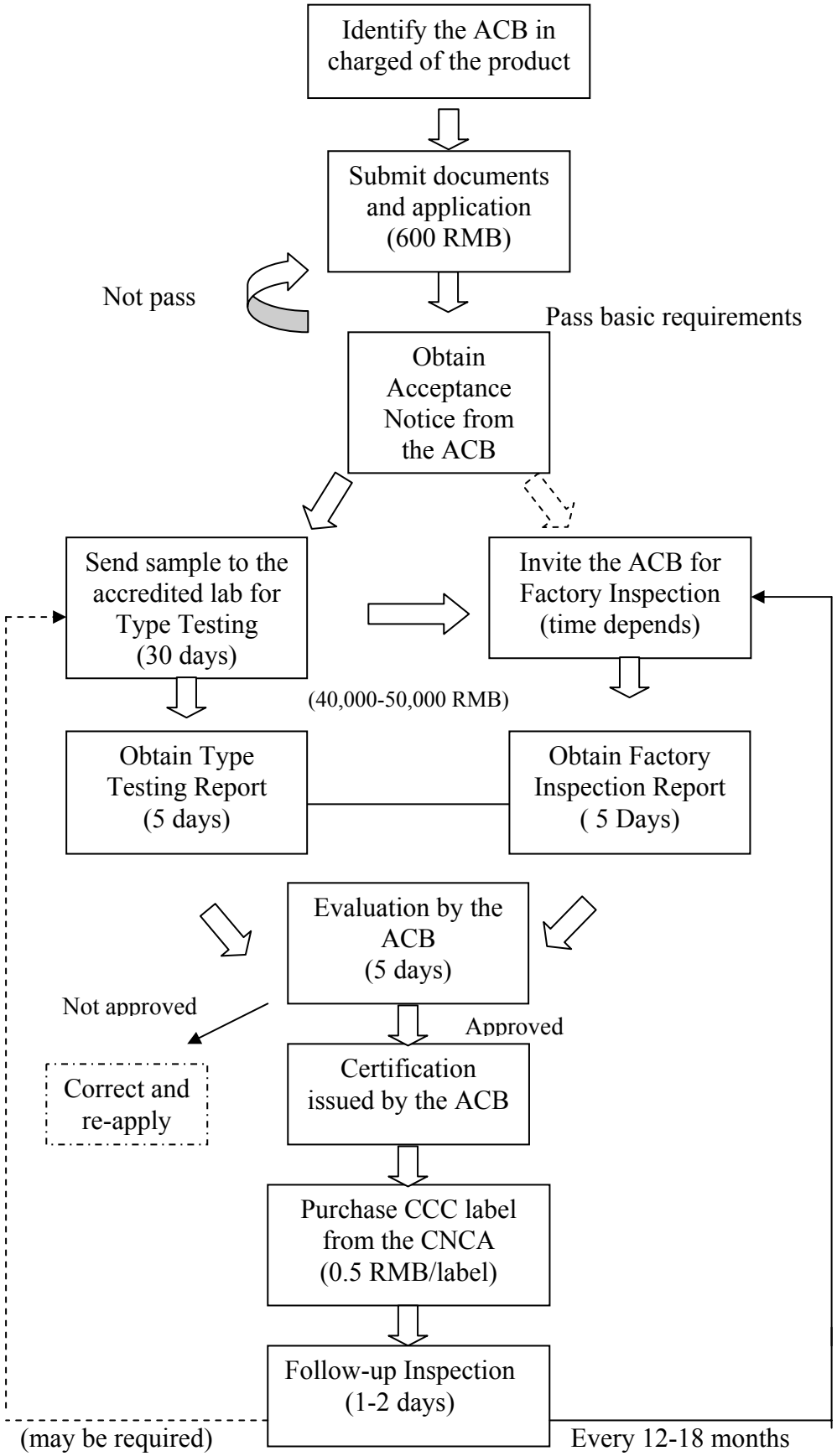
For the products already certified in the old system and having CCIB mark and/or the Great Wall mark, the manufacture can simply change to CCC mark by submitting documents and purchasing the new label. The type testing and initial factory inspection are exempted but the inspection on the difference of factory quality assurance capability requirements must be covered in the follow-up inspection.

4.3.3 Time and Costs

By law, the total time for the certification process must not exceed 90 days as stipulated in the Regulation. As of January 2007, estimated fixed cost for the first approval of CCC Mark is between 41,400 RMB and 51,400 RMB (approx. 5,000-6,800 USD), which covered application fee (600 RMB), certification fee (800 RMB), and cost of type testing and factory inspection (from 40,000 to 50,000 RMB)[94]. Additional costs are annual variable costs from the follow-up inspection and the cost of label (around 0.5 RMB/label). Compliance procedures including time and costs estimated for each step may be illustrated in the following flow chart:

[94] Information from Department of Foreign Trade, Ministry of Commerce of Thailand

Figure 4.2 Compliance procedures, stipulated time, and estimated costs of the CCC certification system



4.4 CCC in Global Concerns and the WTO Forum

4.4.1 Agreement on Technical Barrier to Trade

The TBT Agreement has been implemented among WTO members to ensure that technical regulations and standards, including packaging, marking and labelling requirements, and procedures for assessment of conformity with such regulations and standards, do not create unnecessary obstacles to trade.

In the context of the Agreement, member countries must:

- Treat imported goods no less favorable than domestically produced goods in terms of enforcement of technical regulations and standards, compliance procedures, and fees and charges.
- Use international standards if exist, except where such international standard is ineffective, inappropriate, or providing insufficient level of protection
- Provide transparency
- Not apply conformity assessment procedures more strictly than necessary

Generally, China CCC system must be implemented in accordance with the rule set forth in the Agreement. However, the TBT Agreement does not provide any concrete rules or judgments. It is quite subjective to the TBT Committee panel, for example, to decide whether the compliance procedure is stricter than necessary or whether an existing international standard relating to the product of interest provides sufficient level of protection. As a result, there have been several questions and comments posted to China about the CCC system in the TBT Committee for the annual Transitional Review process but no formal consultation has yet been requested to the Dispute Settlement Body.

4.4.2 Questions and Comment from the US, EU, and Japan

In the 2006 and 2007 Transitional Review Mechanism (TRM), three countries namely the US, EU, and Japan actively urged China to develop and implement a CCC system in the manner that avoids unnecessary barriers to trade. They found that the CCC system remains one of the main market access hurdles, especially for SMEs, due to the complexity, length and costs of the procedure.

Questions and comment on the following issues have been posted by several countries:

- *Clearness and Transparency of Product Coverage (EU)*

  The EU was concerned that product coverage of the CCC system was unclear, non-transparent and left room for interpretations. It was also observed that the list of products was enlarging.

- *Risk-based Conformity Assessment Procedures (US, EU)*

  Currently, the same conformity assessment procedures of the CCC system are applied to all products listed in the Catalogue regardless of level of risk that the product poses to public health, animal, and the environment. In the views of the US and EU, this implies unnecessary restriction to low-risk products. The EC suggested China to establish a more efficient Post-Market Surveillance System[95] in support of different conformity assessment for the low-risk products.

- *Acceptance of International Standards (US, EU, Japan)*

  Implementation rules associated with China's Law on Standards limit the definition of "international standards" to standards issued by 1) the International Organization for Standardization (ISO), 2) International Electrotechnical Commission (IEC), 3) International Telecommunication Union (ITU), and 4) other organizations recognized and publicized by ISO.

