THAILAND

TRADE SUMMARY

The U.S. goods trade deficit with Thailand was $13.7 billion in 2010, up $1.5 billion from 2009. U.S. goods exports in 2010 were $9.0 billion, up 29.7 percent from the previous year. Corresponding U.S. imports from Thailand were $22.7 billion, up 18.9 percent. Thailand is currently the 28th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Thailand were $1.6 billion in 2009 (latest data available), and U.S. imports were $1.5 billion. Sales of services in Thailand by majority U.S.-owned affiliates were $4.6 billion in 2008 (latest data available), while sales of services in the United States by majority Thailand-owned firms were not available in 2009 ($239 million in 2005, latest data available).

The stock of U.S. foreign direct investment (FDI) in Thailand was $10.2 billion in 2009 (latest data available), up from $9.3 billion in 2008. U.S. FDI in Thailand is led by the manufacturing and banking sectors.

IMPORT POLICIES

Thailand's high tariffs remain an impediment to market access in many sectors. While Thailand's average applied MFN tariff rate was 10.4 percent in 2009, ad valorem tariffs are as high as 50-80 percent, and the ad valorem equivalent of some specific tariffs (charged mostly on agricultural products) are even higher. About one-third of Thailand's MFN tariff schedule involves a duty less than 5 percent, and almost 20 percent of tariff lines enter Thailand duty-free, including in key sectors like chemicals, electronics, industrial machinery, and paper. Thailand has bound all tariffs on agricultural products in the WTO, but only around 70 percent of its tariff lines on industrial products. The highest tariff rates apply to imports competing with locally produced goods, including automobiles and automotive parts, motorcycles, beef, pork, poultry, tea, wine and spirits, and textiles and clothing.

Thailand has bound its tariffs on agricultural products at an average of 40.6 percent, although its average applied MFN tariff on agricultural products is 22.6 percent. MFN duties on imported processed food products typically range from 30 percent to 50 percent, which have hindered U.S. exports of these products into Thailand. Tariffs on meats, fresh fruits (including citrus fruit and table grapes) and vegetables, fresh cheese, and pulses (*e.g.*, dry peas, lentils, and chickpeas) are similarly high. 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 and cherries range from 30 percent to 40 percent. U.S. fruit growers estimate they could export up to $15 million more to Thailand each year if these tariffs were eliminated. In addition, the lowering of tariffs below MFN rates through free trade agreements with countries such as China, Australia, and New Zealand has reduced the competitiveness of many U.S. products including agricultural products in recent years and threatens to significantly erode U.S. market share as these agreements are phased in.

Nearly 30 percent of tariffs on industrial goods in Thailand are unbound in the WTO. For non-agricultural products with bindings, Thailand's average bound tariff is 25.5 percent. Thailand's MFN tariffs on industrial goods tend to be much lower than its bindings, averaging 8 percent in 2009. However, Thailand charges significant peak rates in some sectors; the MFN tariff on imported motor vehicles is 80 percent, 60 percent on motorcycles, and 30 percent on certain articles of plastic. Thailand's tariff rates for textiles imports are also high, ranging from 20 to 30 percent for most fabrics, 30 percent for most clothing and other made-up textile products, and reaching 60 percent for some clothing products, according to information provided by Thailand to the WTO. Thailand also applies specific duties on more than a third of all textile tariff lines, which can result in even higher effective rates.

Excessive Thai tariffs on restaurant equipment – including ovens, fryers, ice cream machines, appliances, and cooking utensils, which are sometimes as high as 30 percent – hinder expansion of U.S. quick service restaurants in Thailand as well as U.S. exports.

Thailand applies a 10-percent tariff to all pharmaceuticals (excluding vaccines and therapies for HIV, malaria, and thalassemia). In addition to this tariff, all medicines are subject to a 7 percent value-added tax.

Nontariff Barriers (NTBs)

Quantitative Restrictions and Import Licensing: Import licenses are required for at least 32 categories of items, including many raw materials, petroleum, industrial materials, textiles, pharmaceuticals, certain consumer products, and agricultural items. Imports of used motorcycle parts 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. industry reports that the government has maintained excessively burdensome import requirements for feed products containing dairy ingredients. Nontransparent tariff-rate quotas on some products and price controls on others also impede market access. Thailand imposes domestic purchase requirements for several tariff-rate quota products, including nonfat dry milk, soybeans, soybean meal, and fresh potatoes. Delays in finalizing administrative tariff-rate quotas have led to market uncertainty and shipping disruptions.

