THAILAND

TRADE SUMMARY

The U.S. goods trade deficit with Thailand was $14.5 billion in 2008, an increase of $181 million from $14.3 billion in 2007. U.S. goods exports in 2008 were $9.1 billion, up 7.2 percent from the previous year. Corresponding U.S. imports from Thailand were $23.5 billion, up 3.5 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 $1.8 billion in 2007 (latest data available), and U.S. imports were $1.8 billion. Sales of services in Thailand by majority U.S.-owned affiliates were $3.2 billion in 2006 (latest data available), while sales of services in the United States by majority Thailand-owned firms were $295 million.

The stock of U.S. foreign direct investment (FDI) in Thailand was $15.0 billion in 2007 (latest data available), up from $10.9 billion in 2006. U.S. FDI in Thailand is concentrated largely in the manufacturing, banking, finance/insurance, and wholesale trade 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 Prime Minister Thaksin's government. The United States will continue to monitor and evaluate developments in Thailand to determine next steps, as appropriate, to further build our bilateral economic relationship.

IMPORT POLICIES

Tariffs

Thailand's high tariffs remain an impediment to market access in many sectors. Its average applied most favored nation (MFN) tariff rate is 11.2 percent with some tariffs as high as 80 percent. 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. Moreover, the Royal Thai Customs website automatically defaults to a statutory tariff rate rather than the WTO MFN rate for goods from WTO members unless exporters identify the WTO rate as a preference, resulting in confusion on the part of some U.S. exporters as to what the actual duty rates should be for their goods. The United States urged the Thai government to clarify its presentation of preferential rates on this website.

Duties on imported consumer-ready food products typically range between 30 percent and 50 percent, the highest among Association of Southeast Asian Nations (ASEAN) members, with some as high as 90 percent. 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, even for products for which there is little domestic production. Frozen french fries, for example, are not produced in Thailand, yet face a 30 percent tariff. Tariffs on apples are at 10 percent, while duties on pears and cherries range from 30 percent to 40 percent. U.S. fruit growers believe they could export to Thailand up to $15 million more each year if these tariffs were reduced. U.S. exports of wine face a total tax 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 valued-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 unit duties on more than one third of all textile tariff lines, which make effective rates even higher. In addition, on the Asia-Pacific Economic Cooperation forum website, Thailand's tariffs for certain clothing are incorrectly listed as 60 percent rather than the correct MFN applied rate which is lower. Thailand has not yet addressed the United States' concern that these higher published tariffs are misleading and discourage potential U.S. exporters.

Nontariff barriers

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 only granted for imports intended for re-export or imports intended for individual, non-commercial use. Imports of certain minerals, arms and ammunition, and art objects require special permits from the relevant ministries.

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. 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 requirements associated with the issuance of import permits for feed ingredients.

Thailand imposes import license fees for meat products of approximately $142 per ton on beef and pork, $286 per ton for poultry, and $142 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: U.S. industry has raised concerns about barriers created by the complexity and nontransparent nature of Thailand's tax administration system. 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 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, pickups 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 Royal Thai Customs officials. The Royal Thai Customs 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 Royal Thai Customs. In 2008, Royal Thai Customs revised customs valuation procedures for imports of distilled spirits in response to concerns raised by exporters, the United States, and other trading partners. The United States will continue to monitor the implementation of these revised procedures.

The U.S. Government and exporters continue to urge Royal Thai Customs to implement needed reforms, including publishing proposals for changes in customs laws, regulations, and notifications, and allowing sufficient time for comments on these proposals. They also have requested that Royal Thai Customs impose a time limit on the issuance of rulings, respond to appeals within an established time period, provide a full explanation of its decisions regarding appeals, establish a reasonable time period at the beginning of an audit or an investigation for their completion, and provide a written report of the findings of the audit or investigation.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Thailand Industrial Standards Institute (TISI) is the national standards organization under the Ministry of Industry. TISI is empowered to provide product certifications according to established Thai standards and is an accredited body for International Standards Organization and other certifications in Thailand. The Thai government requires the certification of 60 products in 10 sectors, including agriculture, construction materials, consumer goods, electrical appliances and accessories, polyvinyl chloride pipe, medical equipment, liquefied natural gas containers, surface coatings, and vehicles. For medical equipment, Thailand requires product approval in the country of origin before it can be registered.

