THAILAND

TRADE SUMMARY

The U.S. goods trade deficit with Thailand was $12.2 billion in 2009, down $2.3 billion from 2008. U.S. goods exports in 2009 were $6.9 billion, down 23.7 percent from the previous year. Corresponding U.S. imports from Thailand were $19.1 billion, down 18.9 percent. Thailand is currently the 29th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Thailand were $1.7 billion in 2008 (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 2007 (latest data available), while sales of services in the United States by majority Thailand-owned firms were not available for 2007 ($239 million in 2005).

The stock of U.S. foreign direct investment (FDI) in Thailand was $9.1 billion in 2008 (latest data available), up from $8.9 billion in 2007. U.S. FDI in Thailand is led by the manufacturing, banking and finance/insurance sectors.

FREE TRADE AGREEMENT (FTA) NEGOTIATIONS

The United States and Thailand launched FTA negotiations in June 2004, but these negotiations were suspended in September 2006 following a military-led coup against the government of then-Prime Minister Thaksin. The United States and Thailand continue to consult closely on ways to further build their economic relationship.

IMPORT POLICIES

Tariffs: Thailand's high tariffs remain an impediment to market access in many sectors. According to the WTO, its average applied MFN tariff rate was 10.5 percent in 2007 with some tariffs as high as 80 percent. Under the WTO Agreement, Thailand has bound only 74.7 percent of its tariff lines. A binding establishes a tariff rate that generally, under WTO rules, cannot be exceeded. The highest tariff rates apply to imports competing with locally produced goods, including agricultural products, automobiles and automotive parts, motorcycles, alcoholic beverages, fabrics, paper and paperboard products, and restaurant equipment.

According to the WTO, Thailand has bound its tariffs on agricultural products at an average of 42.7 percent. Duties on imported processed food products typically range between 30 percent and 50 percent, the highest among Association of Southeast Asian Nations (ASEAN) members. 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 for which there is little domestic production. Frozen french fries, for example, are not produced in Thailand, yet imports 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. U.S. exports of wine face a total duty and tax burden of nearly 400 percent when import duties, excise taxes, and other surcharges are calculated.

Thailand also 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.

Thailand's tariff rates for textiles imports are high, ranging from 20 percent to 30 percent for most fabrics and 30 percent for most clothing and other made-up textile products. Thailand also applies specific duties on more than one third of all textile tariff lines, which make effective rates even higher.

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, in recent years, U.S. industry reports that the government has maintained excessively burdensome import requirements for feed products containing dairy ingredients. Non-transparent 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 non-fat 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 import license fees for meat products of approximately $150 per ton on beef and pork, $300 per ton for poultry, and $150 per ton on offal. U.S. industry has expressed concerns that these fees appear to be higher than necessary to cover the costs of import administration.

Taxation: The complexity of Thailand's tax system also has raised concerns. 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 it 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 pickups account for more than 50 percent of total vehicle sales in Thailand.

U.S. industry has recently expressed concern about proposed amendments to the already burdensome excise tax laws and tax administration. One amendment would give the Excise Department Director General the discretionary authority to determine the import value of a product, rather than relying on the Customs-determined value. Another would alter the tax base calculation for imported goods from countries that have free trade agreements with Thailand. The United States continues to engage the Thai government on taxation issues.

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. In 2008, the Customs Department revised customs valuation procedures for imports of distilled spirits in response to concerns raised by exporters and the U.S. and other trading partners. Although the valuation procedures were revised, several U.S. companies are still awaiting refunds of the cash guarantees that were required prior to the final customs decision being issued. The United States will continue to monitor the implementation of the revisions to the customs valuation procedures and press Thailand to address its concerns.

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 Thai Customs' rulings and the lengthy appeals process for these rulings, both of which create considerable uncertainty for importers.

In August 2009, the Royal Thai government announced proposed reforms to its customs laws and procedures. Another round of changes was proposed in late 2009. These proposed amendments still must be scrutinized by the Council of State and approved by the Cabinet before the Thai government can submit the changes to Parliament. It remains unclear what specific changes will be made and the timeline for implementation. The U.S. Government intends to discuss the details of these specific proposals with the Thai government during 2010.

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 and open competition be accorded to all potential bidders, state enterprises and ministries typically apply additional procurement policies and practices. Preferential treatment is provided to domestic suppliers, which includes subsidiaries of U.S. firms registered as Thai companies, through an automatic 7 percent price advantage over foreign bidders in initial bid round evaluations.

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 during the bidding process if corruption is suspected. 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 order to provide support for this decision, the government is considering an amendment to the Arbitration Act that would exempt government contracts from arbitration procedures.

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 2009 Special 301 Report. Key concerns cited in the report included the lack of progress since the previous year in addressing the widespread problems of piracy and counterfeiting. This was evidenced by the lack of sustained and coordinated enforcement efforts, and, in particular, the lack of successful prosecutions. The U.S. pharmaceutical industry continues to express concerns regarding the uncertain climate for their industry in Thailand. In addition, both the pharmaceutical industry and agricultural chemicals industries have expressed concerns that Thailand's trade secret regulations fail to protect against unfair commercial use of undisclosed tests and other data submitted to Thai governmental authorities.

