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Office of Commercial Affairs  
Royal Thai Embassy  
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No. 56009/ 712

October 21, 2013

Subject: **Docket # USTR-2013-0027**

Mr. Douglas M. Bell  
Chair, Trade Policy Staff Committee  
Office of the United States Trade Representative  
600 17<sup>th</sup> Street NW  
Washington, DC 20508  
Via electronic mail: <http://www.regulations.gov>

Dear Mr. Bell:

Pursuant to the Office of the United States Representative's (USTR) August 19, 2013, *Federal Register* Notice, 78 FR 50481: Notice of the Request for Public Comments Regarding the National Trade Estimate Report on Foreign Trade Barriers. The Office of Commercial Affairs, Royal Thai Embassy in Washington, D.C. is submitting this petition on behalf of the Royal Thai Government (RTG), as attached, in response to the above reference notice.

The Office of Commercial Affairs avails itself of this opportunity to renew to the Office of the United States Trade Representative the assurance of its highest consideration.

Sincerely,

A handwritten signature in black ink, appearing to be 'Benchawan Ukrid', written over a horizontal line.

Benchawan Ukrid  
Minister (Commercial)

**THAILAND'S Comments in  
The 2013 National Trade Estimate Report (NTE) for the incoming 2014 NTE Report  
Submitted to the United States Trade Representatives**

No.	Excerpts from the 2013 NTE Report	Comments from Thailand
1.	<p><b>IMPORT POLICIES</b> <b>Tariffs</b></p> <p>- High tariffs in many sectors remain an impediment to market access. While Thailand's average applied most favored nation (MFN) tariff rate was 9.8 percent ad valorem in 2011, ad valorem tariffs can be as high as 50 percent to 80 percent, and the ad valorem equivalent of some specific tariffs (charged mostly on agricultural products) is even higher. About one-third of Thailand's MFN tariff schedule involves duties of less than 5 percent, and almost 30 percent of tariff lines are MFN duty free, including for products such as chemicals, electronics, industrial machinery, and paper. Thailand has bound all tariffs on agricultural products in the WTO, but only approximately 70 percent of its tariff lines on industrial products. The highest ad valorem tariff rates apply to imports competing with locally produced goods, including automobiles and automotive parts, motorcycles, beef, pork, poultry, tea, tobacco, flowers, wine, beer and spirits, and textiles and apparel.</p> <p>- Thailand has bound its agricultural tariffs at an average of 39.9 percent ad valorem, compared with its average applied MFN tariff on agricultural products of 22 percent. MFN duties on imported processed food products typically range from 30 percent to 50 percent, which limits the ability of U.S. exporters of such products to compete in the Thai market. Tariffs on meats, fresh fruits (including citrus fruit and table grapes) and vegetables, fresh cheese, and pulses (e.g., dry peas, lentils, and chickpeas) are similarly high. For corn, the in-quota tariff is 20 percent and out-of-quota tariff is 70 percent. High tariffs are</p>	<p>- Thailand's tariff rates are in accordance with its commitments under the WTO.</p> <p>- Moreover, Thailand reiterates its commitments to achieving its tariffs reduction obligations under on the WTO Doha Round negotiations.</p> <p>- Thailand's transaction valuation methodology is complied with 2 methods as follows:</p> <p>(1) General Rate which is the rate in accordance with the Notification of the Ministry of Finance Re : Reduction and Exemption of Customs Duty According to Section 12 of the Customs Tariff Decree B.E. 2530 which the Fiscal policy office, Ministry of Finance is the agency who regulate the policy overview and in case of any tariff line doesn't have such rate, General Rate is the rate in accordance with the Customs Tariff Decree B.E.2530; or</p> <p>(2) WTO Rate under WTO's customs Valuation Agreement which is the rate in accordance with the Notification of the Ministry of Finance Re: Exemption, Reduction and Increase of Customs Duty for the Marrakesh Agreement establishing the World Trade Organization.</p> <p>- Importer are able to compare the tariff rate, rules and conditions specified in the Notification of the Ministry of Finance and the regulations specified by the Customs Department , published on the website of Customs Department (<a href="http://www.customs.go.th">www.customs.go.th</a> title Integrated Tariff Database) Importer can then choose the tariff rate that is most beneficial.</p>

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	<p>sometimes applied to products even when there is little domestic production. The type of potato used to produce frozen French fries, for example, is not produced in Thailand, yet imports of these potatoes face a 30 percent tariff. Tariffs on apples are 10 percent, while duties on pears, cherries, and table grapes range from 30 percent to 40 percent. Application of preferential tariffs as a result of free trade agreements with countries such as China, Australia, and New Zealand has eroded the competitiveness of U.S. products, including agricultural products, in recent years.</p> <p>- Thailand's average bound tariff for non-agricultural products is approximately 25.5 percent. Thailand's applied tariffs on industrial goods tend to be much lower than its bindings, averaging 8 percent in 2011. However, Thailand imposes high tariffs in some sectors. For example, Thailand applies import tariffs of 80 percent on motor vehicles, 60 percent on motorcycles and certain clothing products, 54 percent to 60 percent on distilled spirits, and 30 percent on certain articles of plastic and restaurant equipment. Among the range of products on which Thailand charges tariffs of 10 percent to 30 percent are certain audiovisual products, reception apparatus, and other consumer electronics, despite the importance of the electronics sector to its economy. Thailand applies a 10 percent tariff on most pharmaceutical products, including almost all products on the World Health Organization list of essential medicines. Thailand applies a 10 percent tariff to most pharmaceuticals, including almost all products on the World Health Organization list of essential medicines.</p>	
2.	<p><b><u>Non-tariff barriers (NTBs)</u></b></p> <p>- Import licenses are required for a limited range of products including certain chemical and pharmaceutical products, including clenbuterol, albuterol or salbutamol; unfinished garments, parts, or components except collars, cuffs, waistbands, pockets, and cuffs for trousers; worked monument or building</p>	<p><b><u>Import Licensing</u></b></p> <p>- Import Licenses are required for 15 categories of items: 1) drugs, chemical and pharmaceutical products 2) Clenbuterol compounds and its salts 3) Albuterol or Salbutamol and its salts 4) Unfinished garments, part or components ; except collars, cuffs, waist, band pocket and cuffs for trouser 5) Worked monument or building stone 6) Used cars 7) Used motorcycles 8) Used six-wheeled buses having 30 seats or more 9) Used diesel engines</p>

