THAILAND

TRADE SUMMARY

U.S. goods exports in 2014 were $11.8 billion, down 0.1 percent from the previous year. Thailand is currently the 25th largest export market for U.S. goods. Corresponding U.S. imports from Thailand were $27.1 billion, up 3.6 percent. The U.S. goods trade deficit with Thailand was $15.3 billion in 2014, an increase of $954 million from 2013.

U.S. exports of services to Thailand were $2.7 billion in 2013 (latest data available), and U.S. imports were $2.7 billion. Sales of services in Thailand by majority U.S.-owned affiliates were $5.7 billion in 2012 (latest data available), while sales of services in the United States by majority Thailand-owned firms were $119 million.

The stock of U.S. foreign direct investment (FDI) in Thailand was $14.4 billion in 2013 (latest data available), up from $14.3 billion in 2012. U.S. FDI in Thailand is led by the manufacturing sector.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Alcoholic Beverage Labeling Requirements

In March 2014, Thailand notified the WTO Committees on Technical Barriers to Trade and Sanitary and Phytosanitary measures of a proposed regulation titled "the Rules, Procedure and Condition for Labels of Alcoholic Beverages." This proposed regulation would further limit the ability of businesses to advertise or promote alcoholic beverages. In addition, Thai officials publically expressed their intention to revive a graphic warning requirement, initially proposed in 2010, for all beer, wine, and spirits sold in Thailand. This additional proposal was published on the website of the Ministry of Public Health, but not notified to the WTO. During subsequent TBT Committee meetings, the United States and other WTO Members encouraged Thailand to notify the revised measure and seek input from affected stakeholders.

Motorcycle Highway Ban

Thailand bans all motorcycles from "special" and "concession" highways designed for cars and trucks, even though heavyweight motorcycles are designed for highway use, most countries accept their use on highways, reflecting the many traffic studies that demonstrate that there is no underlying safety rationale for such bans.

Sanitary and Phytosanitary Barriers

Animal-Derived Products

Although the World Animal Health Organization (OIE) recognized the United States as a negligible bovine spongiform encephalopathy (BSE) risk country in 2013, Thailand still has not lifted its long-standing ban on U.S. feed or feed ingredients that contain or are derived from ruminant animals. Thailand also requires inspection and approval of U.S. manufacturing facilities that produce certain animal-derived products as a condition of import.

Beef and Beef Products:

Thailand still restricts imports of U.S. beef and beef products due to the detection of a BSE positive animal in the United States in 2003, and only allows import of U.S. deboned beef from animals less than 30 months of age. However, in 2012, Thailand published new rules that largely align its BSE-related requirements with OIE guidelines. In August 2013, a team from the Thai Department of Livestock and Development conducted an audit of the U.S. beef production system as a step towards fully reopening the market to U.S. beef. The United States and Thailand are now working to reach agreement on export certificate language. Separately, the Thai Food and Drug Administration (FDA) has also claimed jurisdiction over the import of beef products based on its administration of food safety standards. USDA is working with the Thai FDA to ensure its regulations comply with the OIE guidelines on BSE, but revisions to the rule have been stalled following recent political events in Thailand.

Ractopamine

In 2012, after the Codex Alimentarius Commission established Maximum Residue Levels (MRLs) for ractopamine in cattle and pig tissues, Thailand indicated it would lift its ban on imports of pork from countries that allow ractopamine use. Thailand has begun work on a risk assessment of ractopamine, but it is not expected to be finalized until late 2015. As a result, Thailand has not yet established MRLs for ractopamine in pork, which effectively prevents the importation of U.S. pork products. In addition, several stakeholders have informally shared that there is use of ractopamine throughout the Thai pork industry, and that Thai butchers request pork carcasses from animals treated with ractopamine because they have a higher yield.

Poultry

In December 2014, Thailand reportedly banned all poultry imports from the United States due to the detection of highly pathogenic avian influenza (HPAI) in Washington and Oregon. Since that time, Thailand has reduced the scope of the import ban to only affect fresh and frozen poultry, day old chicks, and hatching eggs. This restriction is inconsistent with OIE guidelines, which recommend that countries take regional approaches to imposing trade restrictions on poultry and poultry products from countries that detect HPAI in commercial or backyard flocks. USDA is working to resolve trade-related issues associated with HPAI. Annual U.S. poultry exports to Thailand total approximately $15 million.

