



May 11, 2004

Ms. Marilyn R. Abbott
Secretary
United States International Trade Commission
500 E Street, SW
Washington, DC 20436

RE: Inv. Nos: TA-131-29 and TA-2104-12: US-Thailand Free Trade Agreement: Advice Concerning the Probable Economic Effect of Duty-Free Treatment for Imports

*Written Testimony Supporting A World Class US Thailand Free Trade Agreement
submitted by
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President
for the members of the
US ASEAN Business Council*

*May 11, 2004
Washington, D.C.*

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Thank you, Madame Commissioner and members of the United States International Trade Commission, for the opportunity to submit this written testimony before the ITC. My name is Ernest Z. Bower, and I am the President of the US-ASEAN Business Council (the Council), a private organization that represents American business interests in the ten country Association of Southeast Asian Nations (ASEAN). The Council works to expand trade and investment between the United States and the member countries of ASEAN, including of course, the Kingdom of Thailand. Other ASEAN members include Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, and Vietnam.

The US-ASEAN Business Council is made up of approximately 150 of America's Fortune 500 companies. These enterprises represent the full range of business sectors, from manufacturing through the services sectors. Trade is vital to the interests of the United States as well as to the members of ASEAN. The US-ASEAN Business Council

is the most focused private sector advocate dedicated to moving forward in the establishment of stronger trade and investment ties between our countries.

The Council has also played a key role in the creation of the US-Thailand Free Trade Agreement (FTA) Business Coalition, a coalition that currently counts approximately 100 American companies and leading trade and business organizations interested in the negotiation of a high quality agreement between the United States and Thailand. Once that goal is achieved, we will coordinate a lobbying effort that will promote the broadest possible understanding of and the passage through legislatures of that Agreement. Along with the National Association of Manufacturers (NAM), the US-ASEAN Business Council serves as a co-secretariat of the Coalition, responsible for coordinating and promoting the interest of member companies through the organization of meetings, agendas, and information. We are strongly supported by corporate Co-Chairs including FedEx, General Electric Company, New York Life International, QUALCOMM, Inc., TimeWarner and Unocal Corporation. In addition, the Coalition's work will be guided by a capable and committed Steering Committee that includes America's top companies and trade associations. I have attached a roster listing the members and leadership of the US-Thailand FTA Business Coalition to my testimony.

We are also working closely with the newly formed US House of Representative Friends of Thailand Congressional Caucus, chaired by Representatives Jim Ramstad (R-MN) and William Jefferson (D-LA). The Caucus is a bipartisan group made up of over twenty Representatives who support the US-Thailand FTA and growing US-Thai relations. Senators Gordon Smith (R-OR) and Max Baucus (D-MT) have agreed to lead a similar group in the US Senate. The US-ASEAN Business Council, the US-Thailand FTA Business Coalition and the members of the Friends of Thailand Congressional Caucus look forward to working closely with the USITC and the Administration as the negotiations go forward.

On behalf of the member companies of the Council and the Coalition, many of whom are heavily involved in the development of Thailand's market economy, I would like to highlight why we believe it is vital to negotiate and pass into law a comprehensive, WTO consistent US-Thailand Free Trade Agreement.

1. A World Class US-Thailand Free Trade Agreement is vital to the economic security and competitiveness of the U.S. economy.

Thailand, strategically located within the large ASEAN market, is a major market for the United States. It is a core member of the APEC group of economies, and it is a springboard for American companies and interests into South Asia and China. Because Thailand is a leader in ASEAN, we believe that establishing a high quality FTA with the Kingdom, coming on the heels of the outstanding agreement reached with Singapore last year, will create a sense of competitive urgency and a comfort level among the other ASEAN countries. We expect that these countries will then begin to move forward, under the Enterprise for ASEAN Initiative, to negotiate FTA's with the United States and

bring us closer to our eventual goal of linking the ASEAN Free Trade Area (AFTA) with the North American Free Trade Area (NAFTA).