  Regarding recognition of the type testing report, the only international standard accepted for the CCC Type Testing is the IECEE (IEC System for Conformity testing and Certification of Electrical Equipment) CB Scheme, which is an IEC System for Conformity testing and Certification of Electrical Equipment but only in the field of electrical safety. The EU requested China to accept all aspects of standards provided for by the IECEE CB Scheme. For the factory inspection, China does not allow exemption for the inspection for

[95] Post-Market Surveillance System is a continuous product assessment designed to give the manufacturer ongoing feedback about quality of their product after being sold in the market, conducting, for example, in forms of consumer survey, user feedback, and media.

manufacturing certified by the ISO9001. The EU and Japan requested China to consider granting such exemption.

- *Incorporation of Standards irrelevant to public health and the environment (EU)*

  The CCC system focuses mainly on health and safety, as well as environment protection. However, the standards often include unrelated topic such as performance and inter-operability requirements.

- *Accreditation of Local-based and China-based Foreign ACBs(US, EU, Japan)*

  Due to limitations in Chinese law on the activities of foreign-own entities and Article 13 of the Regulations on Certification and Accreditation, only Chinese-owned ACBs are eligible for designation under the CCC system. The EU and Japan requested that both local-based and China-based foreign ACBs be eligible for accreditation without discrimination. This would help reducing time and travel costs of type testing and factory inspection.

- *Requirement on Certification of Spare Parts and Components (EU, Japan)*

  Spare parts, components, and sub-assemblies are currently exempted from CCC certification when incorporated in final products. However, they are subject to the CCC system when imported as single units even when they are intended for incorporation in CCC certified final products and are not made separately on the Chinese market. The EU and Japan then requested exemptions for imported parts and components in those two cases.

- *Application of National Treatment (EU,Japan)*

  The EU pointed out an uncertain application of national treatment in particular on the exemption procedures which are unclear and complex.

- *Duplication and Length of Time for Initial Factory Inspection (Japan)*

  Japan commented that when CCC certified manufacturers are willing to introduce new products which are outside the scope of already certified products, they have to apply for the CCC and subject to another initial factory inspection. Such duplication causes unnecessary burden and barrier.

Furthermore, although it is stipulated in Chinese regulation that the CCC certification period must not exceed 90 days, Japan experienced that in some cases it takes longer (6-12 months). This is because they have to wait for a visit of Chinese inspectors for initial factory inspection. Japan requested China to designate foreign ACBs to conduct this inspection to shorten the time period taken for certification.

- *Minimum Purchase Unit and Restriction on Common Use of CCC Mark (Japan)*

  For the CCC Mark, manufacturers are required to purchase stickers from CNCA or apply to CNCA for permission to print the CCC Mark on their products. Japan concerned that the large minimum purchase unit and the restriction on common use of CCC mark with other certified products may cause unnecessary cost and burden of the label management for manufacturers.

Based on the questions and comments posed by the three countries, it can be concluded that problems arising from the use of CCC system is not the product standards themselves, i.e., not that the standards is too restricted, but rather on the way the certification system is implemented including compliance assessment procedures, national treatment, transparency, designation of certified body, and recognition of international standards which considered as key NTMs.

4.4.3 China's Responses

China has responded to some of the comments during the 2006 TRM as follows:

1) China confirmed that foreign-owned certification bodies established in China could be qualified as CCC certification bodies by way of official authorization by CNCA[96].
2) Foreign-owned certification bodies may engage in CCC certification activities as long as that country concludes a Mutual Recognition Agreement (MRA)

[96] Currently, at the end of 2007, there still no foreign-owned certification bodies allowed to engage in CCC certification activities.

with China or participates in international mutual recognition of testing result such as the IECEE CB Scheme[97].

3) China stated that it had been studying the possibility of adopting different conformity assessment procedures to reflect the different levels of risk posed by the products.
4) The reason China does not grant exemption of factory inspection to manufacturer whose factory is certified by ISO9001 is that the CCC system contains not only requirements related to general quality management systems as specified in ISO9001 but also those related to process control and product conformity assessment. China therefore views that ISO9001 cannot fully replace the factory inspection requirement in the CCC system.

No clear answers have been given in the area of transparency, and sometimes the Chinese authority referred to sources of information which are only available in Chinese, such as the CNCA website.

Box 4.1 and 4.2: Examples of Questions and China's Responses regarding CCC issues in the TRM

Box 4.1: Question from the US

Imported or domestically produced products used for research and development and testing purposes and goods imported for processing and re-export, as determined by the Certification and Accreditation Administration (CNCA) of the State Administration of Quality Supervision and Inspection and Quarantine (AQSIQ) in accordance with Decree No. 3, are exempt from Chinese Compulsory Certification (CCC) certification. However, the report states that Decree No. 3 was not available to the Secretariat in English. In its Protocol of Accession, China committed that it "would make available to WTO Members translations into one or more of the official languages of the WTO all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of forex, and to the maximum extent possible would make these laws, regulations and other measures available before they were implemented or enforced, but in no case later than 90 days after they

[97] China only recognizes the test result from IECEE CB Scheme only in an aspect of electrical safety. Testing on other aspects such as health safety, product performance are still required to be perform by Chinese accredited lab in China.

were implemented or enforced." Does China consider this commitment to apply to Decree No. 3? If not, please explain.

Answer:

The Chinese government did publish Announcement No.3 through various media, including the AQSIQ website before it went into effect. As for the English version, the Chinese government will try its best to provide it to WTO Members.

Box 4.2: Questions from Malaysia

Could China explain in detail its Compulsory Product Certification System (CCC) Mark Requirement? What does this entail and what are the costs involved?

Answer:

Information regarding the procedures, requirements and fees of China Compulsory Certification (CCC) system is available on the website of China National Certification and Accreditation Administration (www.cnca.gov.cn).

CCC procedures include: application and acceptance for certification, sampling and testing, initial factory inspection, evaluation and approval of certification results, and follow-up inspection. In principle, the time length of certification should not exceed 3 months

4.5 Thai Exporters and The CCC Mark : A Case of Electrical Appliances

One interesting case regarding the CCC system and Thai exporters is the case of electrical appliances. It is because, first, among the products covered by the CCC regulations, electrical appliances and parts is one of the key export products of Thailand to China. Second, electrical appliances are the products on interests of China in building competitiveness and most of small and medium-size producers are state-owned companies. High level of protection from tariff and non-tariff measures of this sector is expected[98]. Third, policy recommendation may be needed to enhance export

[98] In context of ACFTA, electrical appliances are covered in the sensitive lists where tariffs will be cut to less than 50% in 2015

performance of the sector as its growth has been slowed down recently due to the uses of NTMs in major markets such as the EU, US, and also China[99].

4.5.1 Electrical Appliances Trade between Thailand and China

As of September 2007, exports of electrical appliances grew about 10% from September 2006, from USD 613 million to USD 674 million, accounting for 6.3 % of total exports of Thailand to China. Major products are all components and parts including motors, fuses and switches, power supplies, and compressors.

On the import side, imports of Chinese electrical appliances rose by 1.71% from USD 2,059 million to USD 2,094 million, accounting for 17.03% of total imports from China to Thailand. Some of the major imported products were the same as those exported from Thailand to China, most of which were components and parts. Final products on the list of top 10 imported goods were TV and VDO camera.

