



January 6, 2006

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the United States Trade Representative
1724 F Street, NW
Washington, DC 20508

Dear Ms. Blue:

On behalf of Humane Society International (HSI) and The Humane Society of the United States (HSUS), and pursuant to the *Federal Register* notice at 70 Fed. Reg. 70911-12 (Nov. 23, 2005), please accept the following comments on the interim environmental review of the United States – Thailand Free Trade Agreement (U.S.-Thai FTA).

Founded in 1954, The HSUS today leads a family of organizations, including its international affiliate Humane Society International, with a constituency of 9.5 million and a significant global presence. HSI is a member of the Trade and Environment Policy Advisory Committee (TEPAC) in the United States, advising the United States Trade Representative (USTR) and the Environmental Protection Agency (EPA) on international trade policy. In addition, HSI also promotes humane, sustainable, and equitable development in discussions of international trade and economic policy at the World Trade Organization (WTO). Locally, HSI implements a number of trade capacity building and technical assistance programs in several developing WTO Member countries including a number of countries located in Central and South America. Through these programs, HSI supports economic development efforts including humane sustainable agricultural practices and habitat protection policies.

These comments address the preliminary findings of the U.S.-Thai FTA interim environmental review and other issues that should be considered as the free trade agreement is finalized in preparation for Congressional notification and consideration.

Promoting the protection of all animals worldwide

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I. Introduction

As set forth in the interim environmental review, the Trade Act of 2002 provides for certain objectives and priorities relating to the environment that are to be met by the United States in the negotiation of free trade agreements. These include: (1) ensuring that trade and environment policies are mutually supportive and seek to protect and preserve the environment and enhance the international means of doing so, while at the same time optimizing the use of the world's resources;¹ and (2) seeking provisions in trade agreements under which the parties to those agreements strive to ensure that they do not weaken or reduce the protections afforded in domestic environmental and labor laws as an encouragement for trade.² In order to meet the above negotiating objectives with respect to environmental considerations, HSI believes the essential inquiry for negotiators of the U.S.-Thai FTA is how to ensure that trade and environment policies are mutually supportive for both parties.

HSI is in agreement with the interim environmental review that although the U.S.-Thai FTA will likely not have significant direct effects on the U.S. environment, "the importance of trade to the Thai economy and the importance of the United States as a trading partner suggest[s] that there may be economically driven environmental effects of the FTA in Thailand."³ Although Thailand has taken substantial steps forward in recent years to ensure greater protection of its wildlife, endangered species, and their habitat, much more can be done to further those environmental initiatives in the future. In addition, the devastation caused by the tsunami in December 2004 exacerbated concerns over continuing environmental degradation and inadequate protections for wildlife throughout Thailand. Through reconstruction efforts, and supported by increased trade resulting from the U.S.-Thai FTA, Thailand has an opportunity not only to rebuild vital infrastructure but also to reform and improve upon current agriculture, tourism, and wildlife and habitat protection practices that, pre-tsunami, were insufficient to protect against ongoing environmental degradation.

II. Transboundary and Global Issues

Although the primary focus of the interim environmental review is the direct impacts on the United States as a result of the U.S.-Thai FTA, as noted above, the direct impact on the U.S. environment due to the FTA is expected to be minimal. Strong consideration, therefore, must be given to the impact the U.S.-Thai FTA will have on Thailand, as well as global and transboundary environmental resources including migratory species, marine and coastal habitats, invasive species, and endangered wildlife. As environmental problems do not respect continental or national boundaries, environmental protection and sustainable development initiatives should be a global priority. Increased trade, investment flows and travel between the United States and

¹ Trade Act of 2002, P.L. 107-210, §2102(a)(5).

² *Id.* at §2102(a)(7).

³ Interim Environmental Review United States – Thailand Free Trade Agreement, Office of the United States Trade Representative (November 2005) at ii [*hereinafter* U.S.-Thai IER].

Thailand as a result of the proposed U.S.-Thai FTA will make these initiatives all the more relevant.

As noted in the interim environmental review, Thailand remains a developing country that continues to face considerable challenges in its attempt to balance development goals and protection of the environment. Indeed, many of the environmental challenges facing Thailand are transboundary and/or global in nature, including coastal and marine resource depletion, illegal wildlife trade, environmentally harmful agricultural practices, air pollution, and the enforcement of environmental laws and regulations.⁴ These issues and their potential impacts on both Thailand and the global environment will be discussed at length below.