Import Fees

Thailand imposes food safety inspection fees in the form of import permit fees on all shipments of uncooked meat. Current fees are $160 per ton for red meat (beef, buffalo, goat, lamb, and pork) and offals, and $320 per ton for poultry meat. Equivalent fees for domestic meat inspections, however, are significantly lower at $5 per ton for beef, $21 per ton for poultry, $16 per ton for pork, and zero for offals. The domestic fees are levied in the form of slaughtering or slaughterhouse fees. In addition, Thailand has proposed a new Animal Epidemics Act, which is now under review by the National Legislative Assembly. If passed and implemented, the Act could result in a fivefold increase in inspection fees, from the current ceiling rates of 20 baht/kg ($667/MT) to 100 baht/kg ($3,330/MT).

IMPORT POLICIES

Tariffs

High tariffs in many sectors remain an impediment to access to the Thai market. While Thailand's average applied most favored nation (MFN) tariff rate was 11.4 percent *ad valorem* in 2013, *ad valorem* tariffs can be as high as 80 percent, and the *ad valorem* equivalent of some specific tariffs (charged mostly on agricultural products) is even higher. Thailand has bound all tariffs on agricultural products in the WTO but only approximately 70 percent of its tariff lines on industrial products. The highest *ad valorem* tariff rates apply to imports competing with locally produced goods, including automobiles and automotive parts, motorcycles, beef, pork, poultry, tea, tobacco, flowers, wine, beer and spirits, and textiles and apparel. About one-third of Thailand's MFN tariff schedule involves duties of less than 5 percent, and almost 30 percent of tariff lines are duty free, including for products such as chemicals, electronics, industrial machinery, and paper.

Thailand has bound its agricultural tariffs at an average of 39 percent *ad valorem*, compared with its average applied MFN tariff on agricultural products of 29.9 percent. Applied MFN duties on imported processed food products typically range from 30 percent to 50 percent. Tariffs on meats, fresh fruits and vegetables, fresh cheese, and pulses (*e.g.*, dry peas, lentils, and chickpeas) are similarly high. For corn, the in-quota tariff is 20 percent and out-of-quota tariff is 70 percent. High tariffs are sometimes applied to products even when there is little domestic production. The type of potato used to produce frozen french fries, for example, is not produced in Thailand, yet imports of these potatoes face a 30 percent tariff. Tariffs on apples are 10 percent, while duties on pears, cherries, citrus, and table grapes range from 30 percent to 40 percent. Application of preferential tariffs as a result of free trade agreements with countries such as China, Australia, and New Zealand has eroded the competitiveness of U.S. products, including these and other agricultural products in recent years.

Thailand's average bound tariff for non-agricultural products is approximately 25 percent. Thailand's applied tariffs on industrial goods tend to be much lower than its bindings, averaging eight percent in 2011. However, Thailand applies high tariffs in some sectors. For example, Thailand applies import tariffs of 80 percent on motor vehicles, 60 percent on motorcycles and certain clothing products, 54 percent to 60 percent on distilled spirits, and 30 percent on certain articles of plastic and restaurant equipment. Among the products on which Thailand charges tariffs of 10 percent to 30 percent are certain audiovisual products, reception apparatus, and other consumer electronics¸ despite the importance of the electronics sector to Thailand's economy. Thailand applies a 10-percent tariff on most pharmaceutical products, including almost all products on the World Health Organization's list of essential medicines, with the exception of some vaccines, antimalarials, and antiretrovirals, which are exempt.

Nontariff Barriers

Import licenses are required for 16 categories of products, including certain chemical and pharmaceutical products such as clenbuterol, albuterol, and salbutamol; unfinished garments, parts, or components except collars, cuffs, waistbands, and pockets; worked monument or building stone; used automobiles, including cars, motorcycles and six-wheeled buses having 30 seats or more; certain used diesel engines; machinery and parts that can be used to violate copyrights via digital video and compact discs; intaglio printing machines and color copier machines; waste and scraps of plastic; chainsaws and accessories; fish meal with protein content less than 60 percent; caffeine; gold; and potassium permanganate. Imports of used motorcycle parts, medical devices, and gaming machines are prohibited. Import licenses for used automobiles and used motorcycles are granted only for imports intended for re-export or for individual, non-commercial use. Imports of certain minerals, arms and ammunition, and art objects require special permits from the relevant ministries.

Although Thailand has been relatively open to imports of feed ingredients, including corn, soybeans, and soybean meal, U.S. stakeholders have raised concerns about what it considers to be excessively burdensome requirements for feed products containing certain dairy ingredients. Thailand imposes domestic purchase requirements on importers of several products subject to tariff-rate quotas, including soybeans and soybean meal.