Thailand's motorcycle emissions regulations remain an amalgamation of standards and tests used elsewhere in the world, resulting in standards that reportedly are among the most stringent in the world. Enforcement of these standards has been nontransparent, and even producers utilizing advanced low-emission technology have had difficulty meeting these standards.

Thailand's Food and Drug Administration (TFDA) imposes standards, testing, and labeling requirements, and requires certification permits for the importation of all food and pharmaceutical products, as well as certain medical devices. Many U.S. companies have raised concerns that the permitting processes are overly burdensome and are concerned about the periodic demands for disclosure of proprietary information. TFDA has streamlined its procedures somewhat, but U.S. companies still report delays of up to a year. All processed foods must be accompanied by a detailed list of ingredients and a manufacturing process description, disclosure of which could potentially jeopardize an applicant's trade secrets.

In October 2006, Thailand announced a proposed snack food labeling requirement that would have required "traffic light" labeling logos on five categories of snack foods: potato chips, corn chips, extruded snack foods, biscuits/crackers, and assorted wafers. The United States and other countries raised concerns about the proposed requirement and, as a result, the Ministry of Public Health withdrew the proposed requirement on August 30, 2007. This proposal was replaced with a requirement that snack foods be labeled with a message stating, "Should consume less, and exercise for a better health." While an improvement over the original proposal, this measure raises many of the same concerns. The United States continues to discuss this requirement and other labeling regulations with Thai authorities with a view toward ensuring that requirements are based on relevant scientific and technical information on diet and nutrition and adopt an approach that encourages better health while facilitating trade.

Sanitary and Phytosanitary (SPS) Measures

Sanitary and phytosanitary standards for certain agricultural products, such as poultry and beef products, also are applied in a nontransparent manner, often without prior notification. These standards are often more restrictive than the internationally recognized guidelines developed by the World Organization for Animal Health. In some cases, changes in standards have not been notified to the WTO SPS Committee, resulting in unnecessary disruptions to trade in animal products, including poultry and hides and skins. U.S. exporters of U.S. pet food formulations containing whey, a common dairy ingredient in pet food, have characterized Thailand's import requirements as overly restrictive. Although Thailand agrees in principle to a system-based audit approach to meat inspection, the Thai government still maintains the requirement of inspecting individual slaughterhouse or farm facilities that export animals and animal products into Thailand.

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.

A 2001 "Buy Thai" directive from the Prime Minister's office raised concerns about Thai government procurement policies, which the U.S. Government has raised with Thailand. While Thailand denies that the "Buy Thai" policy discriminates against foreign products, specific language used in government instructions on some procurement tenders explicitly excludes foreign-made, non-Thai products from 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 during the bidding process. The latter provision allows considerable leeway to government agencies and state-owned enterprises in managing procurements, while denying bidders recourse to challenge procedures. Allegations that changes are made in procurements frequently surface. Despite an official commitment to transparency in government procurement, U.S. companies and 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.

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

INTELLECTUAL PROPERTY RIGHTS (IPR)

Rights holders continue to face widespread counterfeiting and piracy of their products in Thailand. The lack of sustained and coordinated enforcement, and, in particular, the lack of successful prosecutions, remains a substantial problem. U.S. copyright industries reported an estimated annual trade loss of more than $400 million in 2007 from IPR piracy in Thailand. In a trend of particular concern, an increasing volume of pirated and counterfeit products manufactured in Thailand is being exported. In 2007, Thailand was moved from the Special 301 Watch List, where it had been since 1994, to the Priority Watch List, reflecting an overall deterioration in the protection and enforcement of IPR. Thailand remained on the Special 301 Priority Watch List in 2008. The United States will continue to raise its serious concerns about the lack of effective IPR protection with the Royal Thai government.