1. Coastal and Marine Resources

The interim environmental review correctly acknowledges that “Thailand’s coastal and marine resources are under increasing pressure from pollution, overfishing and development.”⁵ HSI also agrees with the assessment of the interim environmental review that Thailand’s 2,000 miles of coastline “provides critical habitats for migratory marine species of importance to the United States.”⁶ Destruction of Thailand’s coastline due to increased aquaculture activities, development of tourism-related businesses, and the December 2004 tsunami are all of great concern to HSI.

One of the biggest threats to Thailand’s natural coastal ecosystems has been the destruction of mangroves which provide habitat and shelter for wildlife. Recently, Thailand has become one of the world’s largest shrimp producers, based in part on the extensive conversion of natural mangroves into shrimp farms and other aquaculture ventures.⁷ In addition to conversion for agricultural purposes, increasing coastal population, logging, salt production, tin mining, coastal industrialization and development for tourism have all combined to accelerate the destruction of natural mangroves.⁸ Indeed, from 1961 through 2002 mangrove habitat in Thailand has been reduced by more than forty percent.⁹

Although Thailand has taken some action to alleviate mangrove destruction through the Royal Thai Forest Department’s Mangrove Rehabilitation Program and the five-year Action Plan for Mangrove Management in the Gulf of Thailand,¹⁰ more must be done to protect existing mangroves from further development and to restore some of the wildlife habitat that has already been destroyed. HSI, therefore, supports efforts by the United States and Thailand associated with the implementation of the International Wetlands Convention (Ramsar) to suspend the promotion and creation of unsustainable

⁴ U.S.-Thai IER at 4.

⁵ *Id.* at 8.

⁶ *Id.* at 23.

⁷ *Id.* at 8.

⁸ *Id.* at 9.

⁹ *Id.* at 8-9

¹⁰ U.S.-Thai IER at 9.

aquaculture activities that harm coastal wetlands. The United States, however, must ensure that studies of the environmental and social impacts of increased aquaculture activities in Thailand are completed and their findings given full consideration before implementation of the Ramsar can be considered successful.

HSI is also very concerned about ongoing development of coastal marine beaches for tourism-related activities in Thailand. Increased conversion of beaches for use by tourists contributes to the elimination of nesting areas for sea turtles. Although Thailand is working to reduce the impact of tourism on sea turtle nesting beaches, the expected increase in tourism as a result of the U.S.-Thai FTA may have unforeseen longer term effects that cannot be currently measured. In addition to increased agriculture and tourism-related activities, the extensive damage to the coastline as a result of the December 2004 tsunami further reduced available nesting sites for sea turtles placing even greater pressure on this already very fragile ecosystem.

According to the interim environmental review, environmental laws and regulations in Thailand currently face enforcement challenges for a variety of reasons including “scarce resources; overlapping or conflicting authorities; capacity constraints at the local level; poor coordination among agencies and a fragmented environmental regulatory system.”¹¹ In conjunction with the U.S.-Thai FTA, therefore, it is imperative that the United States assist Thailand by engaging in capacity building and technical assistance projects intended to help alleviate enforcement problems and to move forward with the Royal Thai Government’s initiatives to preserve and protect its coastal and marine resources, including mangroves and the wildlife that live there. HSI strongly believes that development policies which do not address the protection of wildlife and habitat as natural resources will have limited success and are of questionable sustainability.

2. Illegal Trade in Wildlife (CITES) and Wildlife Conservation

Although Thailand has been a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) since 1983, illegal trade in wildlife continues to be a significant issue in the country.¹² As confirmed by the interim environmental review, Thailand has “well-established domestic markets for wild animals and plants that are used for food, traditional medicines and crafts, and commercial purposes including restaurants, pet trade, and religious ceremonies. Thailand also exports wild plants and animals throughout Asia and serves as a regional hub for both legal and illegal wildlife trade.”¹³ The illegal trade of wildlife in Thailand is an issue of great concern for HSI. Several highly endangered species are at the center of illegal wildlife trade from Thailand including freshwater and terrestrial turtles, tigers, Asian elephants, and crocodiles. Even where the Royal Thai Government has passed legislation in an effort to protect wildlife, a lack of resources, inadequate training, institutional shortcomings, unceasing public demand for exotic pets, and persistent poverty that

¹¹ *Id.* at 7.

