WILLKIE FARR & GALLAGHER

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036-3384
Tel: 202 328 8000
Fax: 202 887 8979

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Ms. Gloria Blue
Executive Secretary, TPSC
Office of the USTR
600 17th Street, NW
Washington, D.C. 20508

FR0001@USTR.gov

Re: Thailand Section 201 TPSC Rebuttal Brief

Dear Ms. Blue:

The members of the TPSC are to be commended for the extensive time and attention they have given to studying the ITC's injury findings and remedy recommendations, and to the opportunities given to parties to express their view on what to do. The meaningfulness of this USTR-led process is soon to be tested by the President's final decision regarding the Article 9.1 exception for developing countries. Through this process, the Article 9.1 issues have crystallized and narrowed into clear choices. This brief is submitted on behalf of the Royal Thai Government and Thai steel producers to advise the U.S. Government of their view on how the exception should operate to the benefit of Thailand and the United States.

With respect to mutual interests, it is worth remembering that Thailand and the United States are similarly situated when it comes to steel trade. Both countries export small amounts of steel products to one another, with imports from Thailand accounting for only 0.65 percent of the

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steel imports under investigation.[1] And Thailand's exports to the United States have been high-priced.[2] Thailand, like the United States, is a net steel importer. In fact, Thailand is the world's tenth largest steel importer overall and the fourth largest net steel importer, in absolute tonnage. These are remarkable facts given that Thailand's economy is one-hundredth the size of the United States'. This explains why Thailand has been an early and active and vocal[3] supporter of U.S. efforts in the OECD.

Thailand's biggest concern with this Section 201 investigation is not access to the U.S. market per se, but the large volumes of steel products that will be redirected to Thailand and elsewhere if the U.S. market is effectively closed by the President's decision. Once this were to happen, other countries will follow suit with copycat measures (as several already have by reverting to higher bound tariff rates on steel products) and international steel trade will surely spiral further downward.

The choices for the application of Article 9.1 are now very clear. If trade restraints are imposed, the treatment of Article 9.1 will have a heavy influence on 1) developing countries'

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1 United States steel exports to Thailand totalled $87.5 million over the POI.

2 In the recently completed U.S. antidumping and countervailing duty cases on hot-rolled steel from 11 countries, Thailand's AUV's were the second highest. USITC Pub. 3446, at Appendix C. Thailand received the second lowest AD margin (3.86 percent) and the lowest CVD margin (2.38 percent) even under the policies and methodologies of the Department of Commerce in "calculating" these margins. No injury claim was ever laid to hot-rolled steel from Thailand. Thailand is subject to orders due only to the ITC's "cumulation" practice whereby injury from one subject country constitutes injury caused by all. In the case of welded pipe, the Thai exporter's dumping margin is less than two percent.

3 See Robert Guy Matthews, *Foreign Steelmakers Face U.S. Pressure to Reduce Output*, The Wall Street Journal (December 18, 2001), and *Thailand to back U.S. at OECD Paris meet*, American Metal Market (September 17, 2001).

reaction to the President's decision, 2) developing countries' views of the United States' agendas in multilateral negotiations, 3) developing countries' continued support for the U.S. efforts in the OECD to address world non-economic steel capacity, and 4) the credibility of domestic producers' opposition to meaningful application of Article 9.1. The President's application of Thailand's position on Article 9.1 would serve U.S. interests on all four scores and be immune from attack in the WTO.

Thailand raised Article 9.1 early and thoroughly, in three separate briefs and hearing testimony in the ITC phases and repeatedly during the TPSC process. The issues have been fully vetted. Lawyers for domestic producers[4] have not challenged that Article 9.1 is mandatory nor that the ratios are to be calculated based on volume. They agree that its application should adhere to the ITC's like product delineations, and thereby avoid questions of parallelism.[5] They also agree that it applies only to WTO Members that are designated GSP[6] beneficiaries. These areas of agreement have important practical ramifications in that the scope of any Article 9.1 exception is substantially narrowed. For example, it would not encompass any countries that are

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4 Dewey-Skadden Comments to TPSC at 40-41 and Exhibit 14 (January 4, 2002).

5 Two ITC like products are of major concern to Thailand: 1) flat-rolled carbon steel, and 2) welded carbon pipe (non OCTG).

6 Another alternative is to use the list of market-economy developing countries designated by USTR for differential de minimis and negligibility standards for purposes of U.S. countervailing investigations. 63 Fed. Reg. 29945 (June 2, 1998). See WTO Agreement on Subsidies and Countervailing Measures, Article 27.10.

not GSP (e.g., China, Mexico, and Malaysia), nor any that are GSP but not WTO members (e.g., Russia, Kazakhstan, and Ukraine).[7]

The single significant variable in issue is the time period over which the Article 9.1 exception is calculated. The domestic mills' lawyers advocate either 1998-2000 or 2000, for no reason other than that these periods would, with application on a like product basis, completely negate Article 9.1. Despite this being a live issue from Day 1, they simply have never provided a reasoned basis for the time periods they urge. Thailand trusts that the President will not decide this important issue based on the baldly outcome-determinative and unreasoned demands of Big Steel.

