THAILAND

TRADE SUMMARY

U.S. goods exports in 2013 were $11.8 billion, up 8.6 percent from the previous year. Corresponding U.S. imports from Thailand were $26.2 billion, up 0.2 percent. The U.S. goods trade deficit with Thailand was $14.3 billion in 2013, down $875 million in 2012. Thailand is currently the 27th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Thailand were $2.4 billion in 2012 (latest data available), and U.S. imports were $2.2 billion. Sales of services in Thailand by majority U.S.-owned affiliates were $4.6 billion in 2011 (latest data available), while sales of services in the United States by majority Thailand-owned firms were $103 million.

The stock of U.S. foreign direct investment (FDI) in Thailand was $16.9 billion in 2012 (latest data available), up from $14.5 billion in 2011. U.S. FDI in Thailand is led by the manufacturing and banking sectors.

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 9.8 percent *ad valorem* in 2011, *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 MFN duty free, including for products such as chemicals, electronics, industrial machinery, and paper.

Thailand has bound its agricultural tariffs at an average of 39.9 percent *ad valorem*, compared with its average applied MFN tariff on agricultural products of 22 percent. Applied MFN duties on imported processed food products typically range from 30 percent to 50 percent, which limits the ability of U.S. exporters of such products to compete in the Thai market. 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 agricultural products, in recent years.

Thailand's average bound tariff for non-agricultural products is approximately 25.5 percent. Thailand's applied tariffs on industrial goods tend to be much lower than its bindings, averaging 8 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 range of 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 its 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.

Nontariff Barriers

Import licenses are required for some products, including certain chemical and pharmaceutical products such as 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 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; 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. industry has raised concerns about requirements for feed products containing dairy ingredients that it considers excessively burdensome. Thailand maintains tariff-rate quotas (TRQs) on some products of export interest to the United States, including non-fat dry milk and corn that it administers in a nontransparent manner. Thailand imposes domestic purchase requirements on importers of several TRQ products, including soybeans and soybean meal. Thailand also maintains a limited import window for its corn TRQ.

Price Controls

Thailand's government retains 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. 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. When import duties, excise taxes, and other surcharges are calculated, the cumulative duty and tax burden on imported spirits and wines range from 300 percent to 600 percent. U.S. industry has expressed concern that the current excise tax structure imposes higher taxes on imported spirits than on locally-produced white 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 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 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. In addition, overly punitive penalties and the threat of criminal prosecution over minor or technical issues in Customs import documentation are significant concerns for importers.

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. 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 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. In 2009, Thailand's government proposed a series of reforms to its customs laws and procedures that were to be sent to Thailand's Parliament. However, the proposed legislation stalled and must be reintroduced to Parliament in order for it to be considered.

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 that are inconsistent with these requirements. Preferential treatment is provided to domestic suppliers, including subsidiaries of U.S. firms registered as Thai companies, through an automatic 7 percent price advantage over foreign bidders in evaluations in the initial bid round.

If 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. Foreign businesses have frequently alleged that Thailand's government makes changes to technical requirements for this purpose during the course of procurements.

Despite an official commitment to transparency in government procurement by Thailand's government, 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 considered 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.

SUBSIDIES

The Thai government's price support programs covering the domestic rice industry result in substantial government-owned stockpiles of rice (approximately 15 million to 16 million metric tons of rice). U.S. rice exporters have expressed concern that these stockpiles are subsequently released onto global markets, depressing prices to below the cost of acquisition.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Thailand was again listed on the Priority Watch List in the 2013 Special 301 Report. The United States recognizes the Thai government's continuing efforts to strengthen intellectual property rights (IPR) protection and enforcement including through the establishment of a National Intellectual Property Center of Enforcement (NICE). However, the United States remains concerned about the IPR regime, in particular with respect to widespread copyright piracy and trademark counterfeiting, including recent increases in optical disc piracy and illegal camcording and growing challenges in the areas of Internet, cable, and signal piracy. The United States continues to encourage Thailand to enact proposed legislation to amend its copyright law 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 enforcement actions *ex officio*. The United States also continues to urge Thailand to take enforcement action against widespread piracy and counterfeiting in the country, and to impose sentences that would deter potential offenders.

