

American Cancer Society
American Heart Association
American Lung Association
Action on Smoking and Health – Thailand
Action on Smoking and Health – USA
Campaign for Tobacco Free Kids
Essential Action
Thailand Health Promotion Institute

December 9, 2003

The Honorable Tommy Thompson
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Room 639G
Washington, D.C. 20201

Dear Mr. Secretary:

We are writing to urge you to exclude tobacco products from the Thai-U.S. Free Trade Agreement expected to be negotiated over the next several months.

At the May 2003 World Health Assembly, Thailand and the United States both supported adoption of the Framework Convention on Tobacco Control, in which they recognized "that the spread of the tobacco epidemic is a global problem with serious consequences for public health that calls for the widest possible international cooperation and the participation of all countries in an effective, appropriate and comprehensive international response" and reflected "the concern of the international community about the devastating worldwide health, social, economic and environmental consequences of tobacco consumption and exposure to tobacco smoke."

As you know, prior to the FCTC, there is an unfortunate history of the United States using trade pressure to open up the Thai market to foreign cigarettes and to weaken important Thai public health measures designed to curtail smoking. We want to ensure that history is not repeated.

We believe that future trade policy and international trade agreements should be crafted consistent with the FCTC and ensure that they do not undermine life-saving tobacco control measures.

We fear that, unless tobacco products are excluded, a Thai-U.S. Free Trade Agreement could threaten sound tobacco control policies. We are especially concerned about four areas:

Intellectual property provisions. Even in the absence of a bilateral agreement, U.S. tobacco companies have invoked intellectual property protections in other trade agreements to contest Thailand's proposed health warning labels, arguing that they infringe on trademark rights. They also have challenged Thailand's ingredient disclosure law, claiming a violation of trade secret protections. In other nations, they have used the same trade agreements to oppose bans on the use of the misleading terms "mild" and "light," alleging that such prohibitions interfere with trademark-protected names that include such terms.

Technical barriers to trade. Tobacco companies have invoked technical barriers to trade provisions in other trade agreements to protest bans on the use of the terms "mild" and "light," arguing that they are not the least trade restrictive means to pursue the objective of ensuring that consumers are not misled into believing there is a health benefit to "mild" or "light" cigarettes. Technical barriers to trade provisions also could be used to challenge tobacco product content regulations and other tobacco control measures.

Tariff reductions. Any reduction in cigarette tariffs would be expected to reduce prices and stimulate competition among brands. Both of these effects are associated with higher smoking rates.

Foreign investment protections. Most worrisome are investment protections. Investment protections of the type included in the North American Free Trade Agreement (NAFTA) would give companies such as Philip Morris, BAT and Japan Tobacco standing to challenge directly national laws that they claim are tantamount to an expropriation of their property. Under NAFTA, such claims may be made on broad grounds. Philip Morris has already suggested that a Canadian ban on "light" and "mild" is tantamount to an expropriation of its trademark on products such as Benson & Hedges Lights and Rothmans Extra Light. We believe it would be disastrous to provide tobacco companies with the ability to directly challenge national or subnational tobacco control laws in Thailand under a NAFTA-style investment agreement.

These potential harms to tobacco control can easily be avoided simply by excluding tobacco products from the scope of a Thai-U.S. Free Trade Agreement. The rationale for doing this is fairly simple. Trade agreements are explicitly designed to promote and expand trade in beneficial products. Tobacco products are universally acknowledged to be harmful, not beneficial. Any increase in consumption causes additional suffering and death, as well as a net economic loss for the economy of the nation in which it is consumed and to the global economy. This distinction between a beneficial product and a harmful one essentially turns the traditional presumption in favor of free trade on its head with respect to tobacco products. Logically, the presumption should be against any action that would stimulate tobacco use.

Our concern about the inclusion of tobacco products in trade agreements is not merely theoretical. Econometric research has shown that, by 1991, liberalized trade in tobacco products already had raised smoking rates in Thailand, South Korea, Taiwan and Japan by about 10 percent over what they otherwise would have been. (Chaloupka and Laixuthai, 1996.)

Following through on the policy commitment made with adoption of the Framework Convention on Tobacco Control means government officials must be conscious of the impact of their work on the public health priority of curbing tobacco use. Inclusion of tobacco products in a Thai-U.S. Free Trade Agreement can only work to harm tobacco control efforts.

We look forward to discussing these matters with you as soon as possible. We will be in contact with your office to arrange a meeting at a mutually convenient time. In the meantime, please do not hesitate to contact any of our organizations with any questions regarding this matter.

Sincerely,



Matt Myers
President, Campaign for Tobacco-Free Kids



John Seffrin
CEO, American Cancer Society



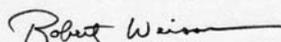
Cass Wheeler
CEO, American Heart Association



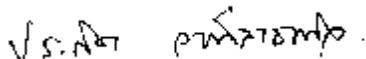
John L. Kirkwood
CEO, American Lung Association



John F. Banzhaf
Executive Director, ASH USA



Robert Weissman
Co-Director, Essential Action



Dr. Prakit Vathesatogkit
Executive Secretary, ASH Thailand



Dr. Hatai Chitanondh
President, Thailand Health Promotion
Institute & National Health Foundation