

**THAILAND's Comments in  
The 2011 National Trade Estimate Report (NTE) for the incoming 2012 NTE Report  
Submitted to the United States Trade Representatives**

23 September 2011

No.	Claims by the U.S.	Comments from Thailand
1.	<p><b>Import Policies</b>  <i>Tariffs:</i> Thailand's high tariffs remain an impediment to market access in many sectors. While Thailand's average applied MFN tariff rate was 10.4 percent in 2009, ad valorem tariffs are as high as 50-80 percent, and the ad valorem equivalent of some specific tariffs (charged mostly on agricultural products) are even higher. About one-third of Thailand's MFN tariff schedule involves a duty less than 5 percent, and almost 20 percent of tariff lines enter Thailand duty-free, including in key sectors like chemicals, electronics, industrial machinery, and paper. Thailand has bound all tariffs on agricultural products in the WTO, but only around 70 percent of its tariff lines on industrial products. The highest tariff rates apply to imports competing with locally produced goods, including automobiles and automotive parts, motorcycles, beef, pork, poultry, tea, wine and spirits, and textiles and clothing.</p> <p>- Thailand has bound its tariffs on agricultural products at an average of 40.6 percent, although its average applied MFN tariff on agricultural products is 22.6 percent. MFN duties on imported processed food products typically range from 30 percent to 50 percent, which have hindered U.S. exports of these products into Thailand. Tariffs on meats, fresh fruits (including citrus fruit and table grapes) and vegetables, fresh cheese, and pulses (<i>e.g.</i>, 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</p>	<p>- Thailand's tariff rates are in accordance with its commitments under the WTO.  - Moreover, Thailand reiterates its commitments to meet its tariffs reduction obligations under on the WTO Doha Round negotiations.</p>

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	<p>produced in Thailand, yet imports of these potatoes face a 30 percent tariff. Tariffs on apples are 10 percent, while duties on pears and cherries range from 30 percent to 40 percent. U.S. fruit growers estimate they could export up to \$15 million more to Thailand each year if these tariffs were eliminated. In addition, the lowering of tariffs below MFN rates through free trade agreements with countries such as China, Australia, and New Zealand has reduced the competitiveness of many U.S. products including agricultural products in recent years and threatens to significantly erode U.S. market share as these agreements are phased in.</p> <p>- Nearly 30 percent of tariffs on industrial goods in Thailand are unbound in the WTO. For nonagricultural products with bindings, Thailand's average bound tariff is 25.5 percent. Thailand's MFN tariffs on industrial goods tend to be much lower than its bindings, averaging 8 percent in 2009. However, Thailand charges significant peak rates in some sectors; the MFN tariff on imported motor vehicles is 80 percent, 60 percent on motorcycles, and 30 percent on certain articles of plastic. Thailand's tariff rates for textiles imports are also high, ranging from 20 to 30 percent for most fabrics, 30 percent for most clothing and other made-up textile products, and reaching 60 percent for some clothing products, according to information provided by Thailand to the WTO. Thailand also applies specific duties on more than a third of all textile tariff lines, which can result in even higher effective rates.</p> <p>- Excessive Thai tariffs on restaurant equipment – including ovens, fryers, ice cream machines, appliances, and cooking utensils, which are sometimes as high as 30 percent – hinder expansion of U.S. quick service restaurants in Thailand as well as U.S. exports.</p>	