Thailand imposes food safety inspection fees in the form of import permit fees on all shipments of uncooked meat. Currently, imports face fees of 5 baht per kilogram (approximately $160 per ton) for red meat (beef, buffalo meat, goat meat, lamb, and pork) and for offal, and 10 baht per kilogram ($320 per ton) for poultry meat. Fees for domestic meat inspections are much lower and are levied in the form of a slaughtering or slaughterhouse fee. The fees are $5 per ton for domestic beef; $21 per ton for poultry; $16 per ton for pork; and zero for offal.

Thailand bans heavyweight motorcycles from highways, even though heavyweight motorcycles are designed for highway use, most countries accept their use, and many traffic studies demonstrate there is no underlying safety rationale for such bans.

Taxation: The complexity of Thailand's tax system also has raised concerns among foreign businesses. Excise taxes are high on some items, such as unleaded gasoline, beer, wine, and distilled spirits. For example, when import duties, excise taxes, and other surcharges are calculated, the cumulative duty and tax burden on most imported spirits is approximately 400 percent.

Excise taxes on automobiles in Thailand are based on various vehicle characteristics, such as engine size, weight, and wheelbase. In July 2004, Thailand revised its excise tax structure, but 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 are taxed at a rate of 3 percent. As a result, domestic pickup trucks account for more than 50 percent of total vehicle sales in Thailand.

Customs Barriers: The United States continues to have serious concerns about the lack of transparency of the Thai customs regime and the significant discretionary authority exercised by Customs Department officials. The Customs Department Director General retains the authority and discretion to arbitrarily increase the customs value of imports. The United States has raised concerns with the Royal Thai government regarding this authority and has urged Thailand to eliminate this practice. The U.S. Government and industry also have expressed concern about the inconsistent application of Thailand's transaction valuation methodology and 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 notifications, and allowing sufficient time for comments on these proposals. Of additional concern are the failure to publish customs rulings and the lengthy appeals process for these rulings, both of which create considerable uncertainty for importers.

U.S. companies also continue to report serious concerns about corruption and the inappropriate penalty reward system for customs officials. In August 2009, the Royal Thai government proposed a series of reforms to its customs laws and procedures. A first set of amendments that address some aspects of the penalty regime was approved by the Thai Cabinet in September 2010, but now must be reviewed and passed by Parliament. The U.S. Government will continue to discuss the details of these specific proposals with the Thai government in 2011.

GOVERNMENT PROCUREMENT

A specific set of rules, commonly referred to as the Prime Minister's Procurement Regulations, governs public sector procurement for ministries and state-owned enterprises. While these regulations require that nondiscriminatory treatment be accorded to all potential bidders and open competition be applied in all procurements, state enterprises and ministries typically apply additional procurement policies and practices. Preferential treatment is provided to domestic suppliers, including subsidiaries of U.S. firms registered as Thai companies, through an automatic seven percent price advantage over foreign bidders in evaluations in the initial bid round.

Where corruption is suspected during the bidding process, government agencies and state enterprises reserve the right to accept or reject any or all bids at any time and may also modify the technical requirements. This allows considerable leeway to government agencies and state-owned enterprises in managing procurements, while denying bidders recourse to challenge procedures. There are frequent allegations that the Thai government makes changes to technical requirements during the course of procurements.

Despite an official commitment to transparency in government procurement, U.S. companies and the Thai media have reported allegations of irregularities. In addition, some U.S. companies have expressed concerns regarding a Thai government decision to no longer include arbitration clauses in concessions and government contracts. In addition, the Thai government is considering an amendment to the Arbitration Act that would exempt government contracts from arbitration procedures altogether.