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	<p>stone; used automobiles, including cars, motorcycles and six-wheeled buses having 30 seats or more; certain used diesel engines; machinery and parts that can be used to violate copyrights via cassette tape, video tape and compact disc; intaglio printing machines and color copier machines; waste and scraps of plastic; chainsaws and accessories; fish meal with protein content less than 60 percent; caffeine; and potassium permanganate. Imports of used motorcycle parts and gaming machines are prohibited. Import licenses for used automobiles and used motorcycles are granted only for imports intended for re-export or for individual, non-commercial use. Imports of certain minerals, arms and ammunition, and art objects require special permits from the relevant ministries.</p> <p>- Although Thailand has been relatively open to imports of feed ingredients, including corn, soybeans, and soybean meal, U.S. industry reports that the government has maintained excessively burdensome import requirements for feed products containing dairy ingredients. Nontransparent tariff-rate quotas (TRQs) on some products of export interest to the United States include non-fat dry milk and corn. Thailand imposes domestic purchase requirements for several TRQ products, including soybeans and soybean meal. It also applies a limited import window for its corn TRQ.</p> <p>- Thailand bans all motorcycles from highways even though heavyweight motorcycles are designed for highway use, most countries accept their use, and many traffic studies demonstrate there is no underlying safety rationale for such bans.</p>	<p>displacement of 331-1,100 cc. 10) Coin sized and weighted similar to official coins 11) Antique idols and parts thereof and parts of ancient monuments 12) Machinery and parts thereof which can be used to violate copyrights of cassette tape, video tape, and compact disc 13) Intaglio printing machines and color copier machines 14) Waste and scrap of plastics 15) Fish meal with protein content less than 60%</p> <p>- In addition, there are 3 kinds of product that required for both import and export licenses including Caffeine, Potassium permanganate and Gold.</p> <p><u>Tariff Rate Quotas (TRQ)</u></p> <p>- Thailand's TRQ administration is consistent to its commitments under the WTO. Nonetheless, each TRQ product has been managed differently based on its nature of industry. As for the import of feed products, including corn, soybean and soybean meal, the importation have been allowed more than the WTO bounded quantity with, special lower rates than current in-quota rates of these products in order to serve the needs of related industries. The concerned committee has also considered Thailand's quota allocations for soybean and soybean meal three years in advance, and the import regulation will have been eventually finalized before the beginning of the next fiscal year so as avoid the delays in TRQ administration.</p> <p><u>Heavyweight motorcycle ban</u></p> <p>- Thailand generally does not impose any access restrictions on motorcycle's use of highways. However, there is an exception for certain types of highway such as motorway. Anyhow, motorcycle drivers must follow signs, traffic lights, and rules of the road at all time for the road safety of all users.</p> <p>- Currently, Thailand bans a motorcycle's use only in two types of highways which are <b>a special highway and a concession highway</b> because these highways are designed for only cars and trucks that have high engine power and are capable of maintaining high speed. Due to our concern over drivers' safety, Thailand bans the motorcycle's use of those highways. Nevertheless, the motorcycle drivers can use other routes such as the parallel roads and local roads etc. to get to the destination.</p>

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3.	<p><b>Price Controls</b></p> <p>- The Thai government retains authority to control prices or set de facto price ceilings for selected goods and services, including staple agricultural products (such as sugar, pork, cooking oil, condensed milk, and wheat flour), liquefied petroleum gas, medicines, sound recordings, and student uniforms. Price control review mechanisms are nontransparent. In practice, the Thai government also uses its control of state monopoly suppliers of products and services, such as in the petroleum, aviation, and telecommunications sectors, to influence prices in the local</p>	<p><b>Definition of Highway in Thailand</b></p> <p>- The 1992 Highway Act, revised as the 2006 Highway Act, defines the following five highway types:</p> <ol style="list-style-type: none"> <li>1. A <b>special highway</b> or <b>motorway</b> is a high capacity highway designed for high speed traffic, for which the Department of Highways carries out construction, expansion, upkeep and repairs, and is registered as such. Motorway entrances and exits have controlled access, and are controlled by the Department of Highways. Registration of motorways is overseen by the Director General of the Department of Highways.</li> <li>2. A <b>national highway</b> is a primary highway, part of the network connecting regions, provinces, districts, and other important destinations, for which the Department of Highways carries out construction, expansion, upkeep and repairs. Registration of national highways is overseen by the Director General of the Department of Highways.</li> <li>3. A <b>rural highway</b> or <b>rural road</b> is a highway for which the Department of Rural Roads carries out construction, expansion, upkeep and repairs. Registration of rural highways is overseen by the Director General of the Department of Rural Roads.</li> <li>4. A <b>local highway</b> or <b>local route</b> is a highway for which the local administrative organization carries out construction, expansion, upkeep and repairs. Registration of rural highways is overseen by the provincial governor.</li> <li>5. A <b>concession highway</b> is a highway for which a legal government concession has been granted, such as Vihavadee-Rangsit Elevated Road. Registration of concession highways is overseen by the Director General of the Department of Highways.</li> </ol> <p><b>De facto price ceiling</b></p> <p>- The NTE 2013 report indicated that the Thai government retains authority to control prices or set de facto price ceilings for selected goods and services.</p> <p>- In fact, sugar is the only one commodity subjected to a price control and doesn't depend on the interaction of market supply and demand. This is done in order to maintain fairness to the producers of sugarcane and refinery sugar, middlemen and consumers.</p> <p>- Other products under the controlled goods and services list are not subject to any price control and are subject to change or modification depending upon the necessity and appropriateness of the circumstances of each year for each commodity.</p>

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<p>market.</p>	<p>- In case of high price problem caused by factors such as hoarding goods, sales rejection or high price adjustment, Thailand will consider to impose the price control measures in the short term. The rationale behind implementing such measure is not trying to distort the market price but to prevent price gouging during the commodity shortages.</p> <p>- Moreover, some items which are mentioned in the report (cooking oil, condensed milk, and wheat flour, liquefied petroleum gas, medicines, sound recordings, and student uniforms) are not subject to any regulatory measures. Thailand has categorized these items as the goods and services under the Controlled List to be able to take appropriate enforcement measures in case of future emergency. Then, market mechanisms still operate normally for these commodities.</p> <p><u>Prices controls in Telecommunications sectors</u></p> <p>- All telecommunications operators (state-owned enterprises, concessionaires and other licensees) are subject to the regulatory regime (which can include price regulations of NBTC (Thai independent regulatory agency), Thus, it is not accurate to state that the Thai government can influence price in the local telecommunication market.</p>	<p>1. Excise Tax is an indirect tax which applied to specific characteristics goods and services. The specific characteristics mentioned above are:</p> <p>1.1 Sin goods or services which cause an unhealthiness and immorality.</p> <p>1.2 Luxury goods or services.</p> <p>1.3 Goods or services which gain benefits from the national resources and harm the environment.</p> <p>In order to meet the international standards, the Excise Department applies the same excise tax rates on both domestic and imported products.</p> <p>2. Regarding the U.S. concerns about the NTE 2013 :</p> <p>2.1 <u>High excise tax rate</u>: the excise tax has been used as a tool for increasing the retail price in order to reduce the domestic consumption of unhealthy products such as liquor and tobacco.</p> <p>2.2 <u>Domestic and imported products</u>: the Excise Department treats all traders equally by applying the same tax rate to the same products. As a result, spirits tax burden will vary on their type and quantity not vary on the origins. Therefore, the same tax rate is</p>
<p>4.</p> <p><b>Excise Taxes</b></p> <p>- Excise taxes are high on some items such as unleaded gasoline, beer, wine, and distilled spirits. When import duties, excise taxes, and other surcharges are calculated, the cumulative duty and tax burden on imported spirits and wines are approximately 300 percent and 400 percent, respectively. U.S. industry has expressed concern that the current excise tax structure imposes higher taxes on imported spirits than on locally produced white and brown spirits.</p> <p>- Excise taxes on automobiles in Thailand are based on various vehicle characteristics, such as engine size, weight, and wheelbase. In July 2004, Thailand revised its excise tax structure, but the tax calculation remains complex and heavily favors domestically manufactured vehicles. Excise taxes on passenger vehicles range from 30 percent to 50 percent, while pickup trucks, mostly produced in Thailand, are taxed at a rate of 3 percent. However, small passenger cars using E-20 gasoline and “eco”</p>		