Table 4.3: Top 10 electrical appliances exported to China as of September 2007

Products	Sep-06 USD	Share %	Sep-07 USD	Share %	Growth %
1. Motors not exceeding 750 W	3,479,877,187	16.7%	4,558,192,228	19.9%	31.0%
2. Apparatus for protecting electrical circuit including fuses, switch, plug, and socket	3,868,450,125	18.6%	3,306,922,164	14.4%	-14.5%
3. Power supply PC	3,430,630,087	16.5%	2,967,022,550	12.9%	-13.5%
4. Records, CD for sound recorded	669,369,773	3.2%	1,772,097,315	7.7%	164.7%
5. Compressors	1,527,718,811	7.3%	1,674,391,547	7.3%	9.6%
6. Wire cables, cord sets	1,378,968,293	6.6%	834,760,440	3.6%	-39.5%
7. TV components	547,382,606	2.6%	821,673,022	3.6%	50.1%
8. VDO components	882,519,247	4.2%	789,670,990	3.4%	-10.5%
9. Motor parts	550,570,017	2.6%	457,739,088	2.0%	-16.9%
10. Home used air-conditioners	448,729,329	2.2%	286,182,250	1.2%	-36.2%
Total exports	20,845,652,679	100.0%	22,931,928,602	100.0%	10.0%

Source : Thai Electrical and Electronics Institute

[99] From a study of Office of Industrial Economics, Ministry of Industry, Quarter 2/2007

Table 4.4: Top 10 electrical appliances imported from China as of September 2007

Products	Sep-06 USD	Share %	Sep-07 USD	Share %	Growth %
1 Apparatus for protecting electrical circuit including fuses, switch, plug, and socket	7,078,544,574	10.11%	8,062,049,271	11.32%	13.89%
2. Records, CD for sound recorded	4,803,611,724	6.86%	6,684,361,596	9.39%	39.15%
3. TV Components	8,426,059,276	12.03%	6,632,777,113	9.31%	-21.28%
4. Wire cables, cord sets	4,826,074,246	6.89%	4,801,443,035	6.74%	-0.51%
5. AC Adaptors	3,650,692,895	5.21%	3,488,086,399	4.90%	-4.45%
7. Motors not exceeding 750 W	3,457,641,226	4.94%	3,209,323,537	4.51%	-7.18%
8. TV and VDO camera	2,139,759,518	3.06%	2,587,908,154	3.63%	20.94%
9. Compressors	1,668,346,129	2.38%	2,495,364,822	3.50%	49.57%
10. Components of VDO,VCD, and DVD	3,087,816,197	4.41%	2,416,251,109	3.39%	-21.75%

Source : Thai Electrical and Electronics Institute

4.5.2 Certification Requirements on Electrical Appliances

Certification procedures for electrical appliances are the same as those of other products involving five steps; 1) Application, 2) Type Testing, 3) Initial Factory Inspection, 4) Evaluation, and 5) Follow-up Inspection. Product standards outlining in "The Implementation Rules for Compulsory Certification of Electrical and Electronic Products" set forth by the CNCA follow the Chinese GB standard which corresponds to IEC Standard.

As a member of the International Electrotechnical Commission (IEC), China recognizes the type testing report provided for by accredited labs designated by other IEC member countries participating in the IEC System for Conformity Testing and Certification of Electrical Equipment (IECEE/CB Scheme). However, China has not yet fully utilized all aspects of this IECEE/CB Scheme. Its recognition covers only the field of electrical safety, while testing for other aspects such as health safety and product performance are still subject to the Chinese ACBs designated by the CNCA. Thailand joined the IECEE in 2001 and participated in the IECEE CB Scheme in

2006 for only two products; washing machines and tumble dryer. Therefore, regarding the CCC system, Thai exporters have not yet gained benefits from the country's participation in IECEE CB Scheme. They still have to send their sample products to a certified lab in China for product testing and wait for Chinese auditor from the ACB to visit and perform initial factory inspection.

4.5.3 Experiences from Thai Consulting Company and Exporters

Pro-Application Service was founded in 1985 as a consulting company providing product testing and certification services for manufacturers who wish to obtain approval for various compulsory and voluntary standards such as CE, UL, and CCC. The company's officers interviewed by the researcher stated that compliance assessment procedures for all certification systems are structured similarly following these steps; application, sample testing, factory inspection, evaluation, and follow-up inspection. All of the steps must be fulfilled in the system with high complexity including the CCC, whereas some steps may not be included in the more simplified system such as the CE which has no requirement on factory inspection. Problems can arise alongside all of the steps in the compliance process, starting from searching for the ACBs in charge of the products concerned, transaction costs and customs procedures for sample sent for type testing, traveling costs of Chinese auditors, and time spent on waiting for the auditors to visit the factory for both the initial and follow-up inspections.

Mr. Kamol Trevibul, General Manager of the JVC Manufacturing (Thailand) Co., Ltd and the Vice Secretary-General of electrical products group at the Federal of Thai Industry confirmed that, except China, it is very easy to gain access to other major markets of the company including ASEAN, Japan, and EU when the products are certified by the IEC standards. However, he argued that Thailand should not consider the CCC system to be a trade barrier. The system may only slow down trade by the length of approval time and complexity of the process but eventually exporters will be able to manage it. What the government should focus on is how to improve product quality and standards to gain sustainable market access. Standard and certification systems in Thailand must be strengthened not only to protect consumer's safety but

also to improve quality of Thai products so that they can comply with all the standards required for accessing export markets.

The very first Thai company in electrical industry who succeeded in obtaining the CCC mark is the Kulthorn Kirby PCL. The company is the first hermetic compressor manufacturer in Thailand, established in 1980. Its production capacity of refrigerator compressor was 3,800,000 units/year, and 800,000 units/year for air conditioner compressor. The Company has also received the CE and the UL marks. According to Mr. Kamjorn Khunvapanichkul, Company Vice President, when the CCC regulation was announced in 2002, the company contacted its partner in China and sent the application through the partner. It took around 3-4 months to receive an acknowledgement from Beijing and to be assigned to the lab in Guangzhou for type testing, which took another 3 months. After that, the company had to pay for all costs incurred during the Chinese auditor's visits for factory inspection including traveling expenses, accommodation expenses, and per diem, totaling around USD 12,000 – USD 15,000. Certification was granted after one month had passed. These total procedures took about 8-9 months and cost around USD 150,000.

Mr. Kanjorn also confirmed that problem of conforming to the CCC system is not the standards but the process and costs since the standards adopted in the CCC system is a one or two "lagged" version of the EU standards. In addition, although having experienced substantive time and costs incurred in the CCC application process, he was certain that the CCC system has much improved recently. He believed that the non-tariff measure (NTM) aspects of the CCC system remained in the forms of cost burden. In addition to initial costs of the approval granting process, the company is subject to the annual costs of follow-up inspection fees, expenses for auditor, and costs of label required for every single piece of the product (RMB 0.5 / label or RMB 1,000/printed label).

One of the key success factors is having Chinese partners. Some companies without Chinese partners had to wait almost two weeks to hear from Beijing just to submit application form and related documents. Also, all documents must be completed Chinese.

On the policy front, group of Thai exporters shared common views in two areas. First, there is not enough co-ordination among relevant government agencies. When problems arise, companies will try to send a complaint to as many agencies as they can think of, because there is no central government authority responsible for this issue, despite the establishment of the Trade Remedies Center of the Department of Foreign Trade, which is fully in charge of the issue. Second, Thai exporters voiced their view that an MRA with China is not suitable at this stage, for concern over the quality of Chinese products. More of theses issues will be discussed in the policy recommendation Chapter.

4.6 Market Surveys in Gunagdong and Yunnan Provinces of China

Between October 21-28, 2007, the researchers visited two Chinese markets for a market survey; one in Guangzhou City of Guangdong province and the other in Kunming, Yunnan Provinces.

Guangdong is one of the largest production bases for electrical products and destination of components and parts exported from Thailand. According to the Thai Consul of Commerce Section, there is one ACB designated by the CNCA for executing the CCC activities in Guangzhou. However, the manufacturer can not choose the ACB to work with as product scope has already assigned for each ACB by the CNCA.

Figure 4.3 Electronics and Electrical Production Bases in China

Currently, no Thai company in Guangzhou has asked the consular office for support or action regarding the CCC system. The Consul also highlighted that although the implementation of the regulation highly depends on practices of the official in charge, a major point to be addressed is that the Chinese certification and inspection system is centralized at AQSIQ whereas that of Thailand is separated and spread out among various authorities including Ministry of Commerce, Ministry of Agriculture, and Ministry of Industry. Therefore, it is more difficult for Thailand to tackle with problems or to supervise and administer the system.