¹² *Id.* at 10.

¹³ *Id.* at 22.

motivates people to enter into this trade all have combined to prevent effective enforcement and protection efforts.

Although it may be unlikely that a U.S.-Thai FTA would cause an increase in the illegal trade of wildlife or endangered species, that does not mean the issue need not be addressed by Thailand. Indeed, Southeast Asia, including Thailand, remains a region where wild animals, many of which are endangered, remain available for purchase. For this reason, conservation of wildlife and their habitat must be addressed through education as well as other means. HSI supports the early efforts and encouragement of the United States to help combat the illegal trade of wildlife from Thailand including workshops to develop an ASEAN wildlife trafficking enforcement network, as well as the U.S. sponsored global Coalition Against Wildlife Trafficking (CAWT), which is focusing its initial efforts in Asia.¹⁴ These efforts, however, are undermined when Thailand engages in activities such as the transfer of over 100 wild animals from Kenya to a substandard zoo in Thailand.¹⁵

Where necessary, therefore, the United States must assist Thailand with capacity building and technical assistance programs to address shortcomings in the law, regulations or other protections for wildlife and in the enforcement mechanisms and procedures under CITES. Such programs should first focus on the provision of resources to better train the authorities responsible for carrying out Thailand's commitments under CITES, including customs and enforcement officials. In addition to training, the United States should endeavor to assist Thailand to improve cooperation between public, private and non-profit entities engaged in combating the illegal trade in wildlife; change public perceptions about the desirability of wild pets; and provide alternative sources of income for people who are engaged in this trade.

HSI believes that to be credible, a comprehensive solution must be developed to change the social conditions that drive people to supply the animals that fuel the illegal trade. To this end, HSI supports the use of sustainable tourism to create positive incentives that encourage wildlife traffickers to move away from this illicit trade and create an alternative source of income, and at the same time protect wild animals in their native habitat. This model has been used successfully by HSI in conjunction with partners throughout Central America to build and strengthen the protection of sea turtles and their nesting sites.

In addition, HSI strongly believes that there is an important role for non-governmental organizations (NGOs) and private sector entities to play in capacity building efforts to protect wildlife and support other sustainable sources of income. Given the high public profile commanded by endangered species, capacity building directed towards improved CITES compliance is highly visible and can be a successful way to demonstrate the environmental benefits that result from the U.S.-Thai FTA.

¹⁴ *Id.* at 10.

¹⁵ See Humane Society International Decries Plan to Transfer Wild Animals from Kenya to Thai Zoo (Nov. 18, 2005), available at http://www.hsus.org/press_and_publications/press_releases/humane_society_international.html

Finally, public perception must change regarding the keeping of wild animals as pets in order to reduce the demand for illegal wildlife. HSI believes it is crucial to develop programs to raise public awareness on the importance of protecting animals in their wild habitat through environmental education programs in schools and through media campaigns.

In sum, HSI agrees with the interim environmental review that cooperative efforts between the United States and the Royal Thai Government—particularly on the exchange of information about patterns of and potential or actual problems with the illegal wildlife trade—will be an effective tool for improving environmental governance with respect to CITES. However, this effort will require dedicated resources that are greater than those presently allocated to this effort by the U.S. Government.

3. Shrimp/Turtle

HSI is well aware of the dangers posed to sea turtles by the numerous threats highlighted in this section of the interim environmental review.¹⁶ In addition, HSI recognizes that the protection of sea turtles is an important issue for the United States as evidenced by the protections enacted by Congress and high profile disputes at the World Trade Organization. Currently, Thailand is frequented by green, hawksbill, olive ridley and leatherback turtles. For this reason, HSI agrees with the interim environmental review that shrimp trawlers used by Thai fishermen are a significant cause of turtle mortality, and that turtle-excluder devices (TEDs) are an effective tool to decrease the number of sea turtle deaths.