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5.	<p>cars face reduced excise taxes of 25 percent and 17 percent, respectively.</p> <p><b>Customs Barriers</b></p> <p>- The United States continues to have serious concerns about the lack of transparency in the Thai customs regime and the significant discretionary authority exercised by Customs Department officials. The Customs Department Director General has the authority and discretion to increase the customs value of imports for reasons that are not linked to the WTO Agreement on Customs Valuation. The United States has raised concerns with the Thai government regarding this authority and has urged Thailand to eliminate this practice. The U.S. Government and industry also have expressed concern about the inconsistent application of Thailand's transaction valuation methodology and reports of repeated use of arbitrary values by the Customs Department. In addition, overly punitive penalties and the threat of criminal prosecution over minor or technical issues in Customs import documentation are significant concerns for importers.</p> <p>- The U.S. Government and exporters continue to urge the Customs Department to implement overdue reforms, including publishing proposals for changes in customs laws, regulations, and providing notifications and allowing sufficient time for comments on these proposals. Additional concerns involve the failure to publish customs rulings and the lengthy appeals process for these rulings, both of which create considerable uncertainty</p>	<p>applied on the same type of spirits.</p> <p>2.3 Excise tax on automobile: Thailand uses the Excise tax as a policy instrument for environmental protection and energy saving. In this respect, the new Excise tax structure will be varied on the CO<sub>2</sub> emission and energy saving. The motor vehicles which use the green energy will pay lower tax rate than other cars.</p> <p>Moreover, the excise tax of energy, such as fuel tax, aims to control the energy consumption and lead to the efficiency of energy use, which is in line with the Eleventh National Economic and Social Development Plan. Therefore, the replaced energy and biodiesel will pay lower excise tax than gasoline.</p> <p>- Thai customs procedures, regulations, and the use of power by customs officials are in accordance with Customs Valuation Agreement under GATT Valuation System and domestic laws.</p> <p><u>Director General's Authority</u></p> <p>- Concerning authority and discretion of the Director General to prescribe the customs value of imports, Thailand is in the process of reviewing the Customs Act, B.E.2469 to dismiss the Director General authority. At present, this law has been approved by the Council of State and will soon be submitted to the Cabinet for approval.</p> <p><u>Appeals Procedures on assessment of duty</u></p> <p>- Concerning appeal procedures for assessment of duties that was prescribed in Section 112 sex. of Customs Act B.E.2469 (1926) amended by article 8 of the Act (No.17) B.E. 2543 (2000), in case of a lengthy appeals process for the rulings , the above section of Customs Act has not prescribed the lengthy of the procedures.</p> <p>- For that reason, in order to facilitate the process, Customs Department has issued the Notification of Customs Department No.114/2555 as follow:</p> <ul style="list-style-type: none"> <li>▪ In case of incomplete or inadequate information for consideration, staff will issue a notice within 3 working days to the appellant or the agency to provide additional information.</li> <li>▪ In case of complete information, the Appeal Commission shall consider information and make a decision within 45 days from the date of the first meeting of such. However, the committee can request an extension of time for consideration (if necessary)</li> </ul>

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	<p>for importers.</p> <p>- U.S. companies also continue to report serious concerns about corruption and the cost, uncertainty, and lack of transparency associated with the penalty/reward system. This system creates conflicts of interest for customs officials and encourages customs investigations for personal financial gain. In August 2009, the Thai government proposed a series of reforms to its customs laws and procedures that were to be sent to the Thai Parliament in 2011. However, following the change of government in August 2011, the proposed legislation stalled and must be reintroduced to Parliament for it to be considered.</p>	<ul style="list-style-type: none"> <li>▪ When the Appeal Commission has made a decision, the decision will be summarized and sent by post within 7 working days to the importer or the exporter who appealed the assessment of duty.</li> <li>- In case that the entrepreneurs face the difficulty to go through the customs formalities, they can submit questions and complaints through the following channels: <ul style="list-style-type: none"> <li>▪ Thai Customs Department's website (www.customs.go.th)</li> <li>▪ Customs Hotline call 1164</li> <li>▪ Thai Customs Department</li> <li>▪ Customs Care Center</li> </ul> </li> </ul> <p><u>Penalty Reward</u></p> <p>- The Customs Department is in the process of reviewing the Customs Act B.E.2469 on the article related to penalty rewards by placing a ceiling on penalty rewards for officials in order to reduce the motivation for crackdowns with the hope of a reward.</p> <p>- During the last parliament, this Draft had been examined by Council of State. However, the political situation has change frequently lately. For that reason, the Draft has been returned to the Customs Department and the next step now is to submit the Draft to the legislation process again.</p>
6.	<p><b><u>GOVERNMENT PROCUREMENT</u></b></p> <p>- A specific set of rules, commonly referred to as the Prime Minister's Procurement Regulations, governs public sector procurement for ministries and state-owned enterprises. While these regulations require that nondiscriminatory treatment be accorded to all potential bidders and open competition be applied in all procurements, state enterprises and ministries typically apply additional procurement policies and practices that are inconsistent with these requirements. Preferential treatment is provided to domestic suppliers, including subsidiaries of U.S. firms registered as Thai companies, through an automatic 7 percent price advantage over foreign bidders in evaluations in the initial bid round.</p> <p>- Where corruption is suspected during the bidding process,</p>	<p>1. Although Thailand government reserve the right to accept or reject any or all bids, this right will be made under special circumstances, as follow:</p> <p>➤ <b>Prime Minister's Procurement Regulation B.E. 2535</b></p> <p>- Article 15.5 after inspecting the qualification of each bidder or server according to the second paragraph of clause 15.3, if there is evidence showing that bidder or server shall be crossed out from being a bidder or server and also informed promptly. Bidder or server whose name is crossed out because of being co-interest bidder may appeal to such order together with the reasons and related documents to Permanent Secretary within 3 days after being informed. In case that there is an appeal as in the second paragraph, Permanent Secretary shall consider and inform rapidly. The decision of Permanent Secretary will be final for work, engagement of consultant and contracting for design and work supervision. His decision shall be submitted to CCP for information. Making an appeal as in the second paragraph does not cause to have an extension of price inquiry envelop opening.</p>