In this context, you will understand why both the announcement in October of 2003 by President George Bush and Prime Minister Thaksin of the intention to negotiate, and the introduction of a letter to Congress from Ambassador Robert Zoellick in February of 2004 on the intention to begin negotiations of a US-Thailand FTA were welcome news to the American business community.

Thailand's 6.7% gross domestic product (GDP) growth in 2003 makes it one of the fastest growing economies in Asia and an attractive trade partner for the United States (NESDB). Thailand is America's 18th largest trading partner while the US serves as Thailand's second largest trading partner, following Japan. Trade between the US and Thailand has grown significantly over the past ten years. Between 1993-2003, US exports to Thailand grew by approximately 55% from 3.766 to 5.841 billion USD. In 2003, US exports to Thailand grew by 21% compared to the same figures in 2002. Two-way trade increased by over 70%, from 12.307 billion USD in 1993 to 21.022 billion USD in 2003 (Census Bureau).

In terms of investment, the US is the second largest foreign investor in Thailand behind Japan, with \$20 billion invested as of 2003. US investment in Thailand comes with American companies best practices including high environmental standards, world class training and labor standards, and unmatched levels of corporate leaders and investment in human resource development, education and local communities.

With the growing bilateral economic relationship, and with Thailand's overall economic growth, Thailand serves as an attractive market to US companies looking to expand their business internationally and within Asia. A US-Thailand Free Trade Agreement will enhance both nations' advantages by ensuring that trade and investment grow sustainably, creating wealth and jobs, and bringing us into even closer partnerships and understanding. In addition, the completion of an FTA with Thailand will resolve an outstanding issue facing both Thai and American companies, namely the requirement to match World Trade Organization standards with those established by the Treaty of Amity and Economic Relations of 1966, a treaty which grants Thai and American companies mutual national treatment. When the FTA is negotiated and complete, US business believes that the advantages provided to companies in both countries will be extended under the terms of the agreement, and will remove the requirement to rescind such mutual advantages under the WTO rules.

2. A US-Thailand FTA Highlights Opportunities for Strategic Partnerships in Various Sectors

Before talking about trade in goods and trade in services between Thailand and the United States, I must briefly highlight the current trade agreement defining US-Thailand bilateral business relations: the Treaty of Amity and Economic Relations. Other than in excluded professional services and industry sectors (including transportation,

communication, fiduciary functions, banking involving depository functions, exploitation of land and natural resources and domestic trade of indigenous agriculture products), US companies enjoy the benefits of the Treaty of Amity and Economic Relations which was amended and passed in 1966. This treaty allows US citizens and companies to enjoy the same rights of ownership and operation as their counterparts in Thailand and vice versa. This treaty, which has given the US a competitive advantage over other countries trading with Thailand, has been challenged by our competitors in the Thai market within the WTO. The WTO has granted an extension of the treaty until next year.

An FTA between the US and Thailand can legitimately sustain the current rules and regulations in the Treaty of Amity, ensuring that American citizens and companies can continue to enjoy the favorable investment environment currently in place in Thailand. An FTA can also expand on the current provisions of the Treaty of Amity by further liberalizing the sectors currently excluded from the Treaty.

In today's global economy, all countries are carefully developing their comparative advantages in key sectors. Thailand and the United States are both heavily engaged in this process, and certainly Thai and American companies will provide leadership in this process. To achieve world-class competitiveness in priority sectors, our companies need our governments to negotiate a comprehensive FTA that will enhance and protect under the law our ability to move goods, services, people and ideas freely between our borders. By so doing, a US-Thailand FTA will mutually enhance Thai and American competitiveness, particularly in sectors where we have special advantages working together. It is vitally important, in this sense, that the FTA comprehensively eliminate tariffs and non-tariff barriers to trade and investment between our countries and protect the intellectual property of US and Thai industries. In this section of my testimony, I will highlight the benefits of a US-Thailand FTA to specific industry sectors.

Agriculture:

In the Administration's notification letter to Congress on its intent to begin FTA negotiations with Thailand, Ambassador Robert Zoellick cites US agricultural producers as one of the groups that have encouraged the Administration to move forward in expanding the US economic relationship with Thailand through an FTA. Currently, the United States is Thailand's largest agricultural export market while Thailand is the sixteenth largest market for US farm exports.