The researchers visited one of the well-known electronics and electrical appliances market in Guangzhou - "Hai Yin" market, and discovered that some of made-in-china products sold there were without the CCC mark. Such products ranged from AC adaptors, printers, to air-conditioners. Inconsistence in product certification was also found in identical products sold in the same shop i.e. one with the CCC mark, the other without. As Hai Yin Plaza is not a department store but consists of small separated shops operated in the building, it is expected that some of imported products may enter China via informal customs processes. Also, some of domestic products were produced by small local manufacturers whose standards were uncertified.

Unlike Guangzhou, electrical appliances markets in Kunming were surveyed in more formal department stores and Carrefour. The result was that the CCC mark was found on all of the products randomly surveyed.

Figure 4.4 Hai Yin Plaza

Figure 4.5 Products Sold in Guangzhou without CCC mark

Figure 4.6: Identical Products with and without CCC mark

Figure 4.7 Department Stores in Kunming

Figure 4.8: Product sold in Kunming with CCC Mark

4.7 Conclusion

The China Compulsory Certification or the CCC system has been implemented in 2002 with purposes of protecting consumer health safety and the environment. The system covers 22 groups of industrial products in 155 categories. Before the CCC system, the certification system was separated for imported products (CCC mark) and

domestically produced products (Great Wall mark). In the CCC system, both imported and domestically produced products must conform to this single system.

CCC certification activities are executed by the Accredited Certified Body or the ACB designated by the CNCA for each product scope. The Compliance procedures of the CCC systems can be outlined in five steps: 1) Application, 2) Type Testing, 3) Initial Factory Inspection, 4) Evaluation, and 5) Follow-up inspection. Therefore, the system consists of two major elements; product sample test and factory inspection. Product sample test assesses performance of products in terms of electric safety and health safety while factory inspection audits the factory quality assurance ability assessment and the products consistency check. Overall process must not be exceed 90 days and cost about 40,000-50,000 RMB, excluding traveling and other costs of auditor visit.

Concerns on complexity of procedures and costs burden arising from the CCC certification have been posted over the global community, especially major industrialized countries such as the US, EU, and Japan. Major areas of interests are recognition of international standards for the product testing and the factory inspection, designation of China-based and local based foreign-owned certification body, duplication of certification of imported parts intended for incorporation in CCC certified final products, and national treatment issue.

According to experiences of the Thai consulting company and exporters of electrical appliances products interviewed in this research, the standards themselves are not too restricted as the CCC generally adopted the IEC standard. The companies confirmed that complying with the CCC system incurred more costs and time than to other compulsory standards, such as CE of the EU market, because of the type testing and factory inspection that are allowed to be performed only by the Chinese ACB. Furthermore, even though China is a member of IECEE, they have only recognized the test from other members only in areas of electrical safety. However, the Thai companies shared a similar view that a MRA may not be a good solution as they are uncertain about recognizing the test report provided by the lab accredited by Chinese authority.

Interesting CCC issues needed to be highlighted are as follows:

1) Time and cost of certification could be massively reduced by China's recognition of testing result from foreign-based certification body. What is an appropriate option for Thailand? , if the MRA is not.
2) Possibility of China to allow foreign certification body to engage in the CCC activities may be limited as the restriction is stipulated in the Chinese law on the activities of foreign-own entities and Article 13 of the Regulations on Certification and Accreditation.
3) As major exports of Thailand to China are components and parts, issue of duplicated certification for imported parts intended for incorporation in CCC certified final products is very important.
4) According to the market survey, adequacy of enforcement of the CCC system on domestically produced product is questioned.
5) The CCC system does not apply to export products; therefore there is a possibility of uncertified products entering Thai market, if Thai standard can not keep up with the international standards.

These issues will be addressed in more detail in the next chapter on policy recommendation and implementation.

Note – Chapter 4

a) 4.1 – Product Catalogue subject to the CCC Requirement (as of January 2007)

1. Electrical wires and cables (total 5 subcategories)

- Cord sets
- Flexible rubber-sheathed cables for mining purposes
- Insulated cables (wires) for railway vehicles of rated voltage up to and including 3000V
- Rubber insulated cables (wires) of rated voltages up to and including 450/750V
- Polyvinyl chloride insulated cables (wires) of rated voltages up to and including 450/750V.

2. Circuit switches, electric devices for protection or connection (total 6 subcategories)

- Appliance couplers for household, industrial and similar purposes
- Plugs and socket-outlets for household, industrial and similar purposes
- Thermal-links
- Cartridge fuse-links of miniature fuse
- Switches of fixed electrical devices for household and similar purposes
- Accessories' enclosures of fixed electrical devices for household and similar purposes

3. Low-voltage Electrical Apparatus (total 9 subcategories)

- Electric leakage protectors
- Circuit-breakers (RCCB, RCBO, MCB)
- Fuses
- Low-voltage switches (isolators, disconnector switches, and fuse-combination units)

- Other circuit protection devices (current limiters, circuits protectors, over-current protectors, thermal protectors, overload relays, low-voltage electromechanical contactors and motor starters)
- Relays (36V < voltage ≤ 1000V)
- Other switches (switches for appliances, vacuum switches, pressure switches, proximity switches, foot switches, thermoswitches, liquid level switches, push-button switches, limit switches, microswitches, tumbler switches, temperature switches, travel switches, changeover switches, automatic change-over switches, knife switches)
- Other devices (contactors, motor starters, indicating lights, auxiliary contact assemblies, master controllers, AC semiconductor motor controllers and starters)
- Low-voltage switchgear assemblies.

4. Low power motors (total 1 subcategory)

- Miniwatt motors

5. Electric tools (total 16 subcategories)

- Electrical drills, including impact drills
- Electric screwdrivers and impact wrenches
- Electric grinders
- Sanders
- Circular saws
- Electric hammers, including electric pickaxes
- Electric spray guns with non-flammable liquid
- Electric shears, including electric scissors with double-edged blades, electric impact scissors
- Electric tapping machine
- Reciprocating saws, including jigsaws and sabre saws
- Concrete vibrators
- Electric chain saws
- Electric planer
- Electric hedge trimmer and electric grass shears
- Electric routers and edge trimmers
- Electric stone cutters, including marble cutters

6. Welding machines (total 15 subcategories)

- Portable A.C. arc welding machines
- A.C. arc welding machines
- D.C. arc welding machines
- TIG welding machines, TIG welders
- MIG/MAG welding machines, MIG/MAG welders
- Submerged arc welding machines
- Plasma arc cutting machines
- Plasma arc welding machines
- Electric shock protective devices for arc welding transformer
- Coupling devices for welding cables
- Resistance welding machines
- Wire feeder for welder
- TIG welding blow lamp
- MIG/MAG welding torches
- Electrode holders.