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	<p>government agencies and state enterprises reserve the right to accept or reject any or all bids at any time and may also modify the technical requirements. This allows considerable leeway for government agencies and state-owned enterprises to manage procurements, while denying bidders recourse to challenge procedures. There are frequent allegations that the Thai government makes changes to technical requirements for this purpose during the course of procurements.</p> <p>- Despite an official commitment to transparency in government procurement by the Thai government, U.S. companies and the Thai media have reported allegations of irregularities. Arbitration clauses included in concessions and government contracts require cabinet approval, and are considered on a case-by-case basis. Complaints may be made in administrative and judicial courts governed by Thai laws.</p> <p>- Thailand is not a signatory to the WTO Agreement on Government Procurement.</p>	<p>competitive bidding or work proposal, depending on the case, except Permanent Secretary considers that such extension will be beneficial to government agency. In case that Permanent Secretary agrees with such appeal and considers that the cancellation of price inquiry envelop opening, competitive bidding or work proposal, which already proceeded, will be beneficial to government agency, Permanent Secretary is authorized to give up such price inquiry envelop opening, competitive bidding or work proposal.</p> <p>- Article 15.7 indicates that after bidding awarded, if there is evidence showing that awarded bidder has co-interest with another bidder which causes impediment of fair and free competition. Head of government agency is authorized to cross out name of every bidder from the list.</p> <p>- If the winning bid exceeds the set budget....(Article 43)</p> <p>- If found that the bidding specifications are discriminatory...(Article 15.2 and 15.3)</p> <p>- 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 bid document which cause advantage or disadvantage among the bidders, the head of government agency shall cancel the bid.</p> <p>➤ <b>Office of the Prime Minister's Regulations on E-Procurement B.E. 2549</b></p> <p>- Article 10 (4) The Bidding Committee shall immediately hold a meeting when the bidding procedures are completed to pass a resolution to accept the bid of the eligible bidder. The said resolution shall indicate the reasons of the resolution and the Bidding Committee shall report the resolution to the chief of the procuring authority on the text official working day. If the chief of the procuring authority agrees with the resolution, the committee shall notify the decision to all the eligible bidders. If the chief of the procuring authority disagrees with the resolution, the chief of the procuring authority shall notify the reasons to disagree to the committee for an explanation within 3 days. When the chief of the procuring authority receives the explanation, if the chief of the procuring authority agrees with the resolution of the committee, the committee shall notify the decision to all the eligible bidders. However, if in a period of 3 days the chief of the procuring authority shall cancel the bidding and notify all the eligible bidders and report to the E-GPC. The notification of the decision of the chief of the procuring authority to all the eligible bidders shall be made within 3 days from the day when the chief of the procuring authority gives a decision and the notification shall be published on the websites of the procuring authority and the Comptroller General's Department for at least 3 consecutive days.</p>

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		<p>- Article 10 (5) In the case where the eligible bidders who have entered into the bidding procedures, disagree with the decision of the chief of the procuring authority or have any reasons to complain for justice, the eligible bidders may file an appeal or a complaint with the E-GPC within 3 days from the day of receiving the notification. The E-GPC shall consider the appeal or the complaint acceptable, the E-GPC shall order the procuring authority to proceed with new bidding procedures commencing from any stages as ordered. In the case where the E-GPC finds the appeal or the complaint unacceptable or acceptable but shall not effect to change the decision which has been notified, the E-GPC shall notify the procuring authority to further proceed under the Office of the Prime Minister's Regulation on Procurement or other regulations of the procuring authority.</p> <p>➤ <b>Procurement Announcement</b></p> <ul style="list-style-type: none"> <li>- If there are proved evidences that <ul style="list-style-type: none"> <li>- there is a collusion or corruption in the bidding process; or</li> <li>- the quality and qualification of procuring items are not in the same condition specified in the procuring documents and not beneficial to government</li> </ul> </li> </ul> <p>The procurement agencies have the right to reject bid that offers that lowest price. The main objective of this is to promote the transparency, fair price competition in the tendering process and mutual benefits among the bidders.</p> <p>➤ <b>The Public Tendering Offenses Act B.E 2542 (1999)</b></p> <ul style="list-style-type: none"> <li>- Wrongdoing during the bidding process <ul style="list-style-type: none"> <li>- If there is a derived joint benefit between the procuring agency and the bidder....</li> <li>- (Article 15.7 and The Public Tendering Offenses Act B.E. 2542 (1999) Article 4, 5 and 8)</li> </ul> </li> </ul> <p>➤ The Office of Auditor General of Thailand and the Office of the National Counter Corruption Commission (NCCC) (now the Office of The National Anti-Corruption Commission of Thailand (NACC)) has right to revoke a bid if it is found that is a reasonable cause or wrongdoing was made during the bidding procurement process.</p> <p>➤ <b>Appeals can be made through the following channels:</b></p> <ul style="list-style-type: none"> <li>- The head of procuring government agency</li> <li>- The Procuring Committee in Charge of Procurement (CCP)</li> <li>- The Office of Auditor General of Thailand</li> </ul>

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7.	<p><b>SUBSIDIES</b></p> <p>- Price support programs to support the domestic rice industry result in substantial government owned stockpiles of rice (approximately 14 million to 15 million metric tons of rice). U.S. rice exporters have expressed concern that these stockpiles are subsequently released on global markets, depressing prices to below the cost of acquisition.</p>	<p>- The Office of The National Anti-Corruption Commission of Thailand (NACC)</p> <p>- The Office of The Ombudsman</p> <p>2. Modify the technical requirements can be made in 2 cases according to the Prime Minister's Procurement Regulation B.E. 2535</p> <p>- Article 47 (2) Before the date of opening of bids, if it necessary to specify additional details or site survey altering the main specification which has not been specified in bid document earlier, the additional bid document shall be prepared fixing date, time and place for providing details or site survey. The bid document shall be proceeded according to first paragraph of Clause 45, as applicable. Every bidder who has been given out or purchased the bid documents will be informed by letter recently.</p> <p>- Article 53 After bidding, but contract or agreement on purchasing or contracting for works has not been signed with any bidder, if it is the imperative or the benefit of the government to alter the essential details or conditions contained in the bid documents which cause advantage or disadvantage among the bidders, the Bid Evaluation in case of having only one bidder Procedure in case of having none proper bidder Details alteration after bidding head of government agency shall cancel that bid.</p> <p>1. <u>Objective of the Rice Pledging Scheme</u></p> <p>- This current government administration, presided by H.E Yingluck Shinawatra, has put major emphasis on enhancing livelihood of and increasing revenue of the poor and rural farmer, who have lived far below the poverty line for many decades. "The Rice Pledging Scheme" has been introduced by the government to generate higher income outstripping the cost of production which keeps inflated during the past years - <i>improving farmer's quality of life</i>.</p> <p>- Since the start of the rice pledging scheme during the harvesting season of 2011/2012, the price of paddy in domestic market, or at rice mills, has been increased, even for farmers who have yet joined the government rice pledge scheme since they had indirectly enjoy a higher market price of rice. This increase in income helps generate greater consumption amongst the farmers across different regions of Thailand - <i>stimulating domestic consumption and the Thai economy as a whole</i>.</p>

