

Thailand Cigarettes Agreement

THE UNITED STATES TRADE REPRESENTATIVE

Executive Office of the President

Washington, D.C. 20506

November 23, 1990

The Honorable Amaret Sila-on

Minister of Commerce

Royal Thai Government

Bangkok, Thailand

Dear Mr. Minister:

As a result of recent consultations between representatives of the Royal Thai government and the United States government, it is my understanding that the Royal Thai government will take the following actions to implement its policies with respect to the importation, distribution, pricing, taxation, promotion, and labeling of foreign cigarettes in Thailand:

1. Thailand will provide foreign cigarette manufacturers, their subsidiaries, affiliates, branch offices and designated agents, open and nondiscriminatory access to the Thai market including the right to import, distribute, price and sell imported cigarettes.

Importation, distribution, pricing and sale of imported cigarettes shall occur independent of the control of the Thailand Tobacco Monopoly (TTM).

Thailand will provide national treatment, consistent with the relevant provisions and interpretations of the General Agreement on Tariffs and Trade, with respect to the importation, labelling, distribution, promotion, pricing, taxation and sale of imported cigarettes.

If there is any modification of the conditions of distribution or sale of cigarettes in the Thai market, it also will be applied on the basis of national treatment to all classes and brands of cigarettes whether imported or domestic.

2. In recognition that, effective October 9, 1990, Thailand no longer bans imports of cigarettes, it will permit any foreign cigarette manufacturer to import cigarettes directly into Thailand without restrictions on price, margins, quantity, brand, style, size, package configuration, or frequency of importation.

Foreign cigarette manufacturers or their designated agents will be solely responsible for all functions and activities related to the importation process and formal customs clearance and customs entry into Thailand.

Imports of cigarettes will be cleared through Thai customs expeditiously in accordance with applicable laws and standard procedures. The requirements to obtain an import license for cigarettes are contained in an Excise Department announcement of 12 October 1990. Once these requirements are met, import licenses will be granted without delay. Import license requirements will be applied in a manner consistent with normal commercial practices and considerations.

3. Imported cigarettes will be permitted to be sold by licensees at all licensed establishments at which domestic products are sold with the sole additional requirement that a license will be required to deal in imported

cigarettes. The requirements for obtaining a license to deal in imported cigarettes are essentially the same as those for obtaining a license to deal in domestic cigarettes. Once requirements are met, licenses will be granted without delay.

4. Foreign cigarette manufacturers, through their exclusive import agents, will be permitted to:

-- distribute imported cigarettes through licensed wholesalers, independent distributors, or subdistributors appointed by the foreign suppliers or their designated agents, or

-- distribute imported cigarettes directly to licensed retail outlets which sell cigarettes.

5. Any foreign cigarette manufacturer's designated agent may apply to the customs authorities to obtain access to the Port Authority's existing bonded warehouse. Upon satisfying reasonable requirements, such application will be favorably considered. Foreign cigarette manufacturers' designated agents will be able to determine warehouse inventory levels and determine the timing of the entry and exit of such goods into and out of these warehouses. Port Authority officials will expeditiously process the physical movement of such goods. Goods held in bonded warehouses will not be subject to payment of import duties and excise taxes until they are released from the bonded warehouse for sale in Thailand.

6. Retail prices for each brand or style of imported cigarettes will be established solely on the basis of freely competitive market forces in Thailand. Commercial terms, fees, commissions, retail margins, and prices to the trade will be determined solely by foreign cigarette manufacturers, importers, and distributors or wholesalers.

The Director-General of the Excise Department, Ministry of Finance, is required by law to collect excise taxes at source, to prevent tax evasion or tax avoidance and to determine and announce the retail price of cigarettes. Foreign cigarette manufacturers' designated agents are required, therefore, to notify in good faith the retail prices of their cigarettes to the Director-General for excise tax assessment and collection.

7. Advertising as well as sales promotional activities must conform to Thai laws, regulations and practices.

8. Domestic and imported cigarette manufacturers will be required to comply with government regulations on labelling including health warnings concerning cigarettes. In the event that the health warning is modified or any new health or other labelling requirements are to be imposed,

-- a minimum of nine months advance notice of the modification or new requirement and its effective date will be published in the Royal Gazette, and

-- all cigarettes in the Thai market, in inventory in Thailand or ordered with the approval of the Excise Department prior to the effective date of the modification or new requirement will be allowed to be sold in Thailand for a period of 12 months from the date of publication of the advance notice in the Royal Gazette.