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Thailand was listed on the Priority Watch List in the 2010 Special 301 Report. The United States also conducted an out-of-cycle review in 2010 to review Thailand's IPR protection and enforcement prior to the full Special 301 annual review in 2011. Key concerns cited in the 2010 report included continued widespread copyright piracy and trademark counterfeiting and a growing challenge in the areas of Internet, cable, and signal piracy. While the United States is encouraged by the Royal Thai government's senior level commitment to stronger IPR protection and enforcement through the creation of the National Task Force, its action plan to improve its IPR regime and the launch of the Creative Economy project, some concerns regarding IPR protection and enforcement remain and represent barriers to U.S. exports and investment. The United States welcomed Thailand's accession to the Patent Cooperation Treaty in 2009 and will continue to encourage Thailand to quickly enact proposed legislation to amend its copyright law to, among other things, implement the WIPO Internet Treaties, address landlord liability for infringement and illegal camcording, and enhance the authority of Thai Customs to take enforcement actions *ex officio*. Thailand also is considering possible amendments to its patent law.

SERVICES BARRIERS

Telecommunications Services

Thailand has made progress toward reforming its telecommunications regulatory regime, but significant obstacles to foreign investment remain. While foreign equity levels are capped at 20 percent under Thailand's WTO commitments, Thai law allows foreign equity up to 49 percent in basic telecommunications service firms and higher for an operator that does not own its telecommunications network but provides value-added services, such as internet service providers (ISPs), audio text providers, and resale service providers (prepaid calling cards). The licensing regime, however, has still limited access to narrowly-defined sub sectors.

The Thai Constitution of 2007 provides for a single independent regulator, provisionally named the National Broadcasting and Telecommunications Commission (NBTC), to allocate additional spectrum for radio and television frequencies and telecommunications. In 2010, Parliament approved the Frequency Allocation Act, which formally established the NBTC. The NBTC is not yet operational, however, and the regulations and procedures for allocating additional frequencies therefore remain unclear. This situation puts at risk any plans for expanding mobile services that can only be provided if operators are able to obtain additional spectrum, including for services using third generation (3G) technology. Other unresolved issues in the telecommunications sector include the phasing out of the concession contracts of the state-owned TOT and CAT Telecom; preferences accorded to TOT and CAT with respect to spectrum; the privatization of TOT and CAT; enforcing the interconnection obligations of these two operators; and Thailand's revision of its GATS schedule to reflect its 1998 commitments in the WTO, including with respect to improvements in foreign equity participation and regulatory oversight.

Although the National Telecommunications Commission has made progress in licensing new operators in some sub-sectors (*e.g.*, Internet access and private networks), it has yet to put in a framework for licensing competitors to the fixed services offered by CAT and TOT, covering domestic and international voice and data services.

Legal Services

U.S. investors may own law firms in Thailand, but U.S. citizens and other foreign nationals (with the exception of "grandfathered" non-citizens) may not provide legal services. In certain circumstances, foreign attorneys may act in a consultative capacity.

Financial Services

Significant restrictions remain on foreign participation in the financial services sector. The 2008 Financial Institutions Business Act, the consolidated financial act that replaced the 1962 Commercial

Bank Act and a 1979 Act on financial services, allows foreign equity ownership up to 49 percent. However, foreign ownership between 25 percent and 49 percent requires prior approval from the Bank of Thailand. The law also allows the Ministry of Finance to authorize foreign ownership greater than 49 percent if deemed necessary to support the stability of the overall financial system during an economic crisis. Permission for foreigners to have more than a 49- percent equity stake in Thai securities firms is granted on a case-by-case basis.

Foreign banks are generally limited to one branch and are not permitted to operate off-site automated teller machines (ATMs), which are considered branches. Subsidiaries established from 2004 to 2008 under the first Financial Sector Master Plan (FSMP) are entitled to open up to five bank branches, including a headquarters office. Under the second FSMP, which was approved by the Cabinet in 2009, foreign banks are allowed to open two additional branches from 2010 onward. The second FSMP also allows some foreign bank branches to have up to 20 branches and 20 ATMs, subject to Bank of Thailand approval. Foreign management personnel are limited to six professionals in full branches and subsidiaries of foreign banks, although exceptions are often granted. In August 2009, pursuant to Thailand's commitments under the ASEAN Framework Agreement on Services, the Bank of Thailand waived the foreign management personnel restriction if the employees are nationals from ASEAN member states.

Accounting Services

Foreigners cannot be licensed as Certified Public Accountants unless they pass the required examination in the Thai language, are citizens of a country with a reciprocity agreement, and are legally resident in Thailand. Foreign accountants may serve as business consultants.