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	<ul style="list-style-type: none"> <li>- Thailand applies a 10-percent tariff to all pharmaceuticals (excluding vaccines and therapies for HIV, malaria, and thalassemia). In addition to this tariff, all medicines are subject to a 7 percent value-added tax.</li> </ul>	<ul style="list-style-type: none"> <li>- Thailand does not consider the 10% tariff to be a market access barrier because most imported drugs are patented and have enjoyed a significant market share for a long time. In practice, it is found that tariffs do not make drugs more expensive but rather the drug prices are controlled by the 20-year patent rights.</li> <li>- Moreover, it has been proven that elimination of tariffs do not lower drug prices. For example, in the case of AIDS drugs, although Thailand does not apply imported tariffs on these drugs, they remain very expensive.</li> <li>- Nevertheless, Thailand's application of tariffs on pharmaceuticals are within its WTO bound rates and are consistent with WTO rules.</li> </ul>
2.	<p><b>Nontariff barriers (NTBs)</b></p> <p><b>2.1 Quantitative Restrictions and Import Licensing</b></p> <ul style="list-style-type: none"> <li>- 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.</li> <li>- Although Thailand has been relatively open to imports of feed ingredients, including corn, soybeans, and soybean meal, U.S. industry reports that the government has maintained excessively burdensome import requirements for feed products containing dairy ingredients. Nontransparent tariff-rate quotas on some products and price controls on others also impede market access. Thailand imposes domestic purchase</li> </ul>	<ul style="list-style-type: none"> <li>- <b>Import licenses</b> are required for <u>19 categories</u> of items, including (1) <u>17 items requiring import permission</u>, consisting of Chemical and Pharmaceutical products, Clenbuterol, Albuterol or Salbutamol, Unfinished garments, part or components except collars, cuffs, waist, band pocket and cuffs for trouser, worked monument or building stones, used cars, used motorcycles, used six-wheeled buses having 30 seats or more, used diesel engines displacement of 331-1,100 cc., gold, coin sized and weighted similar to official coins, antique idols and parts thereof and parts of ancient monuments, machinery and parts thereof which can be used to violate copyrights of cassette tapes, video tape and compact discs, Intaglio printing machines and color copier machines, waste and scrap of plastics, Chainsaws and accessories, Fish meal with protein content of less than 60% (2) <u>2 items required import and export permission</u> consisting of caffeine and potassium permanganate.</li> <li>- Goods falling under import control measures imposed by the Ministry of Commerce by virtue of the Export and Import of Goods Act B.E. 2522 are mostly repealed by relevant government agencies</li> <li>- Thailand manages each TRQ product differently. For products including non-fat dry milk, soybeans, soybean meal, and fresh potatoes, domestic production in Thailand is not sufficient in meeting domestic consumption. As a result, Thailand allows the importation of these products beyond the WTO bound quantity with special rates that are lower than current in-quota rates for these products.</li> <li>- Furthermore, the quota allocation for these products is based on "Licensing on Demand"</li> </ul>

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	<p>requirements for several tariff-rate quota products, including nonfat dry milk, soybeans, soybean meal, and fresh potatoes. Delays in finalizing administrative tariff-rate quotas have led to market uncertainty and shipping disruptions.</p>	<p>approach. Eligible importers can submit their request specifying their required import quantity along with the necessary documentation to the relevant committee. In General, the committee would issue import licenses for these products as requested by the industries.</p> <ul style="list-style-type: none"> <li>- As such, there is no domestic purchasing requirement imposed by the government as a condition for obtaining an import license. When there is excess demand, these are filed by imports from foreign sources, allocated through automatic licensing as mentioned above. Therefore, Thailand's quota administration is in line with the GATT Article III : 5 obligations.</li> </ul>
	<p><b>2.2 Import Permit fees</b></p> <ul style="list-style-type: none"> <li>- Thailand imposes food safety inspection fees in the form of import permit fees on all shipments of uncooked meat. Currently, imports face fees of 5 baht per kilogram (approximately \$160 per ton) for red meat (beef, buffalo meat, goat meat, lamb, and pork) and for offal, and 10 baht per kilogram (\$320 per ton) for poultry meat. Fees for domestic meat inspections are much lower and are levied in the form of a slaughtering or slaughterhouse fee. The fees are \$5 per ton for domestic beef; \$21 per ton for poultry; \$16 per ton for pork; and zero for offal.</li> </ul>	<ul style="list-style-type: none"> <li>- The fees will be charged according to weight of imported goods. This is in accordance with the Ministerial regulation determining fees which was announced on June 1, 2546 issued under the Animal Disease Act B.E. 2549. The fees cover the cost of laboratory tests and wages for the assistant staff at the Department of Livestock.</li> </ul>
	<p><b>2.3 Heavyweight motorcycle ban</b></p> <ul style="list-style-type: none"> <li>- Thailand bans heavyweight motorcycles from highways, even though heavyweight motorcycles are designed for highway use, most countries accept their use, and many traffic studies demonstrate there is no underlying safety rationale for such bans.</li> </ul>	<ul style="list-style-type: none"> <li>- The prohibition on the use of highways by large motorcycles applies to all types of motorcycles and is based on well-grounded concerns for public safety. Thus, it is compliant with WTO rules.</li> <li>- It should be noted that, due to a similar clarification made by Thailand, this issue had already been removed from the NTE report since 2009.</li> </ul>
	<p><b>2.4 Tax system</b></p> <ul style="list-style-type: none"> <li>- The complexity of Thailand's tax system also has raised concerns among foreign businesses. Excise taxes are high on some items, such as unleaded gasoline, beer, wine, and distilled spirits. For example, when import duties, excise taxes, and other surcharges are calculated, the cumulative duty and tax burden on most imported spirits is approximately 400 percent.</li> </ul>	<ul style="list-style-type: none"> <li>- Thailand does not feel that the excise tax system in Thailand is complicated. Thailand has used inclusive tax rate as an excise tax calculation method, which is similar to the system used in Japan and South Korea. Under an inclusive tax rate calculation, taxed to be paid are included into the tax base on which the tax rate is imposed. For example, according to an inclusive tax rate of 20%, 20 baht of tax owed contains in a price structure of 100 baht; the inclusive income tax is taken off the top, which means the cost of the product is 80 baht in after tax money. Mathematically, a 20% of inclusive tax rate on 100 baht income</li> </ul>