Upon the granting of permission to foreign cigarette manufacturers' designated agents by the Ministry of Finance, foreign cigarette manufacturers may mint the approved excise tax emblem on the cigarette package at the point of production; consequently, packaging of such imported cigarettes will remain intact throughout the importation and tax collection process.

9. Thailand will treat the TTM at arm's length in its commercial activities; that is, with regard to the importation, distribution, taxation, or sale of cigarettes, Thailand will treat TTM as a private commercial entity engaging in normal commercial activity and will not grant TTM privileges over any other entity. All laws, regulations, and practices of the Thai government relating to the above activities, including any sanctions or penalties imposed, shall be applied on the basis of national treatment.

10. Representatives of the U.S. and Thai governments will consult promptly at the request of either party on any matter relating to market access for foreign cigarettes.

Finally, I would reiterate my concern regarding the availability of bonded warehouse facilities in Thailand. I strongly urge your government's prompt and positive response to our request that adequate facilities on

reasonable terms be provided to importers of foreign cigarettes. Access to such facilities is critical, and I welcome your offer to consult further on this.

I note that the Uruguay Round market access negotiations are addressing the issue of the level of the Thai import duty on cigarettes, and I strongly encourage favorable action on our request for a substantial reduction in that duty.

I also note that the consultations included discussion of the level and form of the current excise tax. I understand that both sides agreed that the level of tax should be related to the goals of discouraging contraband and achieving Thai domestic health policies. In my view, the level of import duty and excise tax currently assessed will result in a retail price of legitimate imported product far in excess of the current price of 30 to 35 baht per pack for contraband product. This result will not contribute to the elimination of contraband. I would welcome the opportunity to consult further in the near future on the issue of adjusting the level and the form of the excise tax.

I also understand the Thai Ministry of Finance requirement on an appropriate verification system in relation to paragraph 8 above and see the need for further consultation on this issue.

In anticipation that the measures set forth in paragraphs one through ten will be successfully and expeditiously implemented and will result in effective equality of market opportunity for foreign cigarettes in Thailand, I will terminate the investigation under U.S. trade law of Thailand's policies and practices relating to market access for foreign cigarettes.

I would appreciate your confirmation of my understanding of the Thai government's policies and actions with respect to this matter.

Sincerely,

Carla A. Hills

No. 0704/7365

Ministry of Commerce

Bangkok, Thailand

November 28, 1990

Dear Madam Ambassador,

This is to acknowledge your letter of November 23, 1990.

The result of recent consultations between representatives of the United States government and the Royal Thai government, as reflected in the letter from paragraphs one through ten, conforms essentially with the policies and practices that the Royal Thai government has taken or will take with respect to the importation, distribution, pricing, taxation, promotion and labelling of foreign cigarettes in Thailand.

I must emphasize that free and open trading system under the multilateral framework of the General Agreement on Tariffs and Trade is central to the Royal Thai government's trade policy. Hence, it is to be understood that we are fully committed to implementing policies and measures consistent with our rights and obligations under the GATT. In this context, I should further indicate that a sustained reduction of tobacco-products consumption, including cigarette-smoking, is critical to our public health policy.

In view of the GATT Council's adoption of the Panel report on "Thailand-Restrictions on importation of and internal taxes on cigarettes" and the subsequent implementation of policies and measures by the Royal Thai government and in view of the result of the consultations between representatives of the United States government and the Royal Thai government, it is my understanding that the United States government will terminate the investigation of Thailand's policies and practices relating to market access for foreign cigarettes.

On such understandings, the Royal Thai government would thereafter welcome the opportunity to consult further on the various issues of the United States government's concern indicated in your letter.

Yours sincerely,

Amaret Sila-on

Minister of Commerce

Ambassador Carla A. Hills

United States Representative

Washington, D.C.

---

*TANC offers these agreements electronically as a public service for general reference. Every effort has been made to ensure that the text presented is complete and accurate. However, copies needed for legal purposes should be obtained from official archives maintained by the appropriate agency.*