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8.	<p><b>INTELLECTUAL PROPERTY RIGHTS PROTECTION</b></p> <p>- Thailand was listed on the Priority Watch List in the 2012 Special 301 Report. The United States recognizes the Thai government's continuing efforts to strengthen intellectual property rights (IPR) protection and enforcement, but concerns regarding IPR protection and enforcement remain. Key concerns relate to widespread copyright piracy and trademark counterfeiting, including recent increases in optical disc piracy and illegal camcording, and growing challenges in the areas of Internet, cable, and signal piracy. The United States continues to encourage Thailand to quickly enact proposed legislation to amend its copyright law to, among other things, implement the WIPO Internet Treaties, address landlord liability for infringement, take sustained and effective action against illegal camcording, and enhance the authority of Thai Customs to take</p>	<p>2. Thailand's pledging scheme causes huge drops in world rice price lowering global rice export?</p> <p>- Thailand is major world rice producer and exporter, but we are not sole producer and exporter in the world market. In ASEAN region alone, Vietnam, Cambodia, and Myanmar become major rice producer and exporter competing with Thailand for a major share in the world rice market. And in trend with many major rice importing countries across the world, Philippines, Indonesia and even world major importing country like Nigeria have recently shifted their policy from rice-import oriented to be more self-reliance by expanding rice harvested area to ensure food security at home – leading to a larger global rice stock. Given the current supply of rice is far greater than the demand, this has led to consistent drop in world rice prices.</p> <p>- From the rice status above, it can be said that the criticism against the government pledging scheme in causing the plunge in world rice prices is completely inaccurate. Instead, <b>the market mechanism</b> is the major driver for this consistent drop. Most importantly, the government methods of releasing rice from the stockpile under this pledging scheme via <b>Government-to-Government contract (G to G)</b> to a number of importing countries, is clearly made according to the world rice price at that specific time, therefore world rice price would not be affected from the release of stockpile by Thailand.</p> <p>- The Department of Intellectual Property (DIP) holds industry consultation between the US businesses established in Thailand and Thai law enforcement agencies (i.e., Department of Special Investigation, Customs Department, Office of Attorney General, Economics Crime Division and Council of State) at least twice a year (in February and August). This is part of the Department's efforts toward a strong, efficient and user oriented IP regime – which would help promote investor confidence and positive business environment in Thailand in the long run.</p> <p>- The DIP has also worked closely with the representatives of United States Patent and Trademark Office (USPTO) based in Thailand as well as coordinate with them on various issues, including frequent update on the amendments of laws and enforcement activities.</p> <p><u>Status of Legislation</u></p> <p>1. The amendment to the copyright law which deals with the protection of copyrighted work in the digital environment was approved by the Cabinet in October 2012 and has now been submitted to the Government Whip for consideration.</p>

No.	Excerpts from the 2013 NTE Report	Comments from Thailand
	<p>enforcement actions ex officio. The United States continues to be concerned about the lack of transparency and opportunities for stakeholders to be meaningfully included in IPR policy discussions taking place at the Ministry of Public Health. The United States continues to encourage Thailand to consult and engage in a meaningful and transparent manner with all relevant stakeholders, including IP rights holders, as it considers ways to address Thailand's public health challenges while maintaining a patent system that promotes investment, research, and innovation.</p>	<p>2. The amendment to the copyright law which will address the issue of unauthorized camcording in movie theaters and broaden the scope of copyright exception for the benefits of person with disabilities has also been submitted to the Government Whip for consideration.</p> <p>3. The amendment to the copyright law on landlord liability which allowing rights owners and law enforcers to take legal action against landlords for infringements committed by a tenant on the landlord's premises. The DIP has commissioned an impact analysis on the topic before recommending any amendment to the copyright law.</p> <p>4. The amendment to the Customs Act to grant ex officio power to Customs officials to seize IP infringing goods while in transit and in transshipment is being considered by the Council of State.</p> <p>- The Ministry of Public Health (MOPH) has always encouraged all relevant stakeholders, including government agencies, private sectors, and academia to involve in a policy development process related to important public health issues through various meetings and activities. The MOPH always takes into consideration of any suggestions and/or comments obtained from relevant stakeholders.</p> <p>- In response to the U.S. concern over the transparency of IPR policy by the Ministry of Public Health (MOPH), it is unclear from such expression whether what aspects would be not transparent. It should be noted that the MOPH is not a government body legally responsible for developing any IPR policy. The MOPH has never developed or determined the policy on IPRs. The main mission of the MOPH deals directly with the policies and strategies on important public health issues. The procedures for developing health policies and/or strategies are emphasized on the transparency and involvement from relevant stakeholders, including public, private and NGOs sectors. The MOPH values suggestions and /or comments received from these stakeholders.</p>
9.	<p><b>SERVICES BARRIERS</b>  <b>Audiovisual Trade Barriers</b></p> <p>- The Motion Picture and Video Act gives the Film Board the authority to establish ratios and quotas against foreign firms. Foreign ownership and investment in terrestrial broadcast networks is prohibited.</p>	

No.	Excerpts from the 2013 NTE Report	Comments from Thailand
10.	<p><b>Telecommunications Services</b></p> <p>- Thailand has taken steps to reform its telecommunications regulatory regime, <u>but significant obstacles to foreign investment remain</u>. Despite capping foreign equity at 20 percent in its provisional 1997 WTO commitments, Thai law allows foreign equity up to 49 percent in basic telecommunications service firms and higher levels for providers of value-added services that do not own their own telecommunications network, such as Internet service providers, audio text providers, and resale service providers (prepaid calling cards). Thailand is delinquent, however, in revising its WTO schedule, as it committed to do in 1997, to reflect both these higher foreign equity limits and the pro-competitive regulatory measures it subsequently enacted.</p> <p>- In September 2011, Thailand adopted regulations to restrict “foreign dominance” in telecommunications. The regulations prohibit foreign ownership beyond 49 percent and look beyond traditional accounting methods for classifying shareholdings. Though the regulations were modified in July 2012, the criteria by which foreign dominance is determined remain unclear and have prompted concern that implementation of the regulations will be inconsistent and nontransparent. U.S. and other foreign telecommunications companies also have expressed concern that the regulations may be extended to other telecommunications businesses or applied to other industries.</p> <p>- Other issues in the telecommunications sector include the phasing-out of the concession contracts of the state-owned TOT and CAT Telecom; preferences accorded to TOT and CAT with respect to spectrum; the privatization of TOT and CAT; and enforcing the interconnection obligations of these two operators.</p>	<p>1. The texts in paragraph 1 should be adjusted as follows:</p> <p>- Thailand has taken steps to reform its telecommunications regulatory regime. Thailand allows foreign equity less than 50 percent in basic telecommunications service providers. However, for Type one Telecommunications service providers without their own networks such as Internet service providers, audio text providers, and resale service providers prepaid calling cards, foreign equity participation can be higher. Thailand is delinquent however, in revising its WTO schedule, as it committed to do in 1997, to reflect both these higher foreign equity limits and the pro-competitive regulatory measures it subsequently enacted.</p> <p>2 Regarding concerns of the U.S. about The Foreign Dominance Notification:</p> <p>- “The Foreign Dominance Notification applies to all Thai telecom operators whether or not they are foreign invested Thai companies. Since the Notification is under the scope of the Telecoms Business Act and the Foreign Business Act which are consistent with Thailand’s WTO obligations, there is no provision in the Notification inconsistent with WTO provisions.</p> <p>First, the conduct must fall under one or more of the threshold criteria under definition of “foreign dominance” (Article 4). This can be examined from the minutes of the shareholders meeting. Then, the NBTC shall consider whether or not the conduct is inconsistent with the Prohibition Guidelines prescribed in schedule annexed to the Notification. Thus, if the conduct does not fall under one or more of the threshold criteria, the conduct will not be inconsistent with the Notification. However, when the NBTC views that the conduct is inconsistent with the Prohibition Guidelines, the NBTC has authority to order the relevant operator to correct it within the specific time (Article 11). The NBTC will not need to cancel the operator’s license if such operator corrects the conduct within the given time.</p> <p>The eight prohibited actions listed in the Annex serve as guidelines for operators to have ideas how to stipulate their prohibit actions in the nature of foreign dominance as self-control, and to provide information for the purpose of good corporate government by the operators, and to be used as the framework for the NBTC to investigate and monitor which case should be considered as action in the nature of foreign dominance. However, the examples in the annex are not per se rules. In other words, an occurrence of actions or facts according to the annex is not</p>

