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The Nation

## **Govt could be sued if US gets its 'usual FTA'**

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Local activists have warned that the free-trade agreement being negotiated with the US could create a dispute settlement body that would allow US investors to sue the government if investment contracts are breached.

Jacques-Chai Chomthongdi, representing the non-government organisation Thai FTA Watch, said Thai trade negotiators should study the agreement carefully. Drafts of the agreement call for ad-hoc arbitration panels that would hear disputes outside of the court system, similar to provisions in other FTAs the US has entered into, according to a source.

Some observers are concerned that Thailand is giving up too much in its rush to sign the agreement.

"US investors may be able to sue the Thai government if there's changes in Thai law even though not a single dollar has been invested in Thailand," he said, speaking at the Foreign Correspondents' Club on Wednesday night.

Thai trade negotiators will travel to Hawaii next week to meet with their US counterparts. They are expected to hash through a number of contentious issues, including access to life-prolonging Aids drugs, exports of Thai agricultural products, anti-piracy measures and property ownership for foreigners living in Thailand.

Some members of the audience at the Wednesday night meeting were concerned that arbitration provisions in the FTA agreement may enable US investors to raise business disputes relating to US interests outside the court.

According to Jeffrey Race, an American who lives in Thailand and recently testified before the US Congress on the FTA, the agreement may actually provide three choices. Investors could choose to file a suit in a local court, enter the international arbitration system, or use the dispute settlement mechanism created by the FTA.

The Singapore-US FTA, considered a template for the Thai FTA, includes the same dispute settlement provisions, as does the United States' agreement with Chile. The US sought in the Singapore and Chile deals to craft a dispute settlement forum that reduced litigation by focusing on consultations between parties. The theory goes that open public hearings, publicly releasing legal documents and the presence of third parties would foster transparency and investor confidence.

These FTAs provide for ad hoc dispute panels.

Joseph Yun, the US embassy's economic affairs counsellor, declined to discuss investment protection in the pact, saying negotiations were still underway. He pointed out that US business activities in Thailand have long been protected by the Thai-US Treaty of Amity, which gives preferential treatment to US investors in Thailand and vice versa.

The World Trade Organisation's regulations requiring all members to give fair treatment to one another allowed Thailand and the US to extend preferential treatment under the treaty for 10 years. But it will expire by the end of the year.

There is also the possibility investment protection provisions would be placed under the FTA after they expire in the treaty, an informed source said.

Jiraporn Limpananont, who represents the pharmaceutical sector, urged the government not to give special patent protection to US pharmaceutical producers under the FTA. She said extending patent terms from 20 years from the filing date of the patent should not be accepted, otherwise consumers would be forced to pay higher prices.

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