The United States has been encouraged by the Thai government's recent high-level commitment to protect and promote IPR in Thailand and the creation of a national strategy to advance this commitment. Moreover, there have been some high profile seizures of IPR infringing products and the Thai government has introduced legislation addressing unlawful camcording and landlord liability for criminal action where pirated and counterfeit goods are produced or sold.

The United States will continue monitoring the Thai government's efforts to protect and enforce intellectual property rights.

SERVICES BARRIERS

Telecommunications Services

Thailand has made progress toward reforming its telecommunications regulatory regime, but significant obstacles to foreign investment remain. Foreign equity rights at the WTO remained capped at 20 percent and access remains limited to a narrow subset of sectors.

Thailand's constitution (enacted on August 24, 2007) mandates that there shall be a single independent regulator, provisionally named the National Broadcasting and Telecommunications Commission (NBTC), to allocate additional spectrum for radio and television frequencies, and telecommunications. The time frame set up by the NTBC, as well as the procedures for allocating additional frequencies, remain unclear. This 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. The draft legislation to establish the NTBC is currently under review in Parliament.

Other unresolved issues in the telecommunications sector include: the phasing out of the concession contracts of the state-owned TOT and CAT Telecom; the privatization of TOT and CAT Telecom; enforcing interconnection obligations *vis-a-vis* 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. Under the 1962 Commercial Banking Act, foreigners were allowed to hold a maximum of 25 percent of the equity in Thai banks, but in practice Thai regulators had waived the foreign shareholding ceiling with respect to most local banks due to their need for funds. The 2008 Financial Institutions Business Act, the consolidated financial act that replaced the 1962 Commercial Bank Act and a 1979 Act on financial services, increased the statutory percentage of foreign equity ownership to 49 percent in August 2008. 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 above 49 percent if deemed necessary to support the stability of the overall financial system during an economic crisis.

The Financial Sector Master Plan (FSMP I), which took effect in early 2004 and was completed at the end of 2008, called for the consolidation of financial institutions and encouraged mergers. The Second Financial Sector Master Plan (FSMP II), which will further liberalize and strengthen the financial industry, was approved by the Thai Cabinet in mid-November 2009.

Foreign banks are limited to one branch and are not permitted to operate off-site automated teller machines (ATMs), which are considered branches. Subsidiaries established under the period of FSMP I are entitled to open up to five bank branches, including a headquarters office. Under FSMP II, foreign banks will be allowed to open two additional branches regardless of location from 2010 onward. The FSMP II also will allow 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 personnel are nationals from members of ASEAN.

Permission for foreigners to have more than a 49 percent equity stake in Thai securities firms is granted on a case-by-case basis.

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 and Communication Services, including Express Delivery Services

The 2005 Multimodal Transport Act introduced uncertainty with respect to the treatment of foreign shipping companies. Approval of implementing regulations has been delayed, so the full impact of the law remains unclear. While the text of the law itself appears to require foreign shipping companies performing multimodal services in Thailand to either incorporate in Thailand or appoint a Thai agent (as opposed to operating out of their branch offices in Thailand as they have done to date), the draft ministerial regulations implementing the law provide that the law shall not apply to foreign shipping companies transporting goods under bills of lading governed by international convention. Given the lack of clarity and the penalties for noncompliance, international shipping firms have sought to mitigate their risk by incorporating in Thailand, appointing an agent, or passing the attendant costs on to customers.

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 that amount to an average of 37 baht per item (slightly more than one U.S. dollar).

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, needs to obtain an alien business license from the relevant Ministry before commencement of its business if 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 government is taking steps to create a more supportive environment for the business community. In July 2007, the Act on Computer-related Crime was enacted to criminalize offenses against computer systems and data. Several Royal Decrees have entered into effect since 2007 establishing policies for electronic transactions and e-payment service providers. Several additional measures are pending approval with the Council of State, including security measures for electronic transactions 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. In addition, GPO 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 year to four year SMP for all new chemical entities registered and approved for marketing in Thailand. During the SMP, only doctors in hospitals and clinics can prescribe the product and the product may not be included on the National List of Essential Drugs. 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 Thai government retains authority to control prices or set *de facto* price ceilings for 38 goods and 1 service, including staple agricultural products (sugar, cooking oil, condensed milk, wheat flour, and others), liquefied petroleum gas, medicines, sound recordings, and student uniforms. Under the 1999 "Act Relating to Price of Merchandise and Service," a government committee headed by the Minister of Commerce has the authority to "Prescribe the purchase price or distribution price of merchandise or service…", "prescribe maximum profit per unit…", and set the terms and conditions, including maximum permissible volumes, of any goods and service in Thailand. The law was amended in 1999 with the advent of a competition law and was meant to be phased out. However, with several critical aspects of competition law still undefined, the old law continues in place with no termination under consideration.

Price control review mechanisms are nontransparent. Only sugar currently is subject to a retail price ceiling. 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 Thai Constitution of 2007 contains provisions to combat corruption, including enhancement of the status and powers of the Office of the 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 both clarifies actionable anticorruption offenses and increases penalties for violations. Despite these steps, corruption continues to be a serious concern. Counter-corruption mechanisms continue to be employed unevenly and the lack of transparency in many government administrative procedures facilitates corruption.