No.	Excerpts from the 2013 NTE Report	Comments from Thailand
<p><b>11.</b></p> <p><b><u>Legal Services</u></b></p> <p>- U.S. investors may own law firms in Thailand with a requirement to enter into commercial association with local attorneys or local law firms, but U.S. citizens and other foreign nationals (with the exception of “grandfathered” non-citizens) may not provide legal services. In certain circumstances, foreign attorneys can obtain a limited license entitling them to offer advisory services in foreign and international law.</p>	<p>immediately regarded as foreign dominance. It must firstly fall under the definition of “foreign dominance”.</p>	<p>-</p>
<p><b>12.</b></p> <p><b><u>Financial Services</u></b></p> <p>- Significant restrictions remain on foreign participation in the financial services sector. By law, a foreign bank can only open branches subject to a licensing requirement, but in practice foreign banks’ only channel to enter the market by acquiring shares of existing domestic financial institutions. The 2008 Financial Institutions Business Act, the consolidated financial act that replaced the 1962 Commercial Bank Act and a 1979 law on financial services, only allows foreign equity ownership up to 25 percent.</p> <p>- Thailand has removed some barriers to foreign ownership of domestic financial institutions. The 2008 Financial Institutions Business Act gave power to the Bank of Thailand (the country’s central bank) to raise the foreign ownership limit in a local bank from 25 percent to 49 percent on a case-by-case basis. The Act also allows the Minister of Finance, with a recommendation from the Bank of Thailand, to authorize foreign ownership above 49 percent if deemed necessary to support the stability of the overall financial system during an economic crisis. Following the 1997-98 Asian financial crisis only four locally incorporated Thai commercial banks had foreign ownership above 49 percent and over the last decade plus, just four more have been authorized to exceed 49 percent.</p>	<p>The texts should be adjusted as follows:</p> <p>- “Some restrictions remain on foreign participation in the financial services sector. Foreign participation in Thai banking industry can be channeled through licenses granted for branches, subsidiaries and acquiring shares of existing domestic financial institutions. A foreign bank branch can open up to 3 branches subject to a licensing requirement. Subsidiaries are required to be incorporated in Thailand with initial registered capital of 10 billion baht. Subsidiaries are allowed to have more operational flexibility with 20 branches and 20 off-premise ATMs across Thailand. A foreign bank can also enter the market by acquiring shares of existing domestic financial institutions.</p>	<p>- The 2008 Financial Institutions Business Act, the consolidated financial act that replaced the 1962 Commercial Bank Act and a 1979 law on financial services, allows foreign equity ownership up to 49 percent. The Act empowered the Bank of Thailand (the country’s central bank) to raise the foreign ownership in a local bank from 25 percent to 49 percent on a case-by-case basis. The Act also allows the Minister of Finance, with a recommendation from the Bank of Thailand, to authorize foreign ownership above 49 percent if deemed necessary to rectify the operation or to strengthen the stability of any financial institution or for the purpose of the financial institutions system stability. Following the 1997-98 Asian financial crisis four locally incorporated Thai commercial banks have been authorized to have foreign ownership above 49 percent.</p>

No.	Excerpts from the 2013 NTE Report	Comments from Thailand
	<p>- Thailand continues to implement the terms of its five-year (2010 to 2014) Financial Sector Master Plan Phase II consisting of measures to reduce system-wide operating costs, promote competition, and strengthen financial infrastructure. While the initial phase did not include the entry of new service providers, new licenses may be considered in 2014. Beginning in 2012, the Bank of Thailand permitted foreign banks to upgrade existing full branches to subsidiaries, allowing foreign banks to open up to 20 branches and 20 off-premise ATMs across Thailand. Qualifying branches must maintain a capital adequacy ratio of no less than 12 percent, compared with a domestic minimum requirement of 8.5 percent, and non-performing loans must be kept under 3.5 percent. In addition, the converted subsidiary must have a minimum of approximately \$333 million in paid-up-capital. Since March 2010, existing foreign bank branches have been permitted to open up to two additional branches in Thailand without having to meet additional capital requirements.</p> <p>- In 2012, the Thai Securities and Exchange Commission (SEC) began to grant licenses to new domestic and foreign securities companies that meet SEC requirements. Securities firms with foreign equity participation greater than 49 percent are required to obtain permission from the Ministry of Commerce under Annex 3 (21) of the Foreign Business Act in order to supply non-brokerage services, such as securities underwriting, securities dealing, investment advisory services, mutual fund management, and private fund management. Various ownership structures are allowed, including 100 percent Thai or foreign ownership, strategic foreign partnerships, joint ventures between Thai and foreign companies, or bank affiliate status.</p> <p>- Restrictions on foreign investment and ownership in the insurance sector have been relaxed but barriers remain. Under the 2008 amended Life and Non-Life Insurance Acts, foreign investors are permitted to own up to 25 percent equity in existing insurance firms and may hold up to 25 percent of board director seats. The Insurance Commission may, as empowered by its</p>	<p>- Thailand continues to implement the terms of its five-year (2010-2014) Financial Sector Master Plan Phase II (FSMP II) consisting of measures to reduce system-wide operating costs, promote competition, and strengthen financial infrastructure. In 2010-2011, FSMP II emphasized on strengthening Thai commercial banks by M&amp;A, liberalization of branch network, and widening business scope including mutual fund management and venture capital fund management. Having said that, two foreign bank branches which met requirements of BOT notification have operated up to 3 branches or off-premise ATMs. In 2012-2013, foreign bank branches can upgrade to subsidiaries which can open up to 20 branches and 20 off-premise ATMs. One foreign bank branch applied for an upgrade and, if granted license, its operation is expected to begin in 2014. Furthermore, in accordance with the Financial Sector Master Plan Phase II, the licensing criteria for New Foreign Commercial Banks to operate in Thailand were announced end-June 2013. Foreign commercial banks that meet the specified qualification may submit an application for the establishment of subsidiary to the Bank of Thailand until end-December 2013. Up to five new licenses will be granted mainly subject to applicant's ability in meeting the trends and developments in international trade and investment of the country, especially in line with the trends in regional integration.</p> <p>- Restrictions on foreign investment and ownership in the insurance sector have been relaxed in recent year. Foreign investors are permitted to own up to 25 percent equity in existing insurance firms and may hold up to a quarter of director seats. The Insurance Commission may, as empowered by its board of directors, approve an increase of foreign shareholding above 25 percent, but not exceeding 49 percent on a case-by-case basis under a "fit and proper"</p>