With the current average tariff Thailand places on agricultural products at about 24% compared to about 7% for the US, a liberalizing agreement which eliminates tariff and non-tariff barriers will greatly increase the competitiveness of US farm products in Thailand. High tariffs on agriculture products, which include the current existing 30% tariff on frozen fries imports, and a 30% tariff on certain fresh cheeses, substantially hamper not only US exporters' ability to export products and but also hinders the growth of US companies' in the market of selling US products in Thailand. Farm groups estimate that US agricultural exports to Thailand could increase by \$300 million annually with a substantially liberalizing agreement (Ahearn).

Free trade in agriculture is encouraged by a regulatory system that is science-based, clear, and predictable. The result is improved food safety and quality. Additionally, a regulatory environment that encourages technological innovation improves access for U.S. products. An agriculture technology approval process founded on objectives similar to the WTO sanitary and phytosanitary standards, for example, will increase domestic Thai production of agriculture products encouraging their open and free trade.

Thailand has been a leader in agricultural biotech, working through significant research investments toward the promise of real benefits to Thai farmers. Thailand was the first country in Southeast Asia to conduct field trials for Bollgard Bt cotton. Although the field trials were completed, approval for commercial use of Bt cotton was never granted. The subsequent Cabinet moratorium on large-scale field tests for biotech crops make the advance of other beneficial products from research into farmers' hands extremely uncertain. The U.S. can encourage freer trade of agricultural products by working with Thailand to remove barriers to biotechnology.

The US ASEAN Business Council would also like to emphasize the importance of negotiating a comprehensive and inclusive FTA with Thailand that produces significant, immediate tariff savings by not only lowering tariffs for goods exported but also for goods imported by US companies. No products should be excluded from this agreement. By ensuring that US companies have increased access to Thai goods, particularly Thai sugar, the US Government will send a strong signal that it is wholly committed to supporting US business interests both at home and abroad.

Electronic Commerce

To ensure that the U.S.-Thailand FTA satisfies the U.S. negotiating objectives set forth in the TPA legislation and facilitates Thailand's integration into the high tech economy, it is essential that the Agreement contain a high quality chapter on electronic commerce. The obligations in this Chapter should:

- ensure clarity and predictability in the international trade rules applicable to electronic commerce,
- prevent barriers to electronic commerce from arising,
- preserve the current liberal trading environment for digital products,
- ensure that software delivered electronically receives the same benefits and concessions that software traded on a physical medium currently enjoys under existing WTO agreements
- ensure that software and other digital products receive market access, MFN and national treatment no less favorable than such products would receive if they were traded as a good through physical delivery, and
- include a permanent prohibition on duties on the importation or exportation of digital products, including both the transmission and its content.

Government Procurement:

In some sectors, Thailand's government is the largest purchaser of goods and services. Thailand is neither a member or observer of the WTO Agreement on Government Procurement (GPA). The FTA should include strong procurement provisions that adhere to the following core principles: transparency, non-discrimination, merit and performance based procurement, neutral and non-trade restrictive technical specifications, and award of contracts based on best overall value.

An FTA that meets these requirements would satisfy the reciprocal government procurement market access requirements of the Trade Agreements Act of 1979, thereby waiving Buy America Act requirements. In essence, a commitment by Thailand to open its government procurement market to covered U.S. goods and suppliers would also open the U.S. federal procurement market to covered goods and services originating in Thailand. Thus, both nations would benefit, and Thailand would become a more attractive destination for investment.