As noted in the interim environmental review, shrimp products are a significant Thai export to the United States. Frozen and other un-canned shrimp exports from Thailand to the United States varied from \$945 million in 2000 to \$444 million in 2004.¹⁷ Section 609 of Public Law 101-162, however, prohibits the importation of shrimp or shrimp products harvested with commercial fishing technology that can harm sea turtles into the United States. Although it enacted regulations requiring the use of TEDs in 1997, Thailand has not yet received certification by the United States. As stated in the interim environmental review, Thailand's failure to obtain certification is a consequence of its failure to demonstrate the effectiveness of its regulations.¹⁸

As shrimp is one of the most exported products to the United States from Thailand, HSI strongly encourages the U.S. Government to remain vigilant in monitoring commercial shrimp trawling activities and enforcing Section 609 in Thailand even after the entry into force of a U.S.-Thai FTA. HSI supports the interim environmental review in so far as it confirms that the provisions of the proposed U.S.-Thai FTA will not affect the trade restriction in Section 609 of Public Law 101-162, or the manner in which the

¹⁶ The manner in which the IER singles out the danger to sea turtles posed by shrimp trawlers, however, seems to unnecessarily discount the threat posed by other human activities such as increasing coastal population, tourism-related activities, poaching, industrial pollution and long-line fishing.

¹⁷ U.S.-Thai IER at 41, n.64.

¹⁸ *Id.* at 25.

Department of State assesses and makes decisions on the effectiveness of foreign governments in their implementation and enforcement of their domestic laws related to the protection of sea turtles.¹⁹

As verifications of compliance and enforcement efforts under Section 609 are conducted by the Department of State on a bi-annual basis, HSI supports a greater role for NGOs in monitoring the day-to-day use of the devices in order to improve compliance and make enforcement in the region more credible. Such a role could be encouraged through the enhanced cooperation activities envisioned by the U.S.-Thai FTA. Regardless of whether interim enforcement of the use of TEDs is done primarily by local law government officials or if NGOs assume a greater role in this task, additional resources will be needed and should be allocated for cooperative efforts to improve compliance in this area.

4. Sustainable Tourism

The intersection between sustainable economic development, environmental protection and conservation efforts is quite clear when examining the issue of tourism in Thailand. Indeed, Thailand has engaged in the promotion of areas where tourists are able to observe native species in their natural habitat. In 2004, of the approximately 11 million tourists to visit Thailand, about 550,000 were Americans.²⁰ Simply put, tourism has the potential to provide enormous economic benefits to the region if it is planned and managed in a sustainable fashion. Such planning and management will require a great deal of thoughtfulness and input from civil society and experts in a number of disciplines.

In addition to its economic potential, it is also quite clear that tourism poses significant threats to the environment in Thailand if promoted in an unsustainable manner. Additional tourism may result in increased development of beaches and other areas that support wildlife, especially nesting sites for sea turtles. The promotion of tourism in such regions by Thailand, however, illustrates the importance of wildlife and habitat to the domestic economy through sustainable tourism programs.

HSI applauds current U.S. Government assistance in Thailand and throughout Southeast Asia that addresses some of the environmental threats caused by increased tourism, and believes the United States should continue these efforts through future cooperative activities with appropriate resources allocated for sea turtle conservation. Greater capacity building and technical assistance efforts, however, are desperately needed on this issue in Thailand. The Royal Thai Government must make the protection and humane treatment of wildlife a priority in their tourism development programs. Cooperation activities between Thailand and the United States should be undertaken to strengthen the ability of the Royal Thai Government and its ministries in order to conduct

¹⁹ Section 609 requires the Department of State to make annual certifications to the U.S. Congress for countries that meet the requirements of Section 609 in terms of sea turtle protection for commercial shrimp trawl fisheries.

²⁰ U.S.-Thai IER at 4.

environmental, wildlife and habitat impact assessments before tourism and related activities are carried out.

Although there are many opportunities for economic growth in the area of tourism, it must be remembered that tourists flock to Thailand because of its natural beauty, its wildlife and habitat including jungles, rain forests, mangroves, and beaches. Most tourists from United States, Europe, and other developed countries would find the cruel and inhumane treatment of wildlife unconscionable. If implemented in a sustainable manner, sound conservation and environmental protection efforts can be successfully combined with tourism-related activities to increase the economic potential of tourism in Thailand.

