

EU-THAILAND FTA NEGOTIATIONS: IUU FISHING AND HUMAN RIGHTS REMAIN OBSTACLES

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Thailand's fishing industry, which at its height saw as many as 200,000 migrant workers from neighboring Laos, Myanmar and Cambodia caught in a brutal system of abuse, withered global criticism until eventually, the European Union (EU) issued a "yellow card" to Thailand aiming to crack down on both systemic abuse and illegally caught fish ending up in European supermarkets. With a semi-democratic government replacing the military-backed establishment that ruled Thailand for nearly a decade, negotiations for a mutually desired free trade agreement (FTA) have resumed. However, as the new Srettha Thavisin government seeks fast economic remedies to a flagging economy, reforms to its fishing industry may come undone, compromising FTA talks and putting the Kingdom again under international scrutiny. This issue brief discusses the interrelated issues of illegal, unreported, and unregulated (IUU) fishing and the human rights of the migrant workers in Thailand's expansive fishing and seafood industries in the context of the EU-Thai FTA negotiations.

Introduction

When Thailand's Pheu Thai Party (PTP) nominated real estate mogul Srettha Thavisin as its prime ministerial candidate, the centerpiece of his foreign policy would be the aggressive resumption of bilateral and multilateral trade, specifically picking up where his predecessor, Gen. Prayut Chan-o-cha, failed as a result of the May 22, 2014 military coup.¹ The putsch halted economic partnerships with western European countries, and for a number of years, put Thailand solidly in league with China. However, as Thailand now enters a new period of civilian

leadership, albeit a semi-democratic one, Srettha has pushed Thailand toward a firm trade reset. In pursuit of dialogue with the European Union (EU), the third largest investor in Thailand, successful talks are critical to opening new markets for the Kingdom as it seeks opportunities for emerging Thai industries. The opportunity to resume talks were made possible by rather limited democratization in 2019 and the upending of Prayut's near decade of rule after the May 2023 elections.²

The Thai Prime Minister enjoyed no honeymoon

period, as he took power only after the Move Forward Party (MFP) performed much better than Pheu Thai originally anticipated and won the most Parliamentary seats in the May 2023 elections. PTP formed an initial coalition with MFP as the lead, but his coalition partner, MFP's Pita Limjaroenrat was prevented from assuming the role of Prime Minister after a junta-appointed Senate blocked his nomination. With Thailand's 2023 GDP growth slowing to just 1.9 percent on weak exports,³ Srettha's government argued recently that its economy is in "crisis"⁴, in part as a local defense of its populist 500 billion baht digital wallet scheme (\$14.2 billion USD) that would see stimulus delivered directly into the hands of Thais over the age of 16. While critics have blasted the scheme as unnecessary and could plunge Thailand deep into debt, there are a number

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of factors that give credence to the argument of a moribund economy, such as Thailand's historically high levels of household debt, which stands at roughly 90 percent of GDP⁵ and high levels of income inequality,⁶ which the World Bank ranked as 13th among 65 countries in East Asia and the Pacific.⁷

Thailand's trade policy reset with the EU is just a part of Srettha's sales pitch, as the Kingdom has signed an FTA with Sri Lanka,⁸ planned agreements with Arab states through the Gulf Cooperation Council,⁹ sought to make Thailand a hub for the production of electric vehicles,¹⁰ and restart a centuries-old idea of a "land bridge",¹¹ bypassing the Strait of Malacca and potentially shortening the shipping time from the Indian and Pacific Oceans by as much as four days but at a cost of up to \$28 billion. The underlying motivation behind these proposals is the catalyzation of foreign investment in Thailand, which fell during the Prayut era and the COVID-19 pandemic,¹² but was concentrated in mainly the United States, Japan, China, and Singapore.¹³ The health of Thailand's economy remains a concern for investors and the development sector, as the World Bank Thailand Economic Monitor in December noted that economic recovery fell well below expectations with exports and manufacturing falling 3.1 percent and 4 percent, respectively, in the third quarter of 2023 year over year. Plus, tourism arrivals were just 75 percent of pre-pandemic levels as of September 2023.

Reopening Negotiations with EU

Shuttered due to the political consequences of the May 2014 military coup d'état that overthrew the democratically elected government of Prime Minister Yingluck Shinawatra, the resumption of partially free and fair elections in Thailand, both in 2019 and in 2023, have opened the doors for a return to the negotiating table for a Free Trade Agreement (FTA) with the EU. Both parties agreed to resume talks for what the EU terms a "sustainable" and "balanced free trade agreement",¹⁴ while noting that a key part of its economic fortunes rest in the Indo-

Pacific region. For the EU, this is a growing reality as ASEAN countries comprise the bloc's third largest trading partner behind China and the United States, and in turn ASEAN states have invested more than €172 billion in Europe as of 2020.¹⁵ Even without a comprehensive FTA, bilateral trade between Thailand and the EU as of 2020 was €29 billion, making the EU Thailand's fourth largest trading partner behind China, Japan, and the United States, accounting for 7.5 percent of total trade.¹⁶ According to the EU Strategy for Cooperation in the Indo-Pacific, the EU attaches great importance to the value of the diverse economies in the region, which produce more than 60 percent of global GDP, and which together cover more than 70 percent of global trade in goods and services and 60 percent of FDI flows.¹⁷ Thailand's long history of authoritarianism and military rule have been a part of the EU's source of concern about the erosion of democratic principles and human rights, but despite a host of issues that have complicated relationships, such as unfair trade practices, tensions in supply chains, and the COVID-19 pandemic, the EU remains committed to "reinforce cooperation" with countries like Thailand to "promote the rules-based international order and access to open markets and ensure a stable trading environment."¹⁸

It was this sense of urgency, after completing bilateral trade agreements with Singapore more than a decade ago and more recently with Vietnam in 2020¹⁹ that the EU has attempted to diversify economic engagement in the Indo-Pacific, with Thailand its most attractive target. In a March 2023 statement, the European Commission aimed to conclude an "ambitious, modern, and balanced free trade agreement" within two years, although this may be too eager a timeframe.²⁰ When the first round of trade negotiations began in Brussels in September 2023, the emphasis was not on any particular aspect or area of concern, but the clarification of positions, with sides being led by Christophe Kiener, the Directorate General for Trade of the European Commission (EC) and Auramon Supthaweethum, Director-General of the Trade Negotiations Department, Thai Ministry of Commerce.

For the EU in particular, there are fundamentally different issues at play as negotiations begin. While there are issues of mutual benefit such as increased access to new markets and the introduction of culinary products that are national staples, there are many serious obstacles to an agreement on an FTA—particularly in the space of the anticipated two years—such as intellectual property, fisheries, human rights, labor standards, and issues of sustainability. The latter is critical for the EU, as its Trade and Sustainable Development (TSD) approach comes with stringent standards for compliance and enforcement, including the possibility of trade sanctions for serious violations of the Paris Climate Agreement and International Labour Organization (ILO) principles.²¹ Adding greater emphasis on trade negotiation challenges for Thailand in hopes of expanding its trade-oriented foreign policy under the Srettha government, this issue brief discusses two of the most pressing topics of negotiation in the creation of a mutually beneficial agreement: IUU fishing and the interrelated topic of human rights.

Illegal, Unreported, and Unregulated Fishing (IUU) and Seafood Products