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	<ul style="list-style-type: none"> <li>- Excise taxes on automobiles in Thailand are based on various vehicle characteristics, such as engine size, weight, and wheelbase. In July 2004, Thailand revised its excise tax structure, but the tax calculation remains complex and heavily favors domestically manufactured vehicles. Excise taxes on passenger vehicles range from 30 percent to 50 percent, while pickup trucks are taxed at a rate of 3 percent. As a result, domestic pickup trucks account for more than 50 percent of total vehicle sales in Thailand.</li> </ul>	<p>yields the same as a 25% exclusive tax rate on 80 baht.</p> <ul style="list-style-type: none"> <li>- Thailand views that Thailand's tax administration system differs from the U.S. due to the different administrative systems. Unlike the U.S., Thailand's tax administration policy has based on centre government.</li> <li>- At present, the excise tax on <u>unleaded gasoline</u> is 7 baht per litre in Thailand which is similar to the U.S. rate of 2 USD per gallon (38 litre). Therefore, an excise tax on unleaded gasoline is not high, particularly when compared to other OECD members. Meanwhile, high excise taxes are imposed on <u>alcohol</u> in order to deter consumption of products hazardous to health, environment and morals. However, according to WHO statistics the consumption of alcohol in Thailand remains high.</li> <li>- Restructuring of the vehicle tax system has been submitted to cabinet for consideration. Cabinet resolution has endorsed in principle, the restructuring of the vehicle tax system but raised concern on energy efficiency, environment friendly, safety, alternative energy, and CO<sub>2</sub> emission. As a result, restructuring vehicle tax system has led to tax rates being less complicated compared with previous rates since tax rates are now directly related to the emission produced instead of various characteristics.</li> </ul>
	<p><b>2.5 Custom Barriers</b></p> <ul style="list-style-type: none"> <li>- 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.</li> <li>- The U.S. Government and exporters continue to urge the Customs Department to implement overdue reforms, including</li> </ul>	<ul style="list-style-type: none"> <li>- Thai customs being procedures, regulations and the exercise of authority by customs officials are in accordance with the Customs Valuation Agreement under the GATT Valuation System and domestic laws.</li> <li>- On the issue of authority and discretion of the Director General to prescribe the customs value of imports, Thai Customs have already amended the Customs Act, B.E. 2469 by removing Article 11 bis. which stipulates such powers of the Director General. Cabinet approved the amendment in principle on 22 February 2011 and is now under consideration by the Council of State.</li> <li>- Moreover, Thailand's transaction valuation methodology is in compliance with the WTO's Customs Valuation Agreement.</li> </ul> <p><b><u>Publicity of Ruling on Tariff Classification</u></b></p> <ul style="list-style-type: none"> <li>- Thai Customs Department has publicized the customs ruling on its website</li> </ul>