Thailand's patent law generally provides adequate protection for most innovations. However, U.S. industry notes that delays in patent issuance are a significant problem. Patent examinations can often take five years or more, indicating that Thailand's patent office lacks sufficient resources to keep up with the volume of applications. Thailand is currently taking steps to join the Patent Cooperation Treaty.

The U.S. pharmaceutical industry has expressed concerns regarding the issuance of compulsory licenses on patented drugs by Thailand’s Ministry of Public Health. The United States has acknowledged Thailand’s ability to issue compulsory licenses consistent with Thailand’s domestic and international legal obligations as a WTO Member; at the same time, the United States stressed to the Thai government the importance of transparency and due process. The United States has encouraged relevant Thai ministries to address judiciously the complexities of the relationship between health and intellectual property policy and to do so in ways that recognize the role of intellectual property in the development of new drugs. The United States continues to monitor the situation.

On January 30, 2007, the Ministry of Public Health issued implementing regulations for the 2002 Trade Secrets Act. The U.S. pharmaceutical industry has expressed concerns with these new regulations; particularly with respect to deficiencies they identify in the level of protection against unfair commercial use for undisclosed test and other data. U.S. industry is also concerned that Thailand does not have an adequate system to address the granting of marketing approval of copies of pharmaceuticals where a valid patent exists. U.S. industry reports that there has been a recent increase in the number of such copies receiving Thai FDA approval while the original product is still under patent protection.

U.S. geographical indication (GI) owners have expressed concern that they do not know how the Thai Geographical Indications Act will be applied to U.S. GIs, because the law requires explicit evidence that the GI is protected under the law of the foreign country in order to receive protection in Thailand. In addition, the law raises concerns because the existence of a similar, previously registered trademark does not constitute grounds for refusal of a GI registration in Thailand.

The Royal Thai government is in the process of amending the Copyright Act. Thailand has enacted optical disc legislation but it lacks many key elements important to effective IPR protection. In ongoing bilateral discussions with Thai authorities, the United States continues to urge Thailand to modernize its copyright legislation to address digital and Internet copyright issues, including joining and implementing the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty.

Thailand has increased raids and seizures, but absent increased prosecutions and imposition of deterrent penalities, these actions do not appear to have reduced piracy in Thailand, which has rates that are consistently among the highest in the world. Trademark counterfeiting also remains a serious problem, particularly in the area of apparel and accessories. U.S. companies with an established presence in Thailand and a record of sustained cooperation with Thai law enforcement officials have had some success in enforcing trademark rights, but the process remains time-consuming and costly. The U.S. pharmaceutical industry has also expressed concern about the growth in availability of counterfeit medicines and the resulting health risk to patients. They note the lack of sufficient penalties and delays in sentencing for counterfeit drug-related offenses.

Particular areas of concern to U.S. copyright industries are optical media piracy, signal theft, book piracy, camcording, and end user software piracy. Implementation of the 2005 Optical Disk Manufacturing Control Act has not restrained the rapid growth of optical media piracy in Thailand, and pirate cable providers continue to expand their presence. The Thai government passed new broadcasting legislation in December 2007 but has not yet established the commission that would grant broadcast licenses and revoke licenses for infringers. Book publishers have raised concerns that the copyright law is being interpreted so as to allow students or those providing them textbooks to copy any work for educational purposes. The Thai government has initiated a public awareness campaign to address book piracy and end user software piracy, but so far it appears the impact has been limited.

The Royal Thai Police, though they are generally cooperative when rights holders bring specific complaints to their attention, have had limited success because the raids are not sustained and continuous. Other factors limit the level of their success. For example, some raids reportedly have been compromised by a tip-off, and in other cases police are sometimes reluctant to get involved in difficult situations as they have limited legal protection as individuals even when acting in the course of duty. Moreover, it is sometimes difficult to get search warrants from the Thai Intellectual Property and International Trade Court. Sometimes judges in that court push rights holders toward pursuing civil rather than criminal legal actions, but high evidentiary requirements and low damage awards limit the incentive companies have to pursue civil cases.