No.	<b>Excerpts from the 2013 NTE Report</b>	<b>Comments from Thailand</b>
	<p>board of directors, approve an increase of foreign shareholding above 25 percent, but not exceeding 49 percent on a case-by-case basis if the company is financially sound with a good reputation, has a good track record of business performance, can demonstrate its business strength and contributions to the insurance industry, and has a solid business plan. In cases where insurance companies face financial problems that place insured members or the general public at risk, the Minister of Finance may further relax ownership restrictions upon recommendation by the Insurance Commission within certain limits. Issuance of new business licenses for either life or non-life insurance requires approval from the Cabinet and the Minister of Finance.</p>	<p>requirement prescribed by the Commission. Such “fit and proper” requirement includes but not limited to; being a financially sound and reputable financial institution with track record of business performances; able to demonstrate its business strength and contribution to the insurance industry; have a solid business plan for its business in the country including knowledge transfer, business capacity, underwriting skill and the overall competitiveness. In cases where insurance companies face financial problems that place the general public at risk, the Minister of Finance may further relax ownership restrictions upon recommendation by the Office of Insurance Commission. An issuance of a new business license for either life or non-life insurance requires approval from the Minister of Finance upon the cabinet approval.</p>
13.	<p><b>Accounting Services</b></p> <p>- Foreigners are permitted to own up to 49 percent of most professional services companies, including accounting, through a limited liability company registered in Thailand. Foreigners cannot be licensed, however, as Certified Public Accountants unless they pass the required examination in the Thai language, are citizens of a country with a reciprocity agreement, and legally reside in Thailand. Foreign accountants may serve as business consultants.</p>	<p>- Foreigners are permitted to own a majority of the shares in accounting services companies with the approval of the Department of Business Development.</p>
14.	<p><b>Postal and Express Delivery Services</b></p> <p>- Private express delivery companies must pay postal “fines” and penalties for delivery of documents in Thailand. These fines amount to an average of 37 baht per item (slightly more than \$1) for shipments that weigh up to two kilograms.</p> <p>- Thailand also imposes a 49 percent limit on foreign ownership in land transport (trucking), which discourages investment in the express delivery sector.</p>	<p>1. 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)</p> <p>2. The texts in paragraph 1 should be adjusted as follows:</p> <p>- Thailand’s Postal Act (1934) gives the government a monopoly on handling letters and postcards. Private express delivery companies must pay postal “fines” and penalties for delivery of documents in Thailand. These fines amount to an average of 37 baht per item (slightly more than \$1) for shipments that weigh up to two kilograms.</p>

No.	Excerpts from the 2013 NTE Report	Comments from Thailand
15.	<p><b><u>INVESTMENT BARRIERS</u></b></p> <p>-The Foreign Business Act (FBA) lays out the overall framework governing foreign investment in Thailand. Under the FBA, a foreigner, defined as a person or company of non-Thai nationality or a company for which foreign ownership accounts for 50 percent or more of total shares or registered shares, needs to obtain an alien business license from the relevant ministry before commencement of its business in a sector restricted by the FBA. Although the FBA prohibits majority foreign ownership of investment in most sectors, Thailand makes an exception for U.S. investors pursuant to the Treaty of Amity and Economic Relations (AER Treaty). Under the AER, Thailand may limit U.S. investment only in the following areas: “communications, transportation, fiduciary functions, banking involving depository functions, the exploitation of land or other natural resources, and domestic trade in indigenous agricultural products.” Thailand’s obligation to accord national treatment to U.S. investors in all other sectors does not extend to “the practice of professions, or callings reserved for Thai nationals.”</p> <p>- In July 2012, the Department of Special Investigations announced plans to add new guidelines for inspecting firms with foreign shareholders under the Foreign Business Act. These will include percentage of shareholdings, voting rights, administrative power, source of funds and investment capital, dividend payments, and financial transactions.</p>	
16.	<p><b><u>OTHER BARRIERS</u></b></p> <p>- U.S. stakeholders have expressed concern that processes for revising laws and regulations affecting trade and investment lack consistency, transparency, and broad stakeholder engagement.</p> <p>- In the pharmaceutical sector, the Government Pharmaceutical Organization, a state-owned entity, is not subject to Thai Food and Drug Administration licensing requirements on the production, sale, and importation of pharmaceutical products and</p>	<p><u>Pharmaceutical sector</u></p> <p>- Though the Government Pharmaceutical Organization (GPO) is apparently not subject to the Thai Food and Drug Administration licensing procedures, the GPO has not taken advantages from such licensing exemption. In practice, the GPO has applied for pharmaceutical product licensing under the same rules and regulations required for other drug entrepreneurs. It can be said that practically there is no discriminatory practices regarding product licensing between the GPO and other entrepreneurs. However, in certain circumstances such as national emergency, the Law allows the responsible government authority (i.e., FDA) to waive imported drug</p>

No.	Excerpts from the 2013 NTE Report	Comments from Thailand
	<p>is exempt from rules against anticompetitive practices. The Thai government has established a National List of Essential Drugs (NLED) for procurement and dispensing at government hospitals that continues to exclude innovative medicines from those available for reimbursement under government health plans. U.S. stakeholders have expressed concerns about the lack of transparency and due process for decisions on what drugs to include in the NLED; for instance, when a product is not accepted for the NLED, the applicant is provided no explanation and left without recourse. U.S. stakeholders have expressed serious concerns regarding the uncertain climate for their business in Thailand, following Cabinet-level resolutions that cite compulsory licensing as an acceptable cost reduction method for health care. The United States will continue to encourage Thailand to engage in a meaningful and transparent manner with all relevant stakeholders as it considers ways to address Thailand's public health challenges.</p>	<p>products from licensing procedures. Yet, other measures to assure the quality, safety, and efficacy of these imported products must be implemented. It should be noted that the GPO is not exempt from any rules and regulations regarding anticompetitive practices.</p> <p>- Regarding the selection process of the National List of Essential Medicines (NLEM) from 1981 – 2013, the National Drug System Development Committee (NDSDC), Sub-committees, and Working Groups have followed the principles of Good Governance. Members of the Sub-committees and Working Groups have to reveal their names and declare conflict of interest (if any) in accordance with the ethical criteria for developing the List. The selection of medicines on the NLEM is based on the established philosophy, principles, and clear and credible criteria. The NDSDC has utilized an evidence-based medicine approach (particularly ISaE &amp; EMCI scoring system) for selecting essential medicine on the List since 2000. Consequently, the selection process of medicines is rationale, updated, and explanatory. The process is available for the public and/or other stakeholders to access. The technical and scientific information has been reviewed and evaluated carefully by the experts in each field. The evaluation process of the medicines encompasses all important aspects, including for example disease burden and disease severity, efficacy/effectiveness, safety, cost-effectiveness analysis, budget impact analysis, ethical issues etc.</p> <p>When the List of medicines has been updated (adding, or removing the medicines on the List or changing therapeutic indications), the NDSDC will publicly announce the update via the NLEM website along with the reasons for such updates. All questions and answers. (Q&amp;A) and the technical documents have been made available online. (For more information, please visit our website at <a href="http://www.nlem.in.th">www.nlem.in.th</a>).</p> <p>- Regarding the issuance of compulsory licensing (CL) where the US expressed concerns, the MOPH has repeatedly confirmed her strong position that CL will be used as a last resort as a means for improving people's access to essential medicines only if other available measures fail to achieve this legitimate objective. The procedures for issuing CLs in the past had been transparent, and had been done through thorough consultation with the relevant stakeholders including public and private sectors. Importantly, the procedures had been assessed and confirmed by national and international legal experts that they strictly followed the national patent law and the TRIPS Agreement. Currently, there is no sign for considering further CL on other essential medicines.</p>