Intellectual Property Rights:

Currently, copyright and patented industries are a major driver of US exports. Thailand offers excellent potential to grow the export of copyright and patent based goods and services but until the unacceptably high rate of piracy is brought under control and proper intellectual property rights (IPR) protections are instituted, the full potential of these industries' exports will not be reached. In 2002 alone, the amount of trade losses to US companies due to piracy in Thailand amounted to 188.6 million USD. (IIPA)

Consistent with the negotiating objectives set forth in the Trade Promotion Authority Act ("TPA"), the IPR chapter of the U.S.-Thailand FTA should:

- address all forms of software and cable piracy and patent violations, including counterfeiting, digital piracy, and pharmaceutical IPR violations, and
- ensure "accessible, expeditious and effective civil, administrative, and criminal enforcement mechanisms."

To meet these objectives, the Thailand FTA should fully incorporate the high standards of intellectual property protection and enforcement achieved in the U.S.-Singapore FTA.

Life Sciences:

If Thailand is to succeed in attracting research and investment in the life sciences industry, it will need to, among other things, protect an innovator company's rights to proprietary data submitted to the Thai Food and Drug Administration to secure regulatory approval of new medicines, as called for by the TRIPs agreement.

Software:

With a software piracy rate of 77%, Thailand has the 4th highest rate of software theft in Asia and the 9th highest in the world. Thailand is a major manufacturer and exporter of counterfeit software and other pirated works. Optical disc (“OD”) replicating plants in Thailand are capable of producing 441 million discs each year, while legitimate demand is estimated at 60 million. The excess production capacity is used to supply the ever-expanding global market in counterfeit software, music and movies.

The Thai government is aware of these OD counterfeiting operations and has even acknowledged the involvement of organized crime syndicates. Nevertheless, it has yet to take effective action to halt the manufacture of counterfeit software and other pirated works. Thus, the FTA negotiations should require that:

- Thailand enact legislation that subjects OD replicating facilities to licensing, monitoring and record-keeping requirements,
- provides copyright owners with adequate remedies and penalties to enforce these requirements
- TRIPS-plus enforcement obligations be included, and
- Thailand fully implement its obligations under the WIPO Copyright Treaty.

IPR protection will improve competitiveness, advance industry developments and improve prospects for trade in multiple economic sectors, including IT, entertainment and communications, human and animal health, biotechnology, amongst others. US companies look forward to a state-of-the-art intellectual property chapter in the FTA that can fully support future Thai IPR goals in the 21st century.

Pharmaceutical:

The research-based pharmaceutical industry is still in the process of developing specific goals and objectives for the U.S.-Thailand FTA. However, below is the preliminary outline of how a Thailand FTA could be structured to achieve a win-win outcome that supports innovative U.S. medical research, advances Thailand’s goal of building an innovative life sciences capability, supports the health care needs of the Thai people, and serves as an engine for future economic growth.

- **Recognition of Innovation/Non-Discrimination.** It is essential that government programs be adequately funded to ensure the long-term financial stability of hospitals and medical institutions and provide high-quality medical care and treatment. It is also important that such programs provide adequate access to the world’s leading medicines, either through government programs or through

private health insurance schemes. Restrictive formularies and protectionist “Buy Thai” policies that seek to limit access to innovative U.S. and European medicines, while benefiting domestic manufacturers, can jeopardize the health of Thai patients, as well as serve as a discriminatory trade barrier.

- **Science-Based Regulation.** The Pharmaceutical industry looks forward to working with the USITC, USTR, FDA, and the Thai FDA to build a world-class, science-based Thai drug regulatory program which amongst other characteristics align with the WTO sanitary and phytosanitary standards and objectives, which can serve as a model for ASEAN and for other developing economies in the Asia-Pacific region. The Medical Products Annex of the U.S.-Singapore FTA launched a new partnership between the U.S. FDA and Singapore’s HSA in supporting transparent, science-based regulation in the Asia-Pacific. The Thailand FTA offers an opportunity to strengthen the Thai drug regulatory system.

Services

The services industry is now the engine of growth for both the Thai and US economies. Services have overtaken manufacturing as the segment contributing the largest share of new growth in the Thai economy. In 2002, services accounted for about 55% of Thai GDP. In 2003, US companies exported over one billion USD in services to Thailand (Ahearn). With Thailand’s increasing need for technology and knowledge transfer, it is expected that a liberalizing agreement would increase current US services exports.