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	<p>publishing proposals for changes in customs laws, regulations, and notifications, and allowing sufficient time for comments on these proposals. Of additional concern are the failure to publish customs rulings and the lengthy appeals process for these rulings, both of which create considerable uncertainty for importers.</p> <p>- U.S. companies also continue to report serious concerns about corruption and the inappropriate penalty reward system for customs officials. In August 2009, the Royal Thai government proposed a series of reforms to its customs laws and procedures. A first set of amendments that address some aspects of the penalty regime was approved by the Thai Cabinet in September 2010, but now must be reviewed and passed by Parliament. The U.S. Government will continue to discuss the details of these specific proposals with the Thai</p>	<p>www.customs.go.th for public access.</p> <ul style="list-style-type: none"> <li>- When enacting or amending laws and regulations, the Thai Customs Department will always conduct public hearings to listen to public comments and concerns particularly on a sensitive or controversial issue as required by legislative procedures.</li> </ul> <p><b><u>Appeals Procedures</u></b></p> <ul style="list-style-type: none"> <li>- Concerning appeal procedures, which was prescribed in article 112six of the Customs Act, B.E. 2469 (1926) amended by article 8 of the Act (No. 17) B.E. 2543 (2000) authorizes the Appeal Committee to run appeals processes. In the case of a lengthy appeals process for rulings, the Customs Act does not prescribe the length of the procedures. However, to facilitate the process, Thai Customs Department has specified the following time frame: <ul style="list-style-type: none"> <li>- <u>In case of incomplete or inadequate information for consideration</u>, staff will issue a notice within 3 working days to the appellant or the agency to provide additional information.</li> <li>- <u>In case of complete information</u>, the appeals must be submitted to the committee within 30 days from the date when information is received. In addition, the meeting of the committee should be held at least once a month.</li> </ul> </li> <li>- When the committee has made a decision, the decision will be summarized and published on the intranet for staff to use as a guideline and on the Internet for those who are interested.</li> <li>- Moreover, the U.S., especially AMCHAM, has always provided comments to the Customs Department through a Joint Committee which consists of both public and private sectors.</li> </ul> <p><b><u>Corruption</u></b></p> <ul style="list-style-type: none"> <li>- The Customs Department has introduced electronic customs systems (e-Customs) in order to facilitate bona fide trade and reduce face to face interaction. As a result, the customs operations are transparent and can be checked at every stage.</li> <li>- The Customs Department has also established a cooperation center to provide advice and resolve complaints by the private sector to eliminate corruption.</li> </ul> <p><b><u>Penalty</u></b></p> <ul style="list-style-type: none"> <li>- In case of concealing and evading duties, fine rates under article 27 and 27 bis has been amended from “<u>fine equal to four times the value of imports plus import tariffs</u>” to “<b>fine</b></li> </ul>

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	government in 2011.	<p><b>not less than a half but will not exceed four times the value of imports plus import tariffs.”</b></p> <p><b><u>Penalty Reward</u></b></p> <ul style="list-style-type: none"> <li>- The Customs Department has considered placing a ceiling on penalty rewards for officials in order to reduce the motivation for the crackdown with the hope for reward.</li> </ul>
3.	<p><b>Government Procurement</b></p> <ul style="list-style-type: none"> <li>- 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.</li> <li>- Where corruption is suspected during the bidding process, government agencies and state enterprises reserve the right to accept or reject any or all bids at any time and may also modify the technical requirements. This allows considerable leeway to government agencies and state-owned enterprises in managing procurements, while denying bidders recourse to challenge procedures. There are frequent allegations that the Thai government makes changes to technical requirements during the course of procurements.</li> <li>- 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</li> </ul>	<ul style="list-style-type: none"> <li>- The Regulations of the Office of the Prime Minister on Procurement B.E.2535 (1992), is the main procurement regulations for all government agencies. Other forms of public administrations, including State-Owned Enterprises (SOEs) and Local Administrations, have their own set of regulations, based on the Regulations of the Office of the Prime Minister on Procurement B.E.2535 (1992).</li> <li>- According to the Office of the Prime Minister's Procurement Regulation B.E. 2535, the right to reject a bid will only be made under special circumstances, and is not intended to circumvent the requirements of the procurement regulation. <ul style="list-style-type: none"> <li>• <i>Article 42 (2) and (3) indicate that if the qualification of each bidder, price quotation, catalogues or drawings, details and select the bidder who quotes the price in accordance with the condition specified in price inquiry document and whose quality and qualification are beneficial to government and recommend to purchase from or contract with the selected bidder who quotes the lowest price. However, in the procurement announcement, it is stated that the procurement agencies have the right to reject bid that offers that lowest price. With regard to the resolution from the Government Procurement Committee, the procurement agencies can reject the lowest price bid, if there are proved evidences that the quality and qualification of procuring items are not in the same condition specified in the procuring documents and not beneficial to government.</i></li> <li>• <i>Article 53 after bidding, but before signing a contract or agreement, if it is the imperative or the benefit of government to alter the essential details or conditions contained in the bid documents which cause advantage or disadvantage among the bidders, the head of government agency shall cancel the bid.</i></li> <li>• <i>Wrongdoing during the bidding process (The Public Tendering Offenses Act B.E.2542 (1999))</i> <ul style="list-style-type: none"> <li>- <i>If there is a derived joint benefit between the procuring agency and the bidder...</i></li> <li>- <i>(Article 15.7 and The Public Tendering Offenses Act B.E.2542 (1999) Article 4, 5, and 8)</i></li> </ul> </li> </ul> </li> </ul>