Thailand advocates the use of 1998, and with good reasons. Given the bell curve of imports over the POI, the validity of any import restrictions must be based on 1998, particularly with respect to the increase in imports and the causation criteria. Certainly this was the central telltale period argued by the domestic mills and union before the ITC, and it is the fulcrum year on which rests the ITC's injury determination.[8] The U.S. Government repeatedly points to 1998

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7 Under U.S. law, CBERA and ATPA countries receive special statutory exemptions much more lenient than Article 9.1. Because these are specific statutory tests, they control over Article 9.1, a circumstance that no nation benefiting from these lenient tests would be foolhardy enough to put in jeopardy. In any event, if the small imports from these countries made a difference in the application of Article 9.1, it would have to be by exceeding the Article 9.1 collective threshold of 9 percent, thereby completely negating the benefit of any such challenge. Finally, any CBERA or ATPA country that might consider challenging this application of Article 9.1 should realize that, were they to succeed in the WTO, the U.S. "cure" would be repeal of the CBERA and ATPA statutory exceptions. Given this, there is no real risk of such an appeal.

8 ITC Report at 51.

as the import problem year in its refreshingly candid December submission to the OECD.[9] But for 1998, the POI midpoint, it is doubtful that we would all be here.

It would be anomalous, to say the least, if the legal and factual justifications for import restraints turn on what happened in and flowed from 1998, as they must, but a different period is used for the application of Article 9.1. There would be no other conclusion by much of the developing world but that a period other than 1998 was selected only to avoid U.S. obligations under Article 9.1 and deny poorer nations the paid-for benefit of their WTO bargain.

Developing countries may not be significant countries in terms of world GDP, but they can influence multilateral outcomes. Collectively they have proven capable of frustrating U.S. trade negotiating objectives when those objectives are perceived as favoring rich countries over poor ones. Witness Seattle. The appropriate application of Article 9.1 certainly implicates "factors related to the national economic interest of the United States . . . ." 19 U.S.C. §2253(a)(2)(F). It would be folly for the United States to needlessly add fuel to a still smoldering fire by denying developing countries their rights under Article 9.1 when their steel production capacities and roles in the U.S. market are so puny compared to the major players. Instead, building on Doha, the more reasoned path is for the United States to apply Article 9.1 in a manner that best serves the United States' broad interests, and thereby solidify further support from its closest trading partners in the developing world.

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9 U.S. December 2001 Report to OECD at 8, 11, and 13.

Use of 1998, the year the world felt the brunt of the Asian financial crisis, has independent merit for several reasons. It is the best time to assess whether or not developing country imports were part of the problem. Or did they not contribute to the 1998 surge of imports on which this case rests? Any period selected, regardless of the duration, will be a snapshot, whereas 1998 is emblematic.

Use of 1998 is consistent with past U.S. practice which recognizes that there is no requirement that the most recent period apply as Article 9.1 stands independent of the quota allocation period directed by Article 5.2 of the Agreement on Safeguards. For example, in Wheat Gluten the ITC's POI was 1993-1997, but Article 9.1 was applied on the basis of July 1993 to June 1995, not the most recent years. This is analogous to applying 1996 and 1997 in this case. More to the point, in Broom Corn Brooms and Line Pipe the United States has justified its applications of Article 9.1 based on the symmetry with the import surge periods in those cases.

There are further practical implications[10] from using 1998 that are beneficial to the United States, and here Thailand and domestic producers agree. If a developing country individually exceeds Article 9.1's threshold of three percent in the base period, it does not qualify for the exception regardless of whether the exception is otherwise applicable. Thus, use

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10 Many of the developing countries excepted under Thailand's proposed Article 9.1 application would remain subject to the multiple U.S. antidumping and countervailing duty orders on plate (South Africa, India, and Indonesia), hot-rolled (Thailand, Argentina, and South Africa), welded pipe (Thailand, Turkey, India, and Argentina), and, potentially, cold-rolled (Thailand, South Africa, Argentina, India, Turkey, and Venezuela).

of 1998 on a like product basis would disqualify Brazil, a GSP country and WTO member that is a major producer and exporter of flat-rolled steel products.

Finally, Article 9.1 has a continuing, built-in surge control mechanism separate and apart from existing antidumping and countervailing duty orders. As the United States did with Poland in Wheat Gluten, if imports surge from a developing country initially exempted under Article 9.1, the United States can unilaterally subject those imports to the import restraints. When this is to be assessed is undefined by Article 9.1 ("as long as") and the ITC's mid-term review would be logical. Assuming that any period of import restraints in this case begins as three years and one day (consistent with past practice), the statutory timing is such that the ITC's mid-term review will commence just one year after the Presidential Proclamation. How this issue would be assessed (i.e., whether an exempted developing country later surged above three percent of . . . what?) is an important trade policy control lever available to the United States in the future under Article 9.1. The parameters should not be prematurely defined now by hypothesis. To do so would only limit the United States' future options based on speculation concerning unknown developments it can later control. It is better to have this uncertainty remain for a short while as an immediate check.

Thailand, like most developing countries, needs access to the U.S. market to continue to improve the quality of life for its citizenry. In the scheme of things, Thai steel exports to the

United States are and can be only exceedingly small,[11] but their value is important to this small country with a per capita income of $2,000.

As Ambassador Zoellick recognized in his article read around the world with heartfelt appreciation soon after September 11, world trade, and the United States' leadership role in promoting liberalized trade, remain the bedrock of international harmony. It would sully this guiding vision if developing countries are denied meaningful application of Article 9.1 by selection of a base period for no reason other than eviseration of the mandatory exception, as demanded by Big Steel.

We appreciate this opportunity, and those extended over the past weeks, to make known to the TPSC, Ambassador Zoellick, and President Bush, Thailand's views on this important issue.

Respectfully submitted,

Kenneth J. Pierce
Russell L. Smith
Jocelyn C. Flynn

Counsel to the Royal Thai Government and Thai Steel Producers

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11 Thailand consumes about 9 million tons of steel products in a year, but has raw steel production capacity of only about 3 million tons.