7. Household and similar electrical appliances (total 18 subcategories)

- Household refrigerators and food freezers: with the effective volume under 500 Liters, household and similar use with/without frozen compartment, frozen food storage cabinet, freezer and their combination;
- Electric fans: electric fans with single-phase alternate current and direct current for household and similar use;
- Air-conditioners: the refrigeration shall not be exceed 21000 kcal/ h for household and similar use;
- Motor-compressors (input power should be under 5000W): sealed motor-compressors (hermetic and semi-hermetic type) for air-conditioners and freezing appliances for household and similar use;
- Household washing machines: washing machines with/without the devices of water heating, spinning extraction and drying;
- Electric water heaters: including fixed storage water heaters and instantaneous water heater, heating water to a temperature below its boiling point;

- Room heaters: radiant heaters, panel heaters, liquid-filled radiators, fan heaters, convector heaters, tubular heaters for household and similar purposes;
- Vacuum cleaners: vacuum cleaners having the functions of dust or liquid suction, driven by either series-commutator motor or D.C. motors;
- Appliances for skin and hair care: appliances with electric heating components for skin and hair care of both human and animals;
- Electric irons: electric dry irons and steam irons for household and similar purpose;
- Electromagnetic cookers: electromagnetic heating kitchen appliance which may contain electromagnetic heating components single hob or hobs for household or similar purpose;
- Roasters: including rated volume not over 10L roasters, toasters, waffle irons, and similar appliances for household or similar purpose;
- Electric food processors: household food preparation machines and similar multiple-functions food preparation machines;
- Microwave ovens: household appliances for heating food and beverages using electromagnetic energy in one or more of the I.S.M. frequency bands OVER 300 MHz . These appliances may also include a browning or steaming functions;
- Electric cooking ranges, hobs, ovens and similar appliances: including household cooking ranges , stationary electric ovens, hobs, stationary cooking ranges, hob elements, grills and griddles, induction ovens and grills;
- Range hoods: electric range hoods installing above household cooking ranges, hobs and similar cooking appliances, with fans, lights and controllers;
- Appliances for heating liquids and hot/cold water dispensers;
- Electric rice cookers: automatic heat-preservation or timer electric rice cooker with heating components.

8. Audio and video apparatus (not including the audio apparatus for broadcasting service and automobiles) (total 16 subcategories)

- Active loud speaker systems having single or multiple speaker with max. output power under 500W (R.M.S.)
- Audio power amplifier
- Tuners

- Radio receivers
- Audio or video recorders on any kinds of media
- Players or processing equipments of disc, tape or other medias
- Combination of above audio/video apparatus
- Power adapters for audio/video equipments
- Color television receivers and display monitors by any kinds of display types (not including television receivers for automobiles)
- B/W television receivers and other monochrome television receivers
- Picture/display tubes
- Video recorders
- Satellite television/broadcast receivers
- Electronic organs, keyboards
- Antenna amplifiers
- Equipment and components for cable distribution systems of sound and television signals.

9.Information technology equipments (total 13 subcategories)

- Personal computers (PC)
- Portable personal computers
- Display units used to connect with computer
- Printers used to connect with computer
- Multiply-purposes printer and copy machines
- Scanners
- Switching power supply units, adapters and chargers for computer
- Computer game players
- Learning machine
- Duplicators, copiers
- Servers
- Finance and trade settlement equipments
- Wireless LAN products

10. Lighting apparatus (not including the lighting apparatus with the voltage lower than 36V) (total 2 subcategories)

- Luminaries, lamps
- Ballasts, amperites

11. Telecommunication Terminal equipments (total 9 subcategories)

- Stationary telephone terminals:
    - Common telephone sets
    - Caller ID telephone sets
    - Card management telephone sets
    - Answering machine telephone sets
    - Pay phone sets
    - Intelligent card telephone sets
    - Public IC card telephone sets
    - Hands-free telephone sets
    - Digital telephone sets
    - Additional devices of telephone sets
- Cordless telephone terminals:
    - Analogue cordless telephone sets
    - Digital cordless telephone sets
- Group phone systems
    - Group phone systems
    - Telephone conference exchanges
- Fax machines/cards
- Modem terminals/cards
- Mobile terminals
    - Analogue mobile phones
    - GSM digital cell mobile stations, including handsets and other terminals
    - CDMA digital cell mobile stations, including handsets and other terminals
- ISDN terminals
    - Network terminals, including NT1, NT1+
    - Terminal adapters/cards, TA

- Data terminals
    - Storing/transmitting Fax/Voice cards
    - POS terminals
    - Interface transformers
    - Network hubs
    - Other data terminals
- Multimedia terminals
    - Video phones
    - Video conference terminals
    - VOD terminals
    - Other multimedia terminals

12. Motor vehicles (total 2 subcategories)

- Automobiles:Motor vehicles of subcategories M,N,O
- Motorcycles: Motorcycles

13. Motor vehicle Tyres (total 3 subcategories)

- Automobile tyres:
    - Passenger car tyres: radial ply tyres, diagonal tyres
    - Truck tyres: Ultra-light truck tyres, Light truck tyres, Medium/heavy truck tyres
- Motorcycle tyres:
    - Motorcycle tyres

14. Safety Glasses (total 3 subcategories)

- Safety Glasses for Motor Vehicle:
    - Laminated Glass A
    - Laminated Glass B
    - Zone-tempered Glass
    - Tempered Glass
- Safety Glasses for Building:
    - Laminated Glass
    - Tempered Glass

- Safety Glasses for Railway Vehicles:
    - Laminated Glass
    - Tempered Glass
    - Insulated Safety Glass

15. Agricultural Machinery (total 1 subcategory)

- Equipments for Crop Protection
    - Motorized or Manual Liquid Knapsack sprayers
    - Motorized or Manual Powder Knapsack sprayers
    - Motorized Liquid and Powder Knapsack sprayers

16. Latex Products (total 1 subcategory)

- Rubber Condoms

17. Medical Devices (total 7 subcategories)

- Medical X-Ray Diagnostic Equipments
- Haemodialysis Equipments
- Hollow Fiber Dialysers
- Blood Circuit Pipings in Vitro for Blood Purification Equipments
- Electrocardiographs
- Implantable Cardiac Pacemakers
- Artificial Heart-Lung Machines

18. Fire Fighting Equipments (total 3 subcategories)

- Fire Alarm Equipments:
    - Point Type Smoke and Fire Alarm Detecters
    - Point Type Heat and Fire Alarm Detecters
    - Fire Alarm Control Units
    - Gang Control Equipments for Fire Protection
    - Manual Fire Alarm Button
- Fire Hoses
- Fire Extinguishment Sprinkler Equipments:
    - Sprinklers

- Wet System Alarm Valves
- Water Flow Indicators
- Fire Pressure Switches

19. Safety Protection Products (total 4 subcategories)

- Intrusion Detectors:
  - Indoor Microwave Doppler Detectors
  - Proactive Infrared Intrusion Detectors
  - Indoor Passive Infrared Detectors
  - Indoor Microwave and Passive Infrared Combined Intrusion Detectors
  - Magnetic Intrusion Detectors
  - Vibratile Intrusion Detectors
  - Indoor Passive Breaking-Glass Detectors
- Burglar Alarm Controllers
- Burglar Alarm Systems for Vehicle
- Theftproof Coffers

20. Home Decor and Remodeling Products (total 3 subcategories)

- Solvent Paints for Woodenware
- Porcelain Bricks/Ceramic Tiles
- Concrete Antifreezes

21. Safety Parts and Accessories of Vehicles and Motorcycles (total 14 subcategories)

- Safety belts
- Motorcycle engines
- Horns
- Retro reflectors
- Retro-reflective vehicle markings
- Brake hoses
- Rearview mirrors
- Interior trimming materials
- Door lock and door retention components
- Fuel tanks

- Seat and Seat Headrests
- Rearview mirror products
- Odometers
- Vehicle/Motorcycle external lighting and signaling products (headlamp, turn-signal, position lamp, stop lamp, clearance lamp, fog lamp, reversing lamp, parking lamp, side marker lamp, lighting equipment for license plate);

22. Toy Products (total 6 subcategories)

- Children cars, including children bicycles, tricycles, perambulators, baby walking frames, etc.
- Electric toys
- Plastic toys
- Metal toys
- Catapulting toys
- Baby toys