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	<p>government decision to no longer include arbitration clauses in concessions and government contracts. In addition, the Thai government is considering an amendment to the Arbitration Act that would exempt government contracts from arbitration procedures altogether.</p>	<ul style="list-style-type: none"> <li>• <i>Office of the Prime Minister's Regulations on Public Procurement B.E. 2535 (1992), Article 15.7 indicates that after bidding awarded, if there is evidence showing that awarded bidder has co-interest with another bidders which causes impediment of fair and free competition. Head of government agency is authorized to cross out name of every bidder from the list.</i> <ul style="list-style-type: none"> <li>- <i>If the winning bid exceeds the set budget.... (Article 43)</i></li> <li>- <i>If found that the bidding specifications are discriminatory...(Article 15.2 and 15.3)</i></li> </ul> </li> <li>• <i>The Office of Auditor General of Thailand and the Office of the National Counter Corruption Commission (NCCC) has the right to revoke a bid if there is reasonable cause or if it is found that a wrongdoing was made during the bidding procurement process.</i></li> <li>• <i>Appeals can be made through the following channels: the head of procuring government agency, the Procuring Committee in Charge of Procurement (CCP) , The Office of Auditor General of Thailand, The Office of The National Counter Corruption Commission (NCCC), and The Office of The Ombudsman.</i></li> <li>• <i>All dispute settlements could be made through the administrative or judiciary courts governed by Thai laws. However, the arbitration clauses can be included in concessions and government contracts by getting cabinet approval on a case by case basis.</i></li> </ul> <p>- <b>The new Organic Act on Anti-Corruption</b> in relation to public procurement contains two main highlight, as follows:</p> <ol style="list-style-type: none"> <li>1) The government agency shall provide information on procurement expenses, particularly information related to median procurement prices and calculation methods of the median price. The procurement information shall be stored electronically since they are required to be available for public inspection.</li> <li>2) In the case where the government agency enter into a contract with juristic person or person, such person will become a party to the contract with the state, as well as shall have a duty to disclose an account showing income and expenses of the project under the contract with the state to the Revenue Department for inspection.</li> </ol>
4.	<p><b>Service Barriers</b>  <b>4.1 Telecommunication Services</b>          - Thailand has made progress toward reforming its telecommunications regulatory regime, but <u>significant</u></p>	<p>- <b>Thailand feels uncomfortable with the word “significant obstacles”.</b> It should be pointed out that Thailand allows foreign equity up to 49 percent in basic telecommunications services and higher for operators that do not own their own telecommunications network but provides value-added services. Therefore, in</p>



