THAILAND

TRADE SUMMARY

The U.S. goods trade deficit with Thailand was $13.9 billion in 2011, up $182 million from 2010. U.S. goods exports in 2011 were $10.9 billion, up 21.7 percent from the previous year. Corresponding U.S. imports from Thailand were $24.8 billion, up 9.4 percent. Thailand is currently the 27th largest export market for U.S. goods.

Computers and electronics products are a leading category in bilateral goods trade. In 2010, the United States exported $2.3 billion in electronics products, primarily semiconductors, to Thailand, while importing $9.1 billion from Thailand, mainly computers and communications equipment.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Thailand were $1.9 billion in 2010 (latest data available), and U.S. imports were $1.7 billion. Sales of services in Thailand by majority U.S.-owned affiliates were $4.8 billion in 2009 (latest data available), while sales of services in the United States by majority Thailand-owned firms were $137 million.

The stock of U.S. foreign direct investment (FDI) in Thailand was $12.7 billion in 2010 (latest data available), up from $9.8 billion in 2009. U.S. FDI in Thailand is led by the manufacturing and banking sectors.

IMPORT POLICIES

High tariffs in many sectors remain an impediment to market access in Thailand. While Thailand's average applied most favored nation (MFN) tariff rate was 10.4 percent in 2011, *ad valorem* tariffs are as high as 50 percent to 80 percent, and the *ad valorem* equivalent of some specific tariffs (charged mostly on agricultural products) is even higher. About one-third of Thailand's MFN tariff schedule involves duties of 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 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 clothing.

Thailand has bound its tariffs on agricultural products at an average of 36.6 percent, although its average applied MFN tariff on agricultural products is 24.3 percent. MFN duties on imported processed food products typically range from 30 percent to 50 percent, which have impeded access of 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 an additional $25 million or more of citrus fruits, apples, cherries, pears, and grapes 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 eroded the competitiveness of many U.S. products, including agricultural products, in recent years, even before these agreements are fully implemented.

For non-agricultural products with bindings, Thailand's average bound tariff is around 26 percent. Thailand's tariffs applied to industrial goods tend to be much lower than its bindings, averaging nine percent in 2011. However, Thailand imposes high tariffs in some sectors; the tariff on imported motor vehicles is 80 percent, 60 percent on motorcycles, 54 percent or 60 percent on distilled spirits (depending on the product), and 30 percent on certain articles of plastic. Despite the importance of the electronics sector to its economy, Thailand charges tariffs of 10 percent to 30 percent on a range of products including certain audiovisual products, reception apparatus, and other consumer electronics. According to information provided by Thailand to the WTO, tariffs are 60 percent for a number of clothing products, which may be above Thailand's WTO bound rates. Thailand also applies specific duties on more than one-third of all its textile tariff lines, which can result in even higher effective rates.

Substantial 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 most pharmaceuticals, including almost all products on the World Health Organization list of essential medicines.

Nontariff Barriers

Quantitative Restrictions and Import Licensing: Import licenses are required for at least 19 categories of items: certain chemical and pharmaceutical products, including clenbuterol, albuterol or salbutamol; unfinished garments, parts or components except collars, cuffs, waistbands, pockets, and cuffs for trousers; worked monument or building stone; used automobiles, including cars, motorcycles, six-wheeled buses having 30 seats or more, and certain used diesel engines; machinery and parts thereof which can be used to violate copyrights via cassette tape, video tape, and compact disc, as well as 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, and potassium permanganate. 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 (TRQs) on some products and price controls on others also impede market access. Thailand imposes domestic purchase requirements for several tariff-rate quota products, including soybeans. Delays in finalizing administrative TRQs have led to market uncertainty and shipping disruptions.

Thailand bans 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 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. U.S. industry has expressed concern that the current excise tax structure imposes higher taxes on imported spirits than on locally produced white and brown spirits.

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, 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 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 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 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 notifications and allowing sufficient time for comments on these proposals. Additional concerns involve 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 Thai government proposed a series of reforms to its customs laws and procedures which were to be sent to the Thai Parliament in 2011. However, following the change of government in August 2011, the proposed legislation stalled and must be re-introduced for consideration by Parliament.

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 for government agencies and state-owned enterprises to manage 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. Arbitration clauses included in concessions and government contracts require cabinet approval, and are handled on a case-by-case basis. Complaints may be made in administrative and judicial courts governed by Thai laws.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Thailand was listed on the Priority Watch List in the 2011 Special 301 Report. Key concerns cited in the 2011 report included continued widespread copyright piracy and trademark counterfeiting and growing challenges in the areas of Internet, cable, and signal piracy. The United States is encouraged by the Thai government's senior level commitment to stronger intellectual property rights (IPR) protection and enforcement through the creation of the National Task Force, its action plan to improve its IPR regime, the establishment of a National Committee on the Creative Economy, and the formation of the Thai-U.S. Creative Partnership, but concerns regarding IPR protection and enforcement remain and represent barriers to U.S. exports and investment. The United States 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*. The United States continues to be concerned about the lack of transparency and opportunities for stakeholders to provide comments in connection with IPR policy discussions taking place at the Ministry of Public Health. The United States continues to encourage Thailand to engage in a meaningful and transparent manner with all relevant stakeholders, including IP rights holders, as it considers ways to address Thailand's public health challenges while maintaining a patent system that promotes investment, research, and innovation.