Note – Chapter 4

b) 4.2: GB Standard and its Corresponding IEC Standard for Electrical Appliances

PRODUCT	GB STANDARD	Corresponding IEC STANDARD
Refrigerators (inc. Food Processors)	GB4706.1-92 GB4706.13-91	IEC 60335-1 IEC 60335-2-24
Compressors for Refrigerators	GB4706.1-92 GB4706.17-88	IEC 60335-1 IEC 60335-2-34
Air Conditioners	GB5956-91	IEC 60378
Compressors for Air Conditioners	GB4706.1-92 GB4706.17-88	IEC 60335-1 IEC 60335-2-34
Television Sets	GB8898-88	IEC 60065
Household Washing Machines	GB4706.1-92 GB4706.24-91	IEC 60335-1 IEC 60335-2-7
Vacuum Cleaners	GB4706.1-92 GB4706.7-80	IEC 60335-1 IEC 60335-2-2
Appliances for Skin or Hair Care	GB4706.1-92	IEC 60335-1
Electric Shower Units	GB4706.1-92 GB4706.24-86	IEC 60335-1 IEC 60335-2-21
Microwave Owens	GB4706.1-92 GB4706.21-88	IEC 60335-1 IEC 60335-2-25
Electric Rice Cookers	GB4706.1-92 GB4706.19-88 GB4706.6-86	IEC 60335-1
Electric Cooking Ranges	GB4706.1-92	IEC 60335-1
Food Processors	GB4706.1-92 GB4706.30-92	IEC 60335-1 IEC 60335-2-11
Appliances for heating Liquids	GB4706.1-92 GB4706.19-88 GB4706.6-86	IEC 60335-1 IEC 60335-2-15
VCR’s	GB8898-88	IEC 60065
Audio Equipment	GB8898-88	IEC 60065
Visual Display Units	GB4943-95	IEC 60950 inc. A1, 2, 3 & 4
Switching Power Supplies	GB4943-95	IEC 60950 inc. A1, 2, 3 & 4

5. Policy Recommendations & Implementation

5

5.1 Introduction

The final chapter provides policy recommendations and implementation for the Thai government in dealing with Chinese NTMs and facilitating trade of products in the two case studies: fruits and CCC-required industrial products.

5.2 General Recommendation

5.2.1 Utilization of available options for consultation : Multilateral or Bilateral?

As discussed in Chapter 1 and 2, there are several available channels for Thailand to request consultation with China multilaterally, regionally, and bilaterally. Major formal forums are various WTO committees and the Thailand-China Joint Committee under ACFTA. However, such forums have not yet been fully utilized. Uses of WTO channel are still limited as the Thai government seems to prefer bilateral consultation to participating in WTO compliance review under the Transitional Review Mechanism (TRM), or requesting formal consultation to the Dispute Settlement Body.

Since problems of trading with China are not only trade-restricted measures that are inconsistent with WTO and ACFTA commitments, but also difficulty in accessing information on trade-related laws and regulations and other important local rules, it is recommended that Thailand should become more involved in the TRM process by ways of requesting clarification on trade and domestic policies from the Chinese government, in order to evaluate whether or not such measures are consistent with its WTO obligations. Dealing with measures believed to be inconsistent with WTO commitments or considered as trade barriers could be done more effectively through bilateral consultations provided through regional cooperation frameworks or the Thailand-China Joint Committee under ACFTA.

5.2.2 Supporting System for the ASEAN-China Trade Negotiation Committee :

Inter-Governmental and Public-Private Coordination

Although NTMs and trade facilitating issues between Thailand and China have been discussed through the ASEAN-China Trade Negotiation Committee (TNC), in-country supporting system for Thai negotiators still need to be strengthened. Results from the two case studies showed insufficient governmental and public-private coordination in many areas; for example, the negotiation process of the protocols on Thailand-China fruit trade did not include trade negotiators, as the issue was considered to be technical and specific to food and agricultural standards that required expertise from agricultural practitioners rather than that of trade experts. However, since the protocols carry significant impacts on the trade of fruits between the two countries, the presence of trade negotiators in the negotiation process would have lent a great support to the Thai team in determining a unified and beneficial position for Thailand. In addition, the currently rather inactive Operation Center for NTMs Remedies must be reformed to actively provide trade-related assistance to the private sector. It is recommended that a supporting system for the TNC should be well developed and effectively structured with clear roles and responsibility of related government and private agencies as follows:

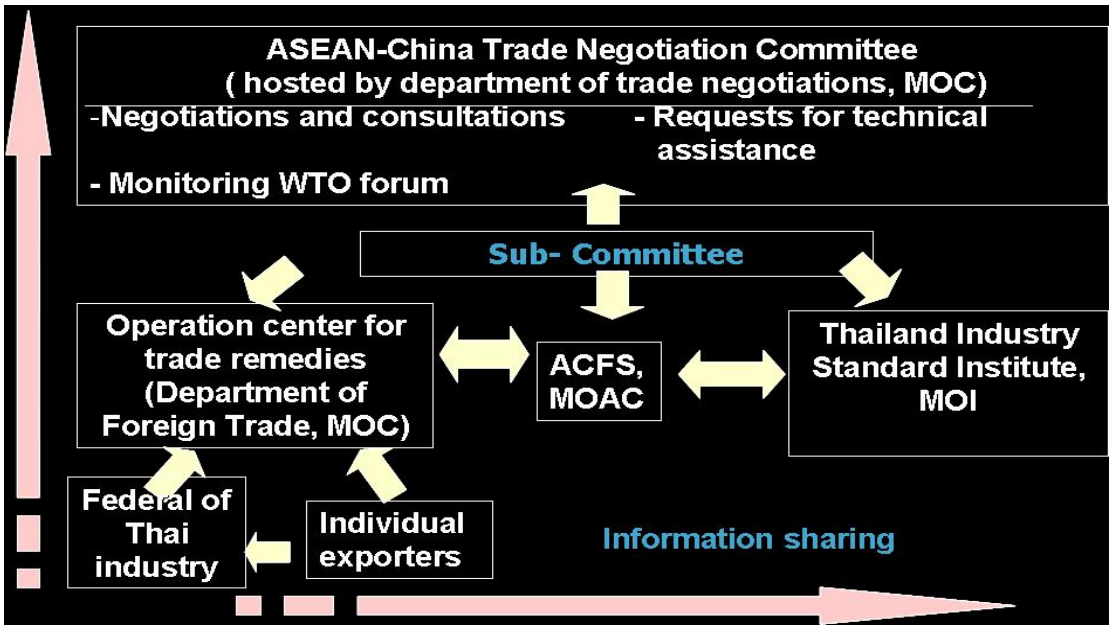
- The Department of Trade Negotiations, Ministry of Commerce should be the host of a working group which:
  - provides information and suggestions on trade-related issues to the TNC
  - gathers and updates trade-related information of Thailand's trading partners, other related agencies and sub-committee.

- Specialized agencies should be responsible for each trade areas as hosts of sub-committee, for example:
  - Department of Foreign Trade, Ministry of Commerce – responsible for trade-related measures
  - National Bureau of Agricultural Commodity and Food Standards (ACFS) – responsible for SPS issues
  - Thailand Industry Standard Institute(TISI) – responsible for TBT

- ❖ The Operation Center for Trade Remedies should be the key agency consulting with the private sector such as the Federation of Thai Industry, or any individual exporters wishing to raise complaints on trade measures.

The inter-governmental and public-private coordination may be illustrated in the following figure:

Figure 5.1 ASEAN-China Trade Negotiation Committee



5.3 Sector-Specific Recommendation

5.3.1 Thailand-China Fruit Trade

China's regulations on food imports can become barriers to trade for agricultural exporting countries including Thailand. The following recommendations are proposed with an aim of re-balancing the position between Thailand and China in order to create a more level playing field and enhance trade between the two parties.

(a) Recommendation 1: Orchard Registration

Thailand should urge China to apply the orchard registration requirement to all of its trading partners, in order to encourage food traceability and to make all countries on par with Thailand in terms of food safety obligations. Orchard registration requirement was also included in the Thailand-Australia FTA, and with its benefits in

terms of food traceability and protection of consumers' health, it should be promoted on an MFN basis. There is also a tendency that this practice will be further adopted by many more countries in the future, considering the increasing concern over food safety in the global market. Food traceability is one of the major requirements for food destined for the EU market, for example.