Another area of U.S. concern is the lack of transparency and opportunities for stakeholders to be included meaningfully in IPR policy discussions taking place at the Ministry of Public Health. 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 the Film Board the authority to establish ratios and quotas against 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 capping foreign equity at 20 percent in its provisional 1997 WTO commitments, 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.

In 2011, 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. Although the regulations were modified in 2012, the criteria by which foreign dominance is determined remain unclear and have prompted concern that implementation of the regulations will be inconsistent and nontransparent. U.S. and other foreign telecommunications companies also 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; and enforcing the interconnection obligations of these two operators.

Legal Services

U.S. investors may own law firms in Thailand if they enter into commercial association with local attorneys or local law firms, 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 can obtain a limited license entitling them to offer advisory services in foreign and international law.

Financial Services

Foreign banks can open branches, subsidiaries, or representative offices subject to licensing requirements, and the number of licenses for branches and subsidiaries is limited. In practice, foreign banks' only channel to enter the market is by acquiring shares of existing domestic financial institutions, and the 2008 Financial Institutions Business Act limits such investments 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. The Act also allows the Minister of Finance, with a recommendation from the Bank of Thailand, to 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.

Since March 2010, existing foreign bank branches have been permitted to open two additional branches in Thailand without having to meet additional capital requirements, except under a temporary expansion program in 2012 that permitted up to 20 branches and 20 off-premise ATMs.

In 2012, the Thai Securities and Exchange Commission (Thailand SEC) began to grant licenses to new domestic and foreign securities companies that meet Thailand SEC requirements. Securities firms with foreign equity participation greater than 49 percent are required to obtain permission from the Ministry of Commerce under Annex 3 (21) of the Foreign Business Act in order to supply non-brokerage services, such as securities underwriting, securities dealing, investment advisory services, mutual fund management, and private fund management. Various ownership structures are allowed, including 100 percent Thai or foreign ownership, strategic foreign partnerships, joint ventures between Thai and foreign companies, or bank affiliate status.

Restrictions on foreign investment and ownership in the insurance sector have been relaxed but barriers remain. Under the 2008 amended Life and Non-Life Insurance Acts, 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 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 must also approve the company directors. In cases where domestic 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 Insurance Commission, within certain limits.

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 (trucking).

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 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 commencement of business in a sector restricted by the FBA. Although the FBA prohibits majority foreign ownership in most sectors, U.S. investors are excepted pursuant to the United States-Thailand Treaty of Amity and Economic Relations (AER). 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, and domestic trade in indigenous agricultural products." In all other sectors, Thailand must accord U.S. investors national treatment in respect of the establishment and acquisition of interests in enterprises. This obligation does not extend to "the practice of professions, or callings reserved for Thai nationals."

Following an announcement in 2012 on the development of new guidelines for inspecting firms with foreign shareholders under the FBA, the Department of Business Development now may review the percentage of shareholdings, voting rights, administrative power, source of funds and investment capital, dividend payments, and financial transactions when it deems such review warranted.

OTHER BARRIERS

U.S. stakeholders have expressed concern that processes 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 Thailand's Food and Drug Administration licensing requirements on the production, sale, and importation of pharmaceutical products and is exempt from rules against anticompetitive practices. Thailand's government established a National List of Essential Drugs (NLED) for procurement and dispensing at government hospitals that uses median pricing and reimbursement schemes that exclude innovative medicines from listing under government health plans. U.S. stakeholders have expressed concerns about the lack of transparency and due process for decisions on which drugs to include in the NLED and other issues. 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.

Thailand bans all 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.

The 2007 Thai Constitution contains provisions to combat corruption, including enhancement of the status and powers of the National Anti-Corruption Commission (NACC), 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. 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 in Thailand.

While the NACC 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. The latest version of Thailand's anti-money laundering law provides improved supervisory powers to monitor and regulate the illegal flow of money through Thai financial institutions, but Thai officials reportedly have not been provided the training necessary to implement the law. Anticorruption mechanisms continue to be employed unevenly, and the lack of transparency in many government administrative procedures facilitates corruption.