With regards to the services sector, the Coalition would like to see a comprehensive US Thailand FTA, which includes:

- a “top-down” or “negative list” approach to service commitments in all sectors,
- market access and national treatment commitments that cover and liberalize all service sectors,
- an open regulatory environment that emphasizes regulatory transparency (particularly in the areas of standard-setting, regulatory application process, and judicial, arbitral or administrative tribunals),
- high standards for what constitutes fair and equitable treatment under the law, and
- language providing for the temporary entry provisions for highly skilled professionals.

A US Thailand FTA that includes the listed elements will ensure the continued growth in trade in services between the two countries.

Investment:

A more stable and attractive investment environment would increase FDI from US companies to Thailand and would significantly benefit both countries, by making US companies more competitive and by spurring

Thai economic growth through improvements in physical capital, new technology, and research and development projects across the nation.

The US Thai FTA should include:

- investment protection provisions (including investor-state arbitration mechanisms)
- a broad definition of “investment”
- appropriate protections against expropriations
- retrospective investment chapter application
- secure the right for US companies to establish and operate in Thailand on a branch basis

The Coalition believes that the USG should continue to establish high standards of protection for US investments abroad. Strong foreign investment protections promote the rule of law, stable energy supplies, and the development of strong financial systems around the world.

Express Delivery:

Particularly with regards to Express Delivery, the US Thailand FTA should include:

- language that appropriately defines express delivery services to include the full scope of services provided
- narrowly tailored reservations on services related to express delivery services, such as ground transportation or warehousing (such reservations should specify that they do not apply to express delivery services)
- a narrowly tailored reservation on postal services (this reservation, if necessary, should make clear that it does not apply to express delivery services)
- a prohibition on cross-subsidies of revenues and other resources derived from a postal service's monopoly operations into competitive express delivery operations
- trade facilitation provisions that expedite the customs clearance of express delivery shipments (e.g., full electronic clearance) and that requires transparency of customs procedures, and
- the provision of full national treatment and market access in the express delivery services sector, including the removal of Thai limitations on foreign ownership of surface transportation service providers and modification of Postal Act B.E.2477.

3. Establishing the US Thailand FTA is Important to US Interests in Asia

Asia will be the engine for global economic growth for the next several decades. With increased economic power, and a larger percentage of world commerce centered in Asia, American engagement in the region is fundamental to promoting US national security, political and economic interests. In this context, enhancing US relations with our longest serving treaty ally in Asia, Thailand, represents an important opportunity. In addition, the US-Thailand FTA should be seen as the second building block, coming after our historic FTA agreement with the Republic of Singapore last year, within the Enterprise for ASEAN Initiative (EAI) which was announced by US President George Bush at the APEC Leaders Meeting in Los Cabos, Mexico in 2002.

Along with the announcement of the intent to begin negotiations of an FTA with Thailand at the annual APEC Summit in October 2003, the Administration also granted Thailand Major non-NATO ally status. Thailand's Major non-NATO ally status recognizes the fact that the country has been a key ally for the US in the Asia Pacific region.

Thailand is one of America's longest standing partners and friends in Asia, having supported the US in its military campaigns in Vietnam, Korea and now in Afghanistan and Iraq. Thailand has been a leader in multinational efforts to secure stability and peace in Asia, working within the UN context to provide leadership in East Timor, and other regional conflicts.

Conclusion

Supporting the US-Thailand relationship by further elevating our ties through a US-Thailand FTA is an important policy objective for the United States at this time. The negotiation and successful completion of a comprehensive, WTO consistent Agreement will ensure that both the United States and Thailand enjoy the mutually beneficial byproducts of liberalized trade, including broader and deeper partnerships, wealth and job creation, and sustainable trade and investment growth.

The Council fully supports the US government's US Thailand FTA negotiation efforts. As the negotiations proceed and issues surface and are dealt with in more depth, we at the Council and our individuals Company Members trust that we can augment our submissions to the USITC and work toward the best US-Thailand Free Trade Agreement possible.