The move for orchard registration is highly likely to be achievable, considering the AQSIQ's recent announcement which requires all Chinese fruits destined for export to come from only registered orchards and packing plants, regardless of their destinations[100]. The new rule became effective on November 1, 2007. It is therefore possible that China will apply the same requirement to imported fruits. Both Thailand and China should then urge their trading partners to adopt the same labelling regulation.

(b) Recommendation 2: Renegotiation of the Thailand-China Fruit Protocols

The Thai government should re-negotiate with China for a better term of the Fruit Protocol, such as to cover a more variety of fruits, and to impose equally strict inspection regulations on Chinese fruits entering Thailand. Thailand should demand that China apply stricter quarantine on their food exports, with traceability system.

(c) Recommendation 3: Close Monitoring of Counterfeit Products

The Thai government should raise the issue of counterfeit food labels with China's State Trademark Office within the State General Administration, Industries and Business, and pressure the Chinese authority to closely monitor and control trade in counterfeit food products, including fruit labels.

[100] (2007) 'Fruit Registration Rule Extended' China Daily, September 21. http://www.chinadaily.com.cn/china/2007-09/21/content_6123552.htm

(d) Recommendation 4: Impose Stricter SPS measures on Chinese Fruits Entering Thailand

For the purpose of consumer protection following widespread scandals of exported Chinese food worldwide, the Thai government must act on the Thai consumers' interest by applying strict SPS measures during the inspection of imported Chinese fruits and vegetables, especially high pesticide residues and chemicals in vegetables and fruits. In order to do so, a central agency monitoring the quality of imported food against the national and international food standards should be established. Also, the Thai government should seriously consider increasing the number of Thai quarantine inspectors and enhancing their capacity in inspection by offering training. Thailand quarantine and inspection capacity remains very limited, despite its status of being one of the world's major food exporters. According to the *White Paper on the Quality and Safety of Food in China*, China now has 163 inspection and quarantine laboratories for import and export foodstuffs throughout China, possessing more than 10,000 sets of large precision instruments of various types. Altogether, 1,189 professionals are directly engaged in the laboratory testing of import and export foodstuffs in these laboratories [101]. This compares to only 38 certified food laboratories in Thailand (See Table 3.15 in 'Note-Chapter 3'). With the rapid influx of Chinese fresh produces entering Thailand with little inspection applied, Thailand must enforce effective measures to ensure food safety of food imports from China.

(e) Recommendation 5: Encourage Inter-Agency Cooperation

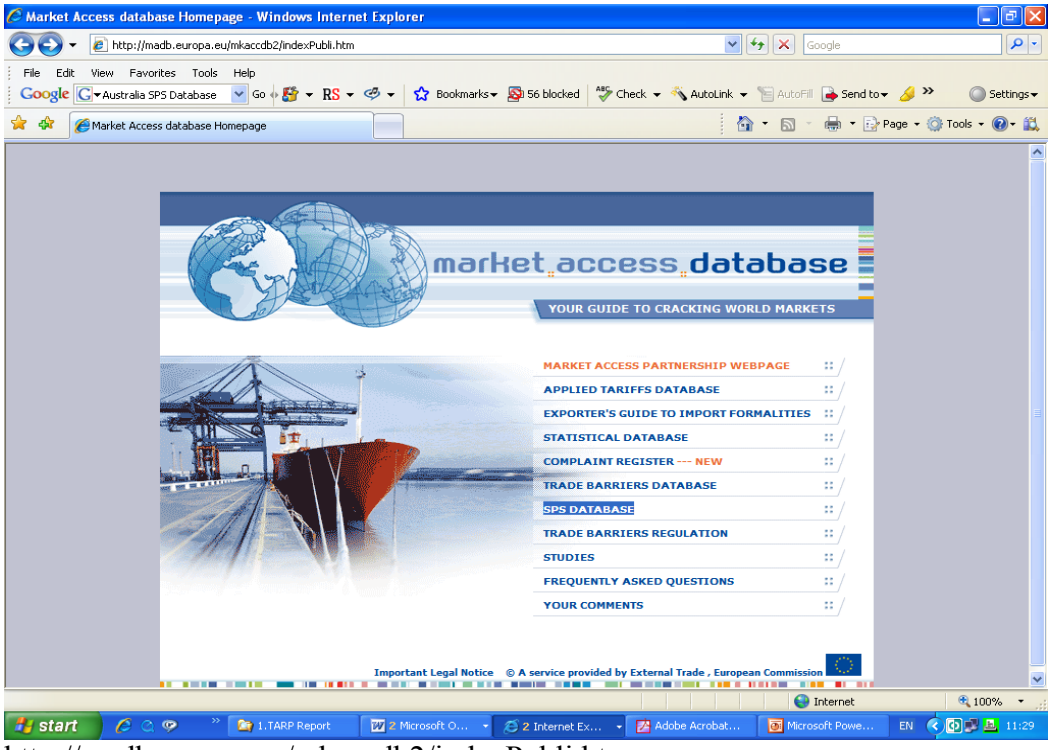
Promote greater collaboration between Ministry of Commerce's Department of Trade Negotiations and other government agencies dealing with technical aspects of trade such as SPS issues, such as Ministry of Agriculture and Cooperatives and the National Bureau of Agricultural Commodity and Food Standards. MOU and Protocols signed between Thailand and other countries should be shared between government agencies. Negotiation of technical issues such as food standards with trading partners must also involve officers from the Department of Trade Negotiations to strengthen Thailand's negotiation position in all areas of trade-related issues.

[101] Ministry of Commerce (2007) *White Paper on the Quality and Safety of Food in China*, September 28. http://english.mofcom.gov.cn/aarticle/counselorsreport/asiareport/200709/20070905144589.html

(f) Recommendation 6: Create an SPS Database

Because countries around the world increasingly use SPS measures as a tool to restrict agricultural trade, having a comprehensive SPS database can bring greater transparency to trade in agriculture and prepare exporters with necessary information on regulations imposed by importing countries which they must fulfill before they are able to export products abroad. Examples of such databases are the EU on-line Market Access database and Australia's AQIS Import Conditions database. The EU Market Access database allows users to search for information related to trade barriers introduced by importing countries including trade statistics, tariff schedules, and research papers on market access issues. One database within the Market Access database is specifically devoted to SPS – the Sanitary and Phytosanitary Export database allows users to search for information by country, commodity, and SPS measure, with a brief description of SPS dispute cases and countries involved.

Figure 5.2: The EU Market Access Database



http://madb.europa.eu/mkaccdb2/indexPubli.htm

Figure 5.3: The EU SPS Export Database

http://madb.europa.eu/madb_barriers/indexPubli_sps.htm

While the EU Market Access database offers information on SPS conditions imposed by importing countries, Australia's AQIS icon (Australia Quarantine Inspection Services Import Conditions) database specifically provides information on Australia's own SPS measures imposed on more than 20,000 imported plant, animal, microbial, mineral and human commodities. For example, users can explore whether a commodity intended to enter Australia requires a quarantine permit and/or treatment or other quarantine prerequisites. According to the website, the information is update promptly after the requirement becomes effective. One drawback of the database is that 'commodity' is a required search criteria, causing users to be unable to search for all SPS measures applied to commodities of a particular country. Nonetheless, this database is an important gateway of information for countries wishing to export agricultural products to Australia.