Price Controls

The Thai government has the legal authority to control prices or set *de facto* price ceilings for selected goods and services, including staple agricultural products (such as sugar, pork, cooking oil, condensed milk, and wheat flour), liquefied petroleum gas, medicines, sound recordings, and student uniforms. These price control review mechanisms are nontransparent. In practice, Thailand's government influences prices in the local market through its control of state monopoly suppliers of products and services, such as in the petroleum, aviation, and telecommunications sectors.

Excise Taxes

Excise taxes are high on some items such as unleaded gasoline, beer, wine, and distilled spirits. Currently, the Thai Government is reviewing its excise tax structure and is considering changes which could further increase the excise tax burden on imported products.

Excise taxes on automobiles in Thailand are based on various vehicle characteristics, such as engine size, weight, and wheelbase. The tax calculation remains complex and heavily favors domestically-manufactured vehicles. Excise taxes on passenger vehicles range from 30 percent to 50 percent, while pickup trucks, mostly produced in Thailand, are taxed at a rate of 3 percent. However, small passenger cars using E-20 gasoline and “eco” cars face reduced excise taxes of 25 percent and 17 percent, respectively.

Customs Barriers

The United States continues to have serious concerns about the lack of transparency in Thailand's customs regime and the significant discretionary authority exercised by Customs Department officials. The Customs Department Director General has the authority and discretion to increase the customs value of imports for reasons that are not authorized by the WTO Agreement on Customs Valuation. The United States has raised concerns with Thailand’s government regarding the Thai government’s use of this authority and has urged Thailand to eliminate this practice. The U.S. Government and stakeholders also have expressed concern about the inconsistent application of Thailand’s transaction valuation methodology and reports of repeated use of arbitrary values by the Customs Department.

The U.S. Government and exporters continue to urge the Customs Department to implement overdue reforms, including publishing proposals for changes in customs laws, regulations, and providing notifications and allowing sufficient time for comments on these proposals. U.S. companies also continue to report serious concerns about corruption and the cost, uncertainty, and lack of transparency associated with the penalty/reward system. This system creates conflicts of interest for customs officials and encourages customs investigations for personal financial gain. The Ministry of Finance is currently drafting legislation that could lower the rewards for customs officials and allow for reduced penalties for administrative errors and other unintentional violations.

GOVERNMENT PROCUREMENT

The Prime Minister's Procurement Regulations, which govern public sector procurement, came into effect in December 2014. These regulations established a preference program in which products certified by the Ministry of Industry as from domestic suppliers have an automatic 15 percent price advantage over foreign bidders in evaluations in the initial bid round. (Domestic suppliers in the preference program include subsidiaries of U.S. firms registered as Thai companies.)

If corruption is suspected during the bidding process, Thai government agencies and state enterprises reserve the right to accept or reject any or all bids at any time. The Thai government also reserves the right to modify the technical requirements at any time. This gives considerable leeway for Thai government agencies and State-owned enterprises to manage procurements, while denying bidders recourse to challenge procedures. Foreign businesses have frequently alleged that the Thai government makes changes to technical requirements for this purpose during the course of procurements. Despite Thailand's commitment to transparency in government procurement, U.S. companies and the Thai media report allegations of irregularities.

Thailand is not a signatory to the WTO Agreement on Government Procurement.

SUBSIDIES

In early 2014, the Thai Government discontinued its controversial rice pledging program. This program resulted in large financial outlays by the government and up to 18 million metric tons of government-owned rice stocks. In the six months following the May 2014 coup d'état, the interim government acted aggressively to export rice through government-to-government contracts and private auctions at prices far below acquisition costs, further adding to downward price pressure on international markets. In late 2014, the Thai Government announced a similar four-month pledging program, at lower guaranteed prices than in previous years, and limited to only fragrant and glutinous rice paddies. As of February 2015, only 350,000 MT of rice had been pledged by farmers under the program and it is unclear at what price these stocks will be released. The government is also in the process of reforming fuel subsidies by eliminating large cross-subsidies between energy sources and reinstating excise taxes and Oil Fund levies on diesel and LPG. LPG prices and electricity up to 50Wh/month have remained fixed for low-income households.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Thailand was again listed on the Priority Watch List in the 2014 Special 301 Report. The United States recognizes the Thai government's continuing efforts to strengthen IPR protection and enforcement including through the establishment of a National Intellectual Property Center of Enforcement. However, the United States remains concerned about Thailand's IPR regime, particularly with respect to widespread copyright piracy and trademark counterfeiting. U.S. concerns also relate to recent increases in online content piracy and illegal camcording and growing challenges in the areas of Internet, cable, and signal piracy. In November 2014, Thailand's National Legislative Assembly passed amendments to the Copyright Act and anti-camcording legislation. The United States continues to urge Thailand to amend its copyright laws and regulations to implement the WIPO Internet Treaties, address landlord liability for infringement, take sustained and effective action against illegal camcording, and enhance the authority of Thai Customs to take *ex officio* enforcement actions. The United States also continues to urge Thailand to create such laws and regulations through a transparent process that takes into account the views of rights holders and incorporates effective notice and comment processes, to take enforcement action against widespread piracy and counterfeiting in the country, and to impose sentences that would deter potential offenders. The National Legislative Assembly is in the process of reviewing and ratifying additional IPR-related legal amendments, but how these new laws will be implemented and whether the new legal environment improves IPR protection and enforcement is still unclear.