Transport Services

The 2005 Multimodal Transport Act introduced uncertainty with respect to the treatment of foreign shipping companies. According to the law and its implementing regulations, foreign shipping companies performing multimodal services in Thailand are required to either incorporate in Thailand or appoint a Thai agent. The ministerial regulations implementing the law waive this requirement for foreign shipping companies transporting goods under bills of lading governed by international convention.

Postal and Express Delivery Services

Thailand’s Postal Act (1934) gives the government a monopoly on handling letters and postcards. 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 less than two kilograms.

Thailand also imposes a 49-percent limit on foreign ownership in land transport (trucking), which discourages investment in the express delivery sector. Express delivery firms prefer to control items throughout the supply of the service, including both air and ground based operations, in order to speed the movement of goods.

Healthcare Services

Thai government policy serves to restrict foreign investment in the healthcare services sector (*e.g.*, hospital, dental, and physician services). U.S. industry has identified the lack of transparency relating to foreign ownership and management of hospitals and treatment facilities as a significant barrier in this sector.

INVESTMENT BARRIERS

The Foreign Business Act (FBA) lays out the overall framework governing foreign investment in Thailand. Under the FBA, a foreigner, defined as a person or company of non-Thai nationality or a company where foreign ownership accounts for 50 percent or more of total shares and/or registered shares, needs to obtain an alien business license from the relevant ministry before commencement of its business in a sector restricted by the FBA. Although the FBA prohibits majority foreign ownership of investment in most sectors, Thailand makes an exception for U.S. investors pursuant to the Treaty of Amity and Economic Relations (AER Treaty). Under the AER, Thailand may limit U.S. investment only in the following areas: "communications, transportation, fiduciary functions, banking involving depository functions, the exploitation of land or other natural resources, and domestic trade in indigenous agricultural products." Thailand's obligation to accord national treatment to U.S. investors in all other sectors does not extend to "the practice of professions, or callings reserved for Thai nationals".

ELECTRONIC COMMERCE

Thailand does not have a complete legal framework to support electronic commerce, but the Thai government is taking steps to create a more supportive environment. In July 2007, the Act on Computer-Related Crime was enacted to criminalize offenses against computer systems and data. Thailand also enacted an electronic transaction law, as well as several royal decrees establishing policies for electronic transactions and e-payment service providers. Several additional measures are pending approval, including security measures for electronic transactions, a draft law on personal data protection, and regulations for certification authority.

OTHER BARRIERS

In the pharmaceutical sector, the Government Pharmaceutical Organization (GPO) is not subject to registration requirements faced by the private sector. The Council of State is currently reviewing a proposed law, however, that would eliminate GPO's exemption from these requirements. GPO also is exempt from complying with the requirements of the safety monitoring period (SMP) when producing and marketing generic formulations of drugs marketed in foreign countries. Other manufacturers are subject to a mandatory two-to-four-year SMP for all new chemical entities registered and approved for marketing in Thailand. This and other Thai government requirements limiting government hospitals' procurement and dispensing of drugs not on the national list of essential drugs significantly constrain the availability of many imported products.

The U.S. pharmaceutical industry has expressed serious concern regarding the uncertain climate for its business in Thailand. The United States will continue to encourage Thailand to engage in a meaningful and transparent manner with all relevant stakeholders as it considers ways to address Thailand's public health challenges.

The Thai government retains authority to control prices or set *de facto* price ceilings for 38 goods and one service, including staple agricultural products (sugar, cooking oil, condensed milk, wheat flour, and others), liquefied petroleum gas, medicines, sound recordings, and student uniforms. Price control review mechanisms are nontransparent. In practice, the government also uses its control of major suppliers of products and services under state monopoly, such as the petroleum, aviation, and telecommunications sectors, to influence prices in the local market.

The 2007 Thai Constitution contains provisions to combat corruption, including enhancement of the status and powers of the National Counter Corruption Commission, which is independent from other branches of government. Persons holding high political office and members of their immediate families are required to disclose their assets and liabilities before assuming and upon leaving office. Moreover, a law regulating the bidding process for government contracts defines actionable corruption offenses and increases penalties for violations. Despite these steps, corruption continues to be a serious concern. Anticorruption mechanisms continue to be employed unevenly, and the lack of transparency in many government administrative procedures facilitates corruption.