

# **“Process and Progress of Thailand – U.S. FTA Negotiations”**

**Ambassador Nitya Pibulsonggram  
Chief Negotiator for the Thailand-US FTA  
Banyan Tree Hotel, Bangkok  
22 November 2004**

-----

## **Introduction**

- Pleased to have been invited to participate in today's discussion. Today's session has been most informative, especially the lessons learnt from Singapore's experience with its FTA with the US.

## **Overall Picture of the Talks**

- I'm sure most, if not all, of you here have followed the FTA talks very closely, but let me just sum up what has been happening since June this year.

- As agreed between the two governments, the FTA with the U.S. is considered the most comprehensive among all the FTAs that Thailand has or is undertaking, covering a total of 23 topics including:

- |   |  |
|---|--|
| - Market Access for Industrial Products | - Agricultural Products                |
| - Textiles and Apparel                  | - Trade Remedies                       |
| - Sanitary and Phytosanitary            | - Technical Barriers to Trade          |
| - Rules of Origin                       | - Customs Administration and Procedure |
| - Cross Border Services                 | - Investment                           |
| - Financial Services                    | - Telecommunication                    |
| - E-Commerce                            | - Intellectual Property Rights         |
| - Competition Policy                    | - Government Procurement               |
| - Transparency                          | - Labour                               |
| - Environment                           | - Science and Technology               |
| - Trade Capacity Building               | - Dispute Settlement                   |
| - General                               |  |

- You will note that the Thai-US FTA is more wide-ranging than other FTAs—this, because it is aimed at creating a new partnership between both sides—FTA Plus, so to say. As a consequence, there are several new elements in the FTA that we

have proposed, including co-operation on SMEs, trade capacity building, and science and technology. These are important areas for Thailand and will not only help our industries prepare for the FTA, but will also assist them reap as much benefit from the FTA as possible once in effect.

### **Progress of the Talks**

- Two rounds of talks have taken place so far, the first round in June, and the second round in October. Both rounds were held in Hawaii, a convenient half-way point between Bangkok and Washington D.C.

- The talks have proceeded satisfactorily thus far. The atmosphere has been very friendly and cordial, as should be the case in a negotiation between allies, not adversaries.

- Both sides did their homework and came well prepared for the negotiations. However, it is still early in the game. So far most groups have concentrated on exchanging information and providing each side with the latest information about the statutory and regulatory environment in the relevant sectors. No specific commitments have been made on either side.

- Having said that, there are certainly issues, some extremely contentious, real or apparent. These issues include labour, environment, financial services, intellectual property rights and mobility.

### **Labour and Environment**

- Labour and environment are two of the most sensitive and contentious issues of the FTA. Many of you are probably aware that the US Trade Promotion Authority (TPA) requires that all FTAs which the US enters into must contain provisions on both. You could therefore say they are pre-conditions and are regarded as non-negotiable.

- As for Thailand, some government agencies as well as many civil society organisations, still have a negative perception towards any discussion on labour and environment, especially in the context of a trade agreement.

- Our stated position has therefore always been that we are prepared to talk about these two issues, but not as part of the

FTA but as a side agreement or MOU—a position to which the US side cannot agree because of the provisions in the TPA.

### **Financial Services**

- Financial services is another topic that has raised many concerns, especially from the banking sector. It is generally felt that given the advancement of the US banking system relative to the Thai banks, US banks stand to gain more from liberalisation of this sector than Thai banks.

- There are also concerns about the possible consequences of liberalisation on the macroeconomic stability of Thailand. Many still fear a repeat of the financial crisis that struck the Kingdom in 1997.

- As with other FTAs the US has negotiated, they wish to see limits on our ability to exercise control over financial inflows and outflows and other prudential measures. This is a difficult issue for our regulators to accept as we need to have high enough flexibility to exercise measures to ensure financial and macroeconomic stability.

- Nevertheless, there are many supporters of Financial Sector liberalisation in the country. They believe it would be good for Thailand, at least in the long run. Indeed, we have already drawn up a Financial Sector Master Plan which was approved in December 2003, and entails a three year transition period. A transition period is acceptable to the US side to allow for domestic adjustments to be made in Thailand.