Another area of U.S. concern is the Ministry of Public Health's lack of transparency and opportunities for public engagements in the development of new measures. The United States will continue to encourage Thailand to consult and engage in a meaningful and transparent manner with all relevant stakeholders, including IP rights holders, as it considers ways to promote access to medicines, use of generics, and a patent system that promotes the development of new, life-saving drugs.

SERVICES BARRIERS

Audiovisual Trade Barriers

The Motion Picture and Video Act gives Thailand's Film Board the authority to establish ratios and quotas limiting the importation of foreign films. Foreign ownership and investment in terrestrial broadcast networks is prohibited.

Telecommunications Services

Thailand has taken steps to reform its telecommunications regulatory regime, but significant obstacles to foreign investment remain. Despite committing to permit foreign equity of only 20 percent in its provisional WTO commitments agreed to by Thailand in 1997, Thai law allows foreign equity up to 49 percent in basic telecommunications service firms and higher levels for providers of value-added services that do not own their own telecommunications network, such as Internet service providers, audio text providers, and resale service providers (prepaid calling cards). Thailand is delinquent, however, in revising its WTO schedule, as it committed to do in 1997, to reflect both these higher foreign-equity limits and the pro-competitive regulatory measures it subsequently enacted.

Thailand maintains regulations to restrict "foreign dominance" in telecommunications. The regulations prohibit foreign ownership beyond 49 percent and look beyond traditional accounting methods for classifying shareholdings. The criteria by which foreign dominance is determined remains unclear, raising concerns that implementation of the regulations are inconsistent and nontransparent. In addition, U.S. and other foreign telecommunications companies also have expressed concern that the regulations may be extended to other industries.

The United States has concerns about other issues in the telecommunications sector relating to the two state-owned telecommunications enterprises: TOT and CAT Telecom. These include the phasing out of the concession contracts of TOT and CAT Telecom; preferences accorded to TOT and CAT with respect to spectrum; the privatization of TOT and CAT; and enforcing the interconnection obligations of these two operators.

Legal Services

U.S. investors may own law firms in Thailand only if they enter into commercial association with local attorneys or local law firms, and U.S. citizens and other foreign nationals (with the exception of "grandfathered" non-citizens) may not provide legal services. In certain circumstances, foreign attorneys can obtain a limited license entitling them to offer advisory services in foreign and international law.

Financial Services

Thailand limits the number of licenses for foreign bank branches and subsidiaries. In practice, foreign banks' only means of entering the market is by acquiring shares of existing domestic financial institutions, and such investments are limited to 25 percent, although the Bank of Thailand has the authority to raise the foreign ownership limit in a local bank from 25 percent to 49 percent on a case-by-case basis. In addition, the Minister of Finance, with a recommendation from the Bank of Thailand, may authorize foreign ownership above 49 percent if deemed necessary to support the stability of a financial institution or the overall financial system during an economic crisis. Changes in major shareholders must also be for prudential reasons with emphasis on good governance and risk management under the Basel Core Principle.

Foreign bank branches and subsidiaries are allowed to perform all types of financial activities similar to local banks, but Thailand maintains restrictions on the maximum numbers of branches allowed. A subsidiary may open only 20 branches and 20 off-premise ATMs across Thailand, and foreign bank branches are permitted to open only three branches or off-premise ATMs in Thailand without having to meet additional capital requirements. Meanwhile, Thailand prohibits the engagement by a representative office in commercial banking activities, allowing such offices to conduct only research services.