The Thai government established a specialized intellectual property (IP) court in 1997 to improve judicial procedures and expertise. Criminal cases generally are disposed of within 6 months to 12 months from the time of a raid to the rendering of a conviction. However, the court frequently hands down light sentences that do not appear to be a deterrent to repeat offenses. When a defendant pleads guilty, which occurs in the majority of cases, the penalty is typically reduced by half. Sentences of less than three months are generally suspended. Of 6,965 cases brought before the IP court in 2007, only 17 involved the imposition of prison sentences. There are no available statistics to show general sentencing trends at the court.

SERVICES BARRIERS

Telecommunications Services

Thailand has made substantial progress toward reforming its telecommunications regulatory regime, but several controversial issues remain unresolved, and significant obstacles to foreign investment in this sector remain.

The 1997 Constitution delegated frequency allocation to the National Telecommunications Commission (NTC) and a National Broadcast Commission (NBC). The NTC began operations in November 2004, but the NBC was never created. The new constitution (enacted on August 24, 2007) mandates that there will now be one independent regulator, provisionally named the National Telecommunications and Broadcasting Commission (NTBC), to allocate the frequencies for radio, television, and telecommunications. The timeframe to set up the NTBC and how frequencies will be allocated remain unclear, putting at risk any plans for expanding mobile services requiring new spectrum, such as 3G. In January 2009, the government submitted the required implementing legislation to Parliament to create the NTBC and requested that the Parliament fast-track the proposed legislation. In addition to the NTBC regulatory aspects, however, the government’s bill, if passed, appears to allow the two state-owned enterprises, TOT and CAT Telecom, to retain their previously allocated frequencies, which could in effect create a monopoly over frequencies, concession revenues, and network equipment.

Other unresolved issues in the telecommunications sector include the phasing out of the "concession" system, the privatization of TOT and CAT Telecom, enforcing interconnection obligations via-a-vis these two operators, and the revision of its General Agreement on Trade in Services schedule to reflect its 1998 commitments, including with respect to improvements in foreign equity participation and regulatory oversight.

Although the NTC has made progress in licensing new operators in some sub-sectors (*e.g.* Internet access and private networks), it has yet to authorize full-fledged competition 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 only 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 Financial Institutions Business Act, the consolidated financial act that replaced the 1962 Commercial Bank Act, increased the statutory percentage of foreign equity ownership to 49 percent in August 2008. The Financial Sector Master Plan (FSMP I), which took effect in early 2004 and was completed in the first quarter of 2007, called for the consolidation of financial institutions and encouraged mergers under the single presence rule. The Second Financial Sector Master Plan, which will further liberalize the financial industry, is pending approval at the Ministry of Finance.

Foreign banks are disadvantaged in their ability to compete with domestic Thai banks. Most notably, they are limited to one branch and are not permitted to operate off-site ATM machines, which are considered as branches. However, subsidiaries established under the period of FSMP I are entitled to open up to five bank branches, including a headquarters office. Foreign management personnel are limited to six professionals in full branches although exceptions are often granted.

Permission for foreign ownership positions in Thai securities firms greater than 49 percent 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. Political difficulties since that time have delayed approval of implementing regulations and, therefore, 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, loosely defined to include nearly any kind of document. Private express companies must pay postal "fines" and penalties for delivery of documents in Thailand that amount to an average of 37 baht per item.

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. 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."

The FBA's prohibitions on foreign investment generally do not affect projects established by Board of Investment promotion privileges or export businesses authorized under the Industrial Estate Authority of Thailand law.

ELECTRONIC COMMERCE

Thailand lacks 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, providing policies for electronic transactions and electronic payment service providers. Two additional measures are pending approval with the Council of State relating to security measures for electronic transactions and regulations for certification authority.

OTHER BARRIERS

The Thai government protects several government firms from foreign competition in Thailand. In the pharmaceutical sector, the Government Pharmaceutical Organization is not subject to requirements faced by the private sector on registration. In addition, it 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 34 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 the Kingdom. 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. Moreover, the lack of transparency in many government administrative procedures facilitates corruption.