5. Invasive Species

HSI agrees with the interim environmental review's assessment that increased trade created by the U.S.-Thai FTA may enhance the risk of the movement of invasive species between Thailand and the United States.²¹ Indeed, Thai exports to the United States involve several products associated with a high risk of becoming invasive species, including ornamental fish which accounted for more than \$8 million, or twenty percent, of total U.S. ornamental fish imports in 2004.²²

The introduction of invasive species through trade in ornamental plants, ornamental fish or tourism may cause a direct and dangerous impact on delicate ecosystems and wildlife habitat in the United States. HSI is in agreement with the interim environmental review that subtropical regions of the United States including Hawaii, the Pacific Island territories, South Florida and the Caribbean are the most vulnerable to the introduction of invasive species from Thailand. In addition to the examples of dangerous alien species listed in the interim environmental review, processed wood products and packing materials are also of great concern as vectors for invasive species involved in trade.

Given the potentially serious environmental consequences of invasive species, and given the fact that the U.S.-Thai FTA will not require either country to alter its framework for managing the introduction of non-native species, HSI encourages both the U.S. and Thai Governments to continue, and expand where possible, the careful monitoring of this issue. As stated in the interim environmental review, invasive species is a topic suitable for close cooperation between the parties, especially in research, monitoring, and assessment of the risks involved. This is an important issue to which all relevant government agencies should dedicate resources within the region.

²¹ *Id.* at 19.

²² *Id.* at 45.

III. Environmental Cooperation

The interim environmental review indicates that the United States and Thailand expect to enter into an environmental cooperation agreement similar to those agreed to in conjunction with the negotiation of the U.S.-Chile, U.S.-Singapore and DR-CAFTA FTAs.²³ Potential areas for cooperation activities as acknowledged in the interim environmental review include: wildlife trade; invasive alien species; environmental technology and small and medium enterprises; and enforcement of environmental laws.²⁴

The U.S. Government has consistently emphasized the importance of environmental cooperation and the crucial role it plays to ensure that trade and environment policies included in free trade agreements are mutually supportive. In order for this goal to be realized, however, it is important that adequate and consistent resources are allocated to support environmental cooperation activities. In looking at past environmental cooperation agreements, HSI has noticed and is concerned that the United States has failed to establish a credible and robust method for funding work programs under the agreements. That being said, HSI is hopeful that some of the examples listed in the U.S.-Thai FTA interim environmental review will continue to be supported with the adequate funding and attention necessary for successful cooperation.

Annex II of the interim environmental review provides examples of recent environmental cooperation activities between the United States and Thailand. HSI supports a number of these activities including efforts by the U.S. Department of the Interior to conduct a survey establishing the presence or absence of Sumatran rhinoceros, ecological monitoring of tigers and prey species, law enforcement training for park staff, education and outreach programs of wildlife awareness for local communities, and efforts to reduce poaching by providing communities with alternative sources of income including microfarming projects.²⁵ HSI also supports efforts by the U.S. Environmental Protection Agency to assist in the development of a symposium on the use of TBT based anti-fouling paints for ship hulls that threaten shellfish and other marine life.²⁶

Finally, HSI is very hopeful that the National Marine Fisheries Service of the U.S. Department of Commerce is successful in its post-tsunami endeavor to rebuild and focus efforts on the evaluation of the sea turtle nesting and foraging in the affected areas. HSI is enthusiastic about the stated goal of the program which is “to ensure that conservation activities and protection of nesting beaches will help to avoid the extinction of the nesting population in the area and contribute to restoration.”²⁷

²³ *Id.* at 28.

²⁴ *Id.* at ii.

²⁵ *Id.* at 30.

²⁶ U.S.-Thai IER at 31.

²⁷ *Id.* at 33.

IV. Conclusion

HSI believes that both Thailand and the United States recognize the urgent need to preserve and protect their respective environments, as well as the global environment, in order to ensure a better future for their citizens. Sufficient resources, both financial and human are needed, however, to provide the necessary tools to accomplish the economic development desired in a sustainable manner. HSI believes the Thai people have the desire, creativity and incentive to find solutions to the many problems facing their country; they simply need assistance to succeed in these efforts.

Overall, HSI considers the interim environmental review to have touched upon the important topics of concern related to the effects of the proposed U.S.-Thai FTA on the environment. Most importantly, the possible role of cooperative activities is highlighted throughout the interim environmental review as a means to address environmental issues affiliated with increased trade between Thailand and the United States. The biggest threat to these ambitions, however, would be a lack of sufficient resources on the part of the U.S. Government to implement meaningful programs. HSI, therefore, would have liked to see more emphasis in the interim environmental review placed upon the importance of the allocation of adequate resources by the U.S. Government to ensure effective capacity building and technical assistance for each of these potentially problematic issues discussed in these comments.