The Thai Securities and Exchange Commission grants licenses to new domestic and foreign securities companies that meet its requirements. It allows various ownership structures, including 100-percent Thai or foreign ownership, strategic foreign partnerships, joint ventures between Thai and foreign companies, or bank affiliate status.

The Thai government has relaxed restrictions on foreign investment and ownership in the insurance sector, but barriers remain. Foreign investors are limited to a 24.99 percent equity stake in existing insurance firms and may only hold up to 25 percent of board of director seats. The Insurance Commission may, as empowered by its board of directors, approve an increase of foreign shareholding up to 49 percent on a case-by-case basis if the company is financially sound with a good reputation, has a good track record of business performance, can demonstrate its business strength and contributions to the insurance industry, and has a solid business plan. The Insurance Commission also must approve the company directors.

Accounting Services

Foreigners are permitted to own up to 49 percent of most professional services companies, including accounting, through a limited liability company registered in Thailand. Foreigners cannot be licensed as Certified Public Accountants, however, unless they pass the required examination in the Thai language, are citizens of a country with a reciprocity agreement, and legally reside in Thailand. Foreign accountants may serve as business consultants.

Postal and Express Delivery Services

Private express delivery companies must pay postal "fines" and penalties for delivery of documents in Thailand. These fines amount to an average of 37 baht per item (slightly more than $1) for shipments that weigh up to two kilograms. Thailand also imposes a 49 percent limit on foreign ownership in land transport.

INVESTMENT BARRIERS

The Foreign Business Act (FBA) lays out the framework governing foreign investment in Thailand. Under the FBA, a foreigner (defined as a person who is not a Thai national, a company which is not registered in Thailand, or a company in which foreign ownership accounts for 50 percent or more of total shares) needs to obtain an alien business license from the relevant ministry before commencing business in a sector restricted by the FBA. Although the FBA prohibits majority foreign ownership in most sectors, U.S. investors registered under the United States-Thailand Treaty of Amity and Economic Relations (AER) are exempt. Under the AER, Thailand may prohibit U.S. investment only in the following areas: "communications, transportation, fiduciary functions, banking involving depository functions, the exploitation of land or other natural resources, domestic trade in indigenous agricultural products, and the practice of professions, or calling reserved for Thai nationals." In all other sectors, Thailand must accord U.S. investors national treatment in respect of the establishment and acquisition of interests in enterprises.

OTHER BARRIERS

U.S. stakeholders have expressed concern that processes used by the Thai Government for revising laws and regulations affecting trade and investment lack consistency, transparency, and broad stakeholder engagement.

In the pharmaceutical sector, the Government Pharmaceutical Organization, a state-owned entity, is not subject to Thai FDA licensing requirements on the production, sale, and importation of pharmaceutical products. U.S. stakeholders have expressed concerns about the lack of transparency and due process in the administration of the Thai government's National List of Essential Drugs (NLED) for procurement of pharmaceutical products dispensed at government hospitals that uses median pricing and reimbursement schemes that exclude innovative medicines from listing under government health plans. U.S. stakeholders have raised similar concerns regarding other issues, such as pending changes to the Drug Act that would affect registration of patented medicines. U.S. stakeholders also have expressed serious concerns regarding the uncertain business climate following Thai Cabinet-level resolutions that cite compulsory licensing as an acceptable cost reduction method for health care and the issuance of policies that appear to favor local generic drug producers over foreign producers.

The 2007 Thai Constitution contains provisions to combat corruption, including enhancement of the status and powers of the National Anti-Corruption Commission, which is independent from other branches of government and is thus unique among Thai bodies aimed at countering corruption. Persons holding high political office and members of their immediate families are required to disclose their assets and liabilities before assuming office, every three years while in office, upon leaving office, and for one year after leaving office. Despite these steps, corruption continues to be a serious concern in Thailand.

While the National Anti-Corruption Commission is the primary constitutional body vested with powers and duties to counter corruption in the public sector, several different agencies have jurisdiction over corruption issues, and clear jurisdictional responsibilities and differing bureaucratic structures mean their actions are not always complementary. Investigative and prosecutorial capacity is limited and Thai laws focus predominantly on abuse of office as opposed to financial or asset-related malfeasance. Anticorruption mechanisms continue to be employed unevenly, and the lack of transparency in many government administrative procedures facilitates corruption. However, Thailand's 2013 anti-money laundering law provides improved supervisory powers to monitor and regulate the illegal flow of money through Thai financial institutions.