Thank you for your inviting us to share our thoughts with you. We look forward to addressing any questions you might have and will be available as a partner and proactive resource for information and input as you move through the FTA negotiating process with the Kingdom of Thailand.

Submitted May 11, 2004
US ASEAN Business Council

References

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US-Thailand FTA Business Coalition
List of Member Companies (as of 03-29-04)

Co-Chairs in Bold, Steering Committee and Secretariat in italics

3M Company	Hewlett-Packard Company
ACE Insurance Limited	IBM Corporation
Aerospace Industries Association	Information Technology Assn. of Am
Alticor Inc.	Info. Technology Industry Council
Altria Corporate Services, Inc.	Interlink Management Corp.
AmCham Singapore	International Trade Services
<i>AmCham Thailand (Steering Comm)</i>	Issara Technology Co., Ltd.
American Standard	Johnson & Johnson
<i>AIG, Inc. (Steering Comm)</i>	Kellwood Company
<i>Am. Chemistry Council (Steering Comm)</i>	Kenan Institute of Private Enterprise
APL Limited	Korea Instit. for Intl. Economics
Assn. of Intl. Auto. Manufacturers	Marriott International Inc.
AT&T	Mekong Trading Company USA
Bechtel Corporation	<i>Microsoft (Steering Comm)</i>
The Boeing Company	Monsanto Company
Brink's Thailand	Motor & Equipment Mfns. Assn.
<i>The Business Roundtable (Steering Comm)</i>	Nat'l Electrical Manufacturers Assn.
C & M International	National Foreign Trade Council
C.M. COMMERCIAL CO.,LTD.	National Oilseed Processors Assn.
CACH International Ltd Co	National Cattlemen's Beef Assn.
California Chamber of Commerce	<i>National Assn. of Manufacturers (Secretariat)</i>
California Council for Intl. Trade	<i>Nat'l Pork Producers Council (Steering Comm)</i>
<i>Cargill, Inc. (Steering Comm)</i>	New York Life Intl., Inc. (Co-Chair)
<i>Caterpillar, Inc. (Steering Comm)</i>	NIKE, Inc.
<i>The Chubb Corporation (Steering Comm)</i>	Nortel Networks
<i>Citigroup (Steering Comm)</i>	OilPure Technologies, Inc.
The Clorox Company	Pacific Rim Consulting
<i>Coalition of Services Ind. (Steering Comm)</i>	Philip Morris
Comlogix, Inc.	<i>PhRMA (Steering Comm)</i>
<i>Corn Refiners Association (Steering Comm)</i>	PricewaterhouseCoopers
Covington & Burling	QUALCOMM, Inc. (Co-Chair)
CSIS	Rail Transfer Corp. (Buffalo Fuel)
Danng International Trading Co.	Reebok International Ltd.
Deloitte	Robert Branand International
Diageo	<i>Securities Industry Assn (Steering Comm)</i>
<i>Discovery Communications (Steering Comm)</i>	StorageTek
Distilled Spirits Council of the US	The Trade Partnership
Dow Chemical Company	TimeWarner Inc. (Co-Chair)
Elanco Animal Health	Travel Goods Association
EZ-FTZ	U.S. Assn. of Imp. of Textiles & Apparel
FedEx (Co-Chair)	<i>U.S. Chamber of Commerce (Steering Comm)</i>
Fleishman-Hillard	U.S. Council for Intl. Business
<i>Footwear Dist. & Ret. of Am. (Steering Comm)</i>	United Technologies Corporation
<i>Ford Motor Company (Steering Comm)</i>	Unocal Corporation (Co-Chair)
Gas Appliance Mfn. Association	<i>UPS (Steering Comm)</i>
GDI & Associates Inc.	<i>US - ASEAN Business Council (Secretariat)</i>
General Electric Company (Co-Chair)	Washington Group International
General Motors Corporation	WBC Global
Global Trade Information Services	Wheat Export Trade Edu. Comm.
<i>Grocery Manufacturers of Am. (Steering Comm)</i>	WorldSpace Management Corp.