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	<p><u>obstacles to foreign investment remain.</u> While foreign equity levels are capped at 20 percent under Thailand's WTO commitments, Thai law allows foreign equity up to 49 percent in basic telecommunications service firms and higher for an operator that does not own its telecommunications network but provides value-added services, such as internet service providers (ISPs), audio text providers, and resale service providers (prepaid calling cards). <u>The licensing regime, however, has still limited access to narrowly-defined sub sectors.</u></p> <p>- The Thai Constitution of 2007 provides for a single independent regulator, provisionally named the National Broadcasting and Telecommunications Commission</p>	<p>actual fact Thailand provides higher market access for basic telecommunications services than what it has committed under the WTO which is at 20%.</p> <p>- <b>Thailand is concerned that the sentence “The licensing regime, however, has still limited access to narrowly-defined sub sectors” is misleading.</b> Since 2005, the former NTC (National Telecommunications Commission: NTC), had announced rules and procedures for telecommunication licensing, including notification of the nature and categories of telecommunications services that must be licensed. There are currently certain categories of telecommunications service licenses that are not subject to any limitations while only a few types of telecommunication services are required to obtain a spectrum license. There are several announcements regarding rules and procedures for telecommunication licensing such as;</p> <ol style="list-style-type: none"> <li>1) Notification of NTC Re: Nature Categories of Telecommunications Business</li> <li>2) Notification of NTC Re: Nature and Categories of Telecommunications Business Requiring Telecommunications Business License</li> <li>3) Notification of NTC Re: Criteria and Procedure for Granting Type One Telecommunication Business License</li> <li>4) Notification of NTC Re: Criteria and Procedure for Granting Type Two Telecommunication Business License</li> </ol> <p>Notification of NTC Re: Criteria and Procedure for Granting Type Three Telecommunication Business License</p> <p>- <b>Thailand would like to clarify the following points;</b></p> <ol style="list-style-type: none"> <li>1) Because the NBTC's function is to allocate additional spectrum for service providers, we would prefer adding the word “service” at the end of the sentence</li> </ol>

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	<p>(NBTC), to allocate <u>additional spectrum for radio and television frequencies and telecommunications</u>. In 2010, Parliament approved the <u>Frequency Allocation Act</u>, which formally established the NBTC. The NBTC is not yet operational, however, and the regulations and procedures for allocating additional frequencies therefore remain unclear. This situation puts at risk any plans for expanding mobile services that can only be provided if operators are able to obtain additional spectrum, including for services using third generation (3G) technology. <u>Other unresolved issues in the telecommunications sector include the phasing out of the concession contracts of the state-owned TOT and CAT Telecom</u>; 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 <u>Thailand's revision of its GATS schedule to reflect its 1998 commitments in the WTO</u>, including with respect to improvements in foreign equity participation and regulatory oversight.</p> <p>- Although the National Telecommunications Commission has made progress in <u>licensing new operators in some sub-sectors</u> (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.</p>	<p>“..... to allocate additional spectrum for radio and television frequencies and telecommunications” to reflect the service component.</p> <p>2) The correct name for the Frequency Allocation Act is the Act on Organization to Assign Radio Frequency and to Regulate Broadcasting and Telecommunication Services B.E. 2553.</p> <p>3) Thailand is in the process of appointing the NBTC Board. The Board members have recently been selected by the Senate and are awaiting Royal Consent.</p> <p>- Concession previously granted to TOT and CAT will expire in 2018 with no further extension granted.</p> <p>- The Ministry of Information Communications and Technology with the cooperation of related agencies such as NBTC are currently revising Thailand schedule of commitments in order to bring the rules and regulation under the Telecommunications Business Act (2001) and the 2<sup>nd</sup> version of the Telecommunications Business Act (2006) into the relevant parts of the schedules.</p> <p>- <b>This statement is not consistent</b> with the current status of the licensing activities undertaken by NBTC (formerly NTC) since it has already granted licenses to service providers in almost all types of services including domestic fixed line telephone services and international telephone services.</p>

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	<p><b>4.2 Legal Services</b></p> <p>- 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.</p> <p><b>4.3 Financial Services</b></p> <p>- 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. <u>Permission for foreigners to have more than a 49- percent equity stake in Thai securities firms is granted on a case-by-case basis.</u></p> <p>- Foreign banks are generally limited to one branch and are not permitted to operate off-site automated teller</p>	<p>- There are two types of legal activities in question. Firstly, a litigator who wishes to practice law in Thailand must have a license, while foreign nationals are not allowed to practice as a litigator as specified under the Lawyers Act of 1985. On the other hand, a solicitor who only provides legal advice is not required to have a license</p> <p>- Securities companies with foreign equity participation up to 100 percent can engage in securities brokerage business. However, other securities business, including securities underwriting, securities dealing, investment advisory, mutual fund management, and private fund management business fall under Annex 3(21) of the Foreign Business Act, which prohibits securities companies with foreign equity participation of 50 percent or above to engage in such business without obtaining permission from Ministry of Commerce.</p>