SERVICES BARRIERS

Telecommunications Services

Thailand has made progress toward reforming its telecommunications regulatory regime. However, significant obstacles to foreign investment remain. Despite capping foreign equity at 20 percent in its WTO commitments, Thai law allows foreign equity up to 49 percent in basic telecommunications service firms and higher 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). The licensing regime, however, provides only limited access to certain narrowly defined subsectors.

The single independent regulator provided for in the 2007 Constitution, the National Broadcasting and Telecommunications Commission (NBTC), was appointed in 2011. The NBTC has authority to allocate additional spectrum for radio and television frequencies and telecommunications although the regulations and procedures for allocating frequencies have not yet been released. The delay in appointing the NBTC has delayed plans for expanding mobile services which require additional spectrum, including for services using third generation technology. Just prior to NBTC's appointment in September, Thailand adopted regulations to restrict "foreign dominance" in telecommunications. The regulations prohibit foreign ownership beyond 49 percent and look beyond traditional accounting methods for classifying shareholdings. For example, foreign dominance can be attributed through agent shareholders, shareholders with special voting rights, foreign participation in the appointment or control of the board of directors or senior management positions such as managing directors, chief financial officers, and the use of equipment and services sourced from majority foreign-owned companies. U.S. and other foreign telecommunications companies have expressed concern that the regulations may be extended to other telecommunications businesses or applied to other industries. Other 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 ongoing 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 implement 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.

Beginning January 1, 2012, the Securities and Exchange Commission (SEC) began granting licenses to both domestic and foreign brokerages that meet minimum capital requirements. This represents a marked improvement over the previous SEC licensing regime, which maintained quotas on the total number of licenses awarded. Securities firms with foreign equity participation greater than 50 percent are still required to obtain permission from the Ministry of Commerce under Annex 3 (21) of the Foreign Business Act for non-brokerage services, such as securities underwriting, securities dealing, investment advisory, mutual fund management, and private fund management.

Thailand has removed some barriers to foreign ownership of domestic financial institutions. The Financial Institutions Act, passed at the end of 2007, gave power to the Bank of Thailand (the country's central bank) to raise the foreign ownership limit in a local bank from 25 percent to 49 percent on a case-by-case basis. The Act also allows the Minister of Finance to authorize foreign ownership above 49 percent. In January 2009, the Ministry of Finance allowed Malaysia's CIMB Group to hold majority shares (around 93 percent) in BankThai Bank, the country's ninth largest commercial bank. In February 2010, the Ministry of Finance allowed Industrial and Commercial Bank of China (ICBC – the largest commercial bank in China) to hold a 97.24 percent ownership interest in ACL Bank, Thailand's smallest commercial bank.

Thailand continues to implement the terms of its five year (2010 to 2014) Financial Sector Master Plan Phase II. Beginning in 2012, the Bank of Thailand will permit foreign banks to upgrade existing full branches to 'subsidiaries,' which will allow foreign banks to open up to 20 branches and 20 off-premise ATMs across Thailand. Qualifying branches must maintain a capital adequacy ratio of no less than 12 percent, compared with a domestic minimum requirement of 8.5 percent, and non-performing loans must be kept under 3.5 percent. In addition, the converted subsidiary must have a minimum of $333 million in paid-up-capital. As of December 2011, there were 15 foreign bank branches and one subsidiary operating in Thailand, including 3 American banks (Citibank, Bank of America, and JP Morgan Chase bank). Since March 2010, existing foreign bank branches have been permitted to open two additional branches in Thailand without having to meet additional capital requirements.

Restrictions on foreign investment and ownership in the insurance sector have been relaxed in recent years, but certain barriers remain. Foreign investors are permitted to own up to 25 percent equity in existing insurance firms and may hold up to a quarter of director seats. The Office of the Insurance Commission (OIC) may, at its discretion, raise the foreign equity and director limits to 49 percent and 50 percent respectively. In cases where insurance companies face financial problems that place insured members or the general public at risk, the Minister of Finance may further relax ownership restrictions upon recommendation by the OIC. In order to establish a branch office for either life or non-life insurance, foreign insurance companies are required to obtain a license from the Minister of Finance subject to cabinet approval. A foreign branch operating in Thailand must also place a security deposit and maintain an OIC-specified level of assets in-country that cannot be less than is otherwise required under the Life Insurance Act or the Non-Life Insurance Act. Branches of foreign insurance companies are not permitted to open additional branches.

Accounting Services

Foreigners are permitted to own up to 49 percent for most professional services companies, including accounting, through a limited liability company registered in Thailand. Foreigners cannot be licensed, however, as Certified Public Accountants 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

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 up to 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.

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 for which 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, a state-owned entity, is not subject to Thai Food and Drug Administration licensing requirements on the production, sale, and importation of pharmaceutical products and is exempt from rules against anticompetitive practices. The Thai government has established a National List of Essential Drugs (NLED) for procurement and dispensing at government hospitals. U.S. stakeholders have expressed concerns about the lack of transparency and due process for inclusion of drugs on the NLED. U.S. stakeholders has also have expressed serious concerns 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 39 goods and 2 services, including staple agricultural products (sugar, pork, 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 Thai 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 Anti-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. Several different agencies have anticorruption mechanisms and oversight with overlapping jurisdictions and varied levels of competence, policing powers, and capacity. Anticorruption mechanisms continue to be employed unevenly, and the lack of transparency in many government administrative procedures facilitates corruption.