No.	<b>Excerpts from the 2013 NTE Report</b>	<b>Comments from Thailand</b>
	<p>- The 2007 Thai Constitution contains provisions to combat corruption, including enhancement of the status and powers of the National Anti-Corruption Commission, which is independent from other branches of government and is thus unique among Thai bodies aimed at countering corruption. Persons holding high political office and members of their immediate families are required to disclose their assets and liabilities before assuming and upon leaving office. Moreover, a law regulating the bidding process for government contracts defines actionable corruption offenses and increases penalties for violations. Despite these steps, corruption continues to be a serious concern. Several different agencies have jurisdiction over corruption issues; a lack of clear jurisdictional responsibilities and differing bureaucratic structures mean their actions are not always complementary. Investigative and prosecutorial capacity is limited and Thai laws focus predominantly on the abuse of office versus the financial or asset-related malfeasance. Thailand's anti-money laundering laws provide inadequate controls over the illegal flow of money through Thai financial institutions. Anticorruption mechanisms continue to be employed unevenly, and the lack of transparency in many government administrative procedures facilitates corruption.</p>	<p><u>Corruption</u></p> <p>The texts should be adjusted as follows:</p> <p>- The 2007 Thai Constitution contains provisions to combat corruption, including enhancement of the status and powers of the National Anti-Corruption Commission, which is independent from other branches of government and is thus unique among Thai bodies aimed at countering corruption. Persons holding high political office and members of their immediate families are required to disclose their assets and liabilities upon taking office, every three years while being in office, upon vacation of office and also one year after vacation of office. Moreover, a new regulation regarding government contracts is designed for improving transparency in the bidding process.<sup>1</sup> Despite these steps, corruption continues to be a serious concern. While several different agencies exercise jurisdiction over corruption cases, the NACC is the primary constitutional body vested with the powers and duties to counter corruption in the public sector. There are clear jurisdictional responsibilities<sup>2</sup> among different agencies, but in practice differing bureaucratic structures mean their actions are not always complementary. Moreover, different agencies have investigative and prosecutorial capacity of varied levels of competence, and Thai laws focus predominantly on the abuse of office versus the financial or asset-related malfeasance. Thailand's anti-money laundering laws provide inadequate controls over the illegal flow of money through Thai financial institutions. Anticorruption mechanisms continue to be employed unevenly, and the lack of transparency in many government administrative procedures facilitates excessive red tape and corruption. High-profile Thai corruption cases often-and increasingly-involve a transnational element.<sup>3</sup></p>

<sup>1</sup> Section 103/7 of the Organic Act on Counter Corruption B.E. 2542 (1999) amended in B.E. 2550 (2007) and (No.2) B.E. 2554 (2011) prescribes that a state agency shall prepare details on exenses relating to procurement, especially the reference price and the calculation of the reference price in its electronic information system in order to allow access to the public, and a contracting party to the state agency shall be under a duty to declare an income and expenditure account of the project contracted with the state agency to the Revenue Department in addition to the annual financial statements to allow examinations relating to the expenditure of funds and calculation of taxes in such project.

<sup>2</sup> The Office of the Public Sector Anti-Corruption Commission (PACC) is an entity within the Ministry of Justice and has jurisdiction over public officials below the level of a director. The Royal Thai Police has jurisdiction over private-to-private corruption cases.

<sup>3</sup> The number of U.S. Foreign Corrupt Practices Act (FCPA) cases involving Thai public officials and U.S.-related corporations are on the rise in recent years, e.g. Green Case, CTX Explosive Scanners Case, Diageo Case, Alliance One Tobacco Case, etc.

## Sanitary and Phytosanitary Measures (SPS)

No.	Excerpts from the 2013 SPS Report	Comments from Thailand
1.	<p><b>Animal Health</b></p> <p><b>Animal-Derived Products</b></p> <p>- Thailand bans the importation of most ruminant-origin products (including essentially BSE-risk free commodities, such as blood), and many non-ruminant origin commodities intended for use in pet foods or for livestock feed due to BSE-related concerns. Thailand also requires inspection and approval of U.S. manufacturing facilities that produce certain animal-derived products as a condition for approval for importation.</p>	-
2.	<p><b>Food Safety</b></p> <p><b>Beef and Beef Products</b></p> <p>- Thailand restricts the importation of U.S. beef and beef products due to the detection of a BSE positive animal in the United States in 2003. Currently, Thailand allows imports of U.S. deboned beef from animals under 30 months of age. In 2012, Thailand published new rules that bring it largely in line with OIE BSE guidelines. The United States will continue to urge Thailand to open its market fully to U.S. beef and beef products based on science, the OIE guidelines, and the United States' risk status.</p>	<p>- Thailand would like to provide further information that the Department of Livestock Development of Thailand inspected the farms and slaughterhouses both in the U.S. boneless beef and bone-in beef in the period of July to August 2013. At present, the inspection team is now on the process of considering the obtained information to certify imported beef from the U.S. which is expected to be sent the formal response letter to the U.S. around November 2013.</p>
3.	<p><b>Ractopamine</b></p> <p>- In 2012, after the Codex established MRLs for ractopamine in cattle and pig tissues, Thailand indicated it would lift its ban on imports of pork from countries that allow the use of ractopamine. However, Thailand has not yet established MRLs for ractopamine in pork, which in effect continues to prevent imports of U.S. product. Thai officials indicated they will establish domestic MRLs by December 2013. The United States has encouraged Thailand to act quickly in this regard.</p>	<p>- Regarding Thailand's review process of applying a reference Maximum Residue Limit (MRLs) for ractopamine in pork and pork offal, the Food and Drug Administration of the Ministry of Public Health of Thailand is in the process of revising the regulation on MRLs for ractopamine under Food Act B.E. 2522 (1979) to be in line with the newly established CODEX international standards.</p> <p>- Thailand would like to confirm that there are three steps that exporters must complete before exporting pork and pork products into Thailand. First, exporters must fill out the questionnaire with adequate evidence. Then, relevant Thai agencies will inspect farms and slaughterhouses in the exporting countries. After the inspections, Thai agencies will consider issuance of import permit and requirements. Thus, the U.S. must follow these requirements in order to export pork and pork products to Thailand.</p>

No.	Excerpts from the 2013 SPS Report	Comments from Thailand
4.	<p><b>Import Fees</b></p> <p>- Thailand imposes food safety inspection fees in the form of import permit fees on all shipments of uncooked meat. Current fees are \$160 per ton for red meat (beef, buffalo, goat, lamb, and pork) and offals, and \$320 per ton for poultry meat. Fees for domestic meat inspections, however, are significantly lower at \$5 per ton for beef, \$21 per ton for poultry, \$16 per ton for pork, and zero for offals. The domestic fees are levied in the form of slaughtering or slaughterhouse fees. The United States will continue to press Thailand to equalize the fees and ensure that the import fees are commensurate with the services provided.</p>	<p>- 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 wage for the staff assistant in the Department of Livestock.</p> <p>- The Department of Livestock of Thailand is considering to review the Ministerial regulation determining fees under the Animal Disease Act B.E. 2549.</p>

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Department of Trade Negotiations  
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