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	<p>machines (ATMs), which are considered branches. Subsidiaries established from 2004 to 2008 under the first Financial Sector Master Plan (FSMP) are entitled to open up to five bank branches, including a headquarters office. Under the second FSMP, which was approved by the Cabinet in 2009, <u>foreign banks are allowed to open two additional branches from 2010 onward. The second FSMP also allows some foreign bank branches to have up to 20 branches and 20 ATMs, subject to Bank of Thailand approval.</u> Foreign management personnel are limited to six professionals in full branches and subsidiaries of foreign banks, although exceptions are often granted. In August 2009, pursuant to Thailand's commitments under the ASEAN Framework Agreement on Services, the Bank of Thailand waived the foreign management personnel restriction if the employees are nationals from ASEAN member states.</p>	<p>- Under the second phase of Financial Sector Master Plan (FSMP II: 2010-2014), which was approved by the cabinet in 2009, Foreign banks are allowed to open up to 3 branches (2 additional branches from the existing one) regardless of location from 2010 onward. In parallel with this, in 2012, the authorities will consider allowing newly converted and existing subsidiaries to open up to 20 branches and 20 off premise ATMs subject to the Ministry of Finance approval. Currently, subsidiaries are allowed to open up to 5 branches (2 branches in the Bangkok Metropolitan area and the remaining 3 branches outside the Bangkok Metropolitan area). Foreign management personnel are limited to six professionals in full branches and subsidiaries of foreign banks, although exceptions are often granted.</p>
	<p><b>4.4 Accounting Services</b></p> <p>- 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.</p>	<p>- According to the Accounting Professions Act, B.E. 2547, CPA (Certificate Public Accountant: CPA) must be Thai nationals or nationals of the country that allows Thai nationals to provide auditing services in its territory (Reciprocal basis of accounting, such as MRA in ASEAN). Nationals wishing to provide auditing services in Thailand must have good proficiency in the Thai language and can prepare financial reports in the Thai language and have domiciled in Thailand.</p>
	<p><b>4.5 Transport Services</b></p> <p>- The 2005 Multimodal Transport Act introduced uncertainty with respect to the treatment of foreign shipping companies. According to the law and its implementing regulations, foreign shipping companies performing multimodal services in Thailand are required</p>	<p>- Regarding the claim that this law does not apply to foreign shipping companies transporting goods under bills of lading governed by international convention, <b>Thailand would like to point out that it has already examined this claim</b> and found that no such condition is stated in either the current Ministerial Regulation or the draft Ministerial Regulations.</p>

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	<p>to either incorporate in Thailand or appoint a Thai agent. <u>The ministerial regulations implementing the law waive this requirement for foreign shipping companies transporting goods under bills of lading governed by international convention.</u></p>	<ul style="list-style-type: none"> <li>- Because multimodal transport services have attracted a lot of consumers and service providers, it has been necessary to establish a law that lays down the principles governing the rights and responsibilities of the service suppliers and consumers of the service. These principles are aimed primarily at protecting the consumers and to built credibility within the service providers, in line with international practice.</li> <li>- The multimodal transport legislation of Thailand provides the opportunity for service providers of both Thai and foreign companies to operate, but must be under the conditions of the law. Therefore, foreign operators may operate in Thailand but must register in a country with which Thailand has an international convention and must notify the registrar. Alternatively, the foreign company may assign a representative as prescribed under the law. This law protects Thai consumers but also allows the opportunity for both Thai and foreign service suppliers to operate in Thailand equally under this law.</li> </ul>
	<p><b>4.6 Postal and Express Delivery Services</b></p> <ul style="list-style-type: none"> <li>- Thailand's Postal Act (1934) gives the government a monopoly on handling letters and postcards. Private express delivery companies must pay postal "fines" and penalties for delivery of documents in Thailand. These fines amount to an average of 37 baht per item (slightly more than \$1) for shipments that weigh less than two kilograms.</li> <li>- Thailand also imposes a 49-percent limit on foreign ownership in land transport (trucking), which <u>discourages investment</u> 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.</li> </ul>	<ul style="list-style-type: none"> <li>- As mentioned before, like many other countries around the world, the Postal Act (1934) gives exclusivity to the government to provide handling and transportation services for letters and postcards only, while private providers are permissible to provide the service for other types of postal content. And, as universally agreed, Thailand applies the classification of letters and postcards in accordance with the provision under the Universal Postal Union Convention (UPU).</li> <li>- <b>Thailand would like to confirm that</b> domestic transportation (cabotage) is a reserved business of all countries, as it concerns national security. According to the Land Transport Act B. E. 2522, article 24 requires that "the applicant for a license to provide domestic road transport services must either be a natural person of Thai nationality or juristic person incorporated under Thai laws with the office headquarters located in Thailand. In case of limited company, not less than half of the total number of the directors of the company shall be Thai nationals. Not less than fifty-one percent of the capital of the company shall be owned by</li> </ul>