### **Intellectual Property Rights**

- IPR is another one of the more contentious topics in the FTA, which has drawn much attention and criticism from all concerned – media, academia, NGOs, and civil societies.

- The US side have made their position clear. They are asking for TRIPS Plus levels of IPR protection. As most of our statutes already conform with international standards, we have to consider the US request carefully.

- Naturally, a major concern for Thailand is the consequences to health care as a result of higher levels of protection, in particular on the issue of access to medicine.

- It is our belief that humanitarian considerations must be taken into account to provide patients with access to necessary medicine as allowed for under the Doha Declaration which confirmed the primacy of public health over patents. The International AIDS Conference held in Bangkok this past July underlined the importance of these issues not only for Thailand, but for the international community as a whole.

- The issue of pharmaceutical patents has not come up yet during the first two rounds of talks, but we have received positive indication from the US side in so far as compulsory licensing and parallel importation are concerned. I am optimistic that Thailand will retain the flexibility to exercise these measures under the Doha Declaration.

- However, there are many more issues under the topic of IPR which is expected to draw heated debate within Thailand, such as protection of plant varieties, extension of protection period for patents and copyrights, anti-circumvention, various kinds of trademark protection, to name just a few.

- And, of course, there is a considerable body of statutes that will have to be addressed and amended.

### **Mobility or Temporary Entry of Business Persons**

- This issue is critical as it is the other side of the same coin as cross border services. Logic would dictate that market access for our services would be next to meaningless if our people cannot go to provide those services.

- The US side, however, has to date been hampered by a lack of mandate to discuss this issue. It is a prerogative of the Congress and one that it protects jealously. While we have received indications that this issue can be addressed bilaterally outside the framework of a FTA, we are seriously concerned that this process, which will not enjoy the privilege of TPA, will get bogged down in the end. However, one channel may exist to discuss the substantive aspects of mobility—and that is under professional qualifications as part of the chapter on Cross-border Services. We remain cautiously optimistic and hope that a viable solution can be found.

### **Process of the FTA and public/private sector participation**

- I understand that you also want me to talk about the “Process” of the talks.
- Once the talks are concluded, both the US and Thai Governments will have to “sell” the FTA to our respective public.
- In this regard, we have started our consultation process early in the game, in fact, long before the first round of talks.
- We have, indeed, been as transparent as possible with the Thai public. We have invited members of the academia, and interest groups to participate and voice their opinions at various forums. We have been in close consultation with the private sector through the Thai Chamber of Commerce, the Federation of Thai Industries, the Thai Bankers Association on a continuing and on-going basis.
- In fact, representatives from the private sector flew with us to Hawaii during both rounds. Although they did not participate in the talks, they played a valuable role as resource persons and advisors. In addition, we have a team of academics working along side us with whom we consult regularly.

### **The Road Ahead**

- My staff has also informed me that you wanted to hear my thoughts on whether there will be any changes in either people or policy on the US side during the new Bush Administration.
- I believe Mike Delaney may have already covered this issue, maybe not.
- On my part, I expect continuity in terms of policies. The GOP has also gained more seats in both Houses of Congress. As a consequence, we expect the TPA to be extended.
- I also want to add that all my colleagues and I here in Thailand look forward to continuing to work with all the members of the incoming administration and the USTR on the FTA. In particular, I look forward to continuing to work with Barbara Weisel, my US counter-part.
- Looking ahead, though, I do not wish to underestimate the difficulties that lie ahead. The Thai Government is still formulating a clear position on the many difficult and highly

contentious issues, like Labour and Environment, and Financial Services—and many aspects of IPR.

- There is also the political dimension of the talks. As there will be general elections in February, we are asking for the postponement of the proposed third round of talks, originally scheduled for December, until at least after the elections in February 2005, a new government is formed, and mandate to proceed is given.

**Note of Appreciation**

- That concludes my presentation. Before I close, however, I should like to thank the Thailand-US Business Council for organizing this event and hosting us such a wonderful luncheon. I know that you and your members have been staunch supporters of the FTA. I hope you will continue to support us through the talks and encourage you to make your voices heard.

Thank you.

-----