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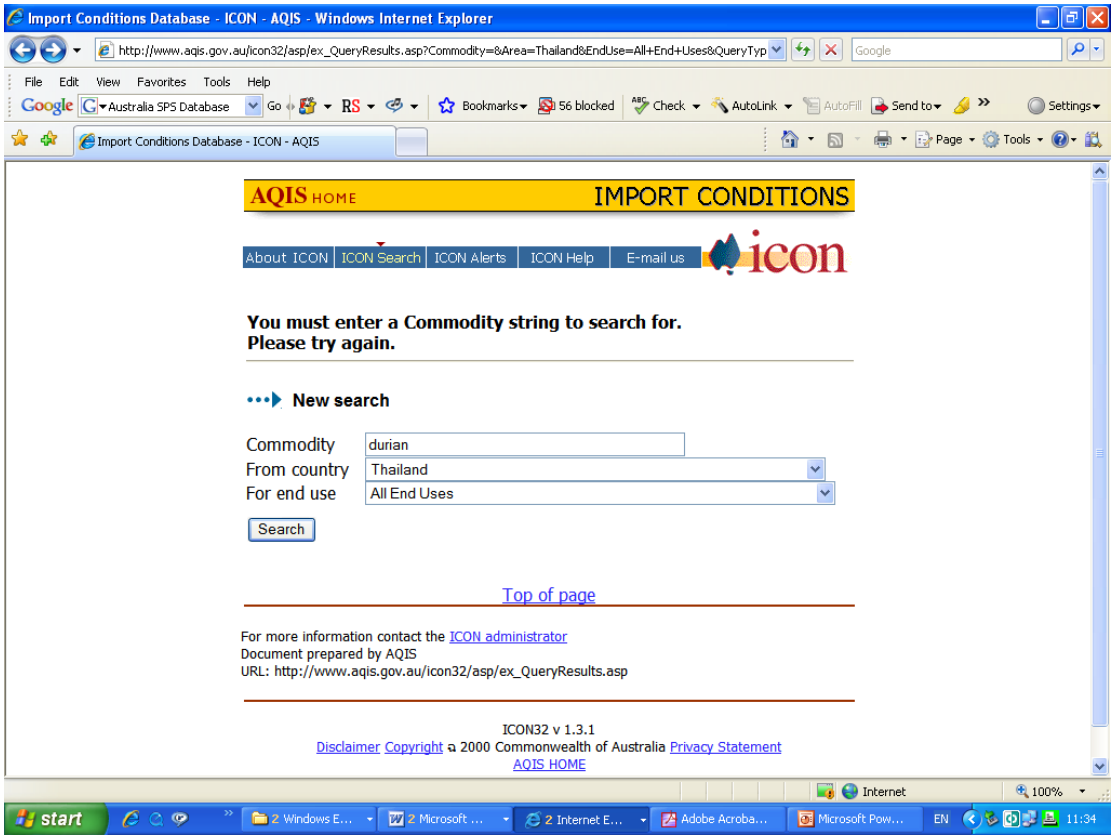
Figure 5.4: Australia Quarantine Import Services Import Conditions Database



http://www.aqis.gov.au/icon32/asp/ex_querycontent.asp

5.3.2 The CCC Requirement on Industrial Products

(g) Recommendation 1: Recognition of certification and accreditation

Costs and time required for the CCC certification procedures are high because they must be performed in China and by the Chinese certification body. Only Chinese-own certification body can be engaged in certification activities including product sample testing, issuing the test report, and factory inspection. Full involvement of foreign-owned certification body is indirectly allowed under two circumstances where the test report is issued by certification body from countries that:

1. China has a MRA with, or
2. Participate in international recognition schemes of which China is also a member; e.g. IECEE CB Scheme for electrical appliances

Still, these two available options cannot be appropriately applied to Thailand. At this stage, the Thai private sector seems not to be interested in the MRA due to their concern over the substandard quality of Chinese products and the incapability of Thai authority to carry out follow-up inspection once those products have already entered the Thai market. The most appropriate option is to seek an adoption of a international recognition agreement rather than a MRA to ensure accuracy of testing report. However, Thailand's product scopes of participation in IECEE CB Scheme are currently limited to only two products; washing machine and tumble dryer. In addition, China does not accept all ranges of testing under IECEE CB Scheme, neither does it accept the ISO standard for factory inspection.

Subject to the above conditions, three recommendations are proposed:

1. The Thai Industry Standard Institute, Ministry of Industry should study opportunity to expand product scope for Thailand in participating in the IECEE Scheme.
2. Negotiation team should negotiate with China for acceptance of IECEE CB scheme for a wider range of tests and ISO testing for factory standards
3. Ministry of Commerce should explore opportunities for direct Thai involvement in Chinese certification activities (e.g., joint-venture certification bodies)

(h) *Recommendation 2: Avoiding duplication of certification requirements*

Duplications of certification requirements in the CCC system were found in two areas. The negotiation teams should negotiate with China to:

- ❖ Eliminate the requirement for the testing of components and parts exports intended to be incorporated into final products that require the CCC mark, and avoid discriminatory requirements between domestically produced and imported parts.
- ❖ Eliminate requirement for fresh inspection of CCC certified factories that wish to introduce new products to the market.

(i) *Recommendation 3: Alignment of Thai standards with international standards*

Having a strong standard and certification system for industrial products is important for consumer safety, but the system should not be trade-restricted. One way to balance the two aspects is to align one's standards with international standards. Comparing with the CCC system, Thai standards are based on an older version of the international one, i.e. IEC standard. Upgrading the Thai standards to the most updated version of the international standards is recommended since it will bring the following benefits:

- Consumer safety is safeguarded
- More appropriate standard can be applied to imported products.
- It requires Thai producers to improve product quality so that it is easier to conform with standards imposed by other major export markets

(j) *Recommendation 4: Strengthening the post-market surveillance system*

The post-market surveillance system is a continuous product assessment designed to give the manufacturer ongoing feedback on the quality of their product after they are sold in the market. Both Thailand and China should develop an efficient surveillance system to improve the ability of the authorities to take action against dangerous products that have already entered the market. When the system is effectively in place, trade could be more facilitated at the border, in particular for the low-risk products.

5.4 Conclusion

This study investigates China's non-tariff measures which pose as obstacles for Thai exporters to accessing the Chinese market. The study concludes that Thailand must effectively address the issue of non-tariff measures to China at various forums, either bilaterally, regionally, or multilaterally, in order that these persisting and trade-obstructing problems are rectified. However, Thailand cannot adopt an offensive approach to accessing the Chinese market alone, as the influx of Chinese imports has also greatly impacted domestic industries in Thailand. Consequently, Thailand must also guard its defensive interests when trading with China. In the case of fruit trade, the Thai government must urgently implement effective food quality monitoring and

inspection schemes, to ensure the safety of imported food from China and to protect Thai consumers. Similarly, the CCC mark problem also demands that Thailand allies its product standards with international standards in order to rid of problems of inconsistency in standards and quality of domestically produced goods compared to those produced abroad. It is expected that this offensive strategy will enhance export opportunities of Thai products and will become one of the solutions to the problem of accessing the Chinese market, which many Thai entrepreneurs currently face.

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- Non-Tariff Measures in China : Cases of Thailand-China Fruit Trade and CCC Mark Requirement on Industrial Products, 2007 (Researcher)
- Opportunities, Problems, and Obstacles of Accessing the Chinese Market under the ASEAN-China Trade Liberalization Framework: a Detailed Province-level Analysis**,** 2006 (Researcher)
- Reforming Customs Procedure for Promoting Thailand's Intra-Regional Trade,2006 (Researcher)
- Impact of Trade in Services Liberalization on Tourism Industry of Thailand, 1998 (Research Assistant)

Individual Study

- Estimating Investment Function of Thailand, 1998
- Economic Integrations and Implication to Thailand, 1997

Article

- China in the GATT System : Is the trade really open?, November 2007
- Doha Round is now in crisis : A change in modalities could become a way out, July 2006
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