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	<p><b>4.7 Healthcare Services</b></p> <p>- Thai government policy serves to restrict foreign investment in the healthcare services sector (<i>e.g.</i>, hospital, dental, and physician services). U.S. industry has identified <u>the lack of transparency relating to foreign ownership and management of hospitals and treatment facilities as a significant barrier in this sector.</u></p>	<p>shareholders who are natural persons of Thai nationality.” Therefore, this has nothing to do with the limitation of foreign ownership.</p> <p>- <b>Thailand feels uncomfortable with the word “the lack of transparency”</b> relating to foreign ownership and management of hospitals and treatment facilities as a significant barrier in this sector. <b><u>Thailand would appreciate if the US would clarify this issue.</u></b></p> <p>- Hospital businesses are categorized in list 3 under the Foreign Business Act (FBA). Non-Thai nationals or companies with foreign equity participation of 50 percent or above require permission from the Director-General of the Department of Business Development with the approval of the Foreign Business Committee.</p> <p>- According to the Places of Service Act B.E. 2541, hospitals need to seek permission. Individual applicant must have residence in Thailand. In case of legal entity its manager or representative must have residence in Thailand. Besides, the operator of the hospital must be a medical practitioner who intends to protect consumers, especially for patients who are admitted to hospital. In addition, the said law specifies that anyone who wants to run the hospital business must identify their management abilities, such as action plan, the availability of medical equipment, the number of doctors, and etc. Therefore, those who wish to become medical or hospital managers must be domiciled in Thailand because they must be able to respond promptly when any emergency event occurs.</p>
5.	<p><b>Electronic Commerce</b></p> <p>- 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. Thailand also enacted an electronic transaction law, as well as several royal decrees establishing policies for electronic transactions and e-payment service providers. Several</p>	<p>- The Thai government and its business sectors alike benefit immensely from e-Commerce usage nationwide. E-Commerce is becoming more widely used in Thailand to support business to business collaboration (supply chain management and e-marketplace). Internet usage has increased continuously from 12.6% in 2007 to 26.3% in 2010. E-Commerce in Thailand focuses on export trade, services, and domestic consumption, with due attention paid to national interests. Thailand enacted an electronic transaction law and several royal decrees establishing policies for electronic transactions and e-payment service providers. Several additional measures are still pending approval, including a draft law on</p>

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	<p>additional measures are pending approval, including security measures for electronic transactions, a draft law on personal data protection, and regulations for certification authority.</p>	<p>personal data protection and regulations for certification authority. Furthermore, the government's ICT master plan spanning the period 2011-2020 plays an important role in building an environment that facilitates the growth of e-Commerce.</p> <p>- The Ministry of Information and Communications Technology has also established the Electronic Transactions Development Agency (ETDA) on 10 February 2010 in order to develop, promote and support the adoption and growth of e-commerce in Thailand. Some of the key functions of the Agency include providing legal advice related to e-commerce business operations, advising on security issues, issues related to standards for e-commerce businesses, examination of e-commerce documentation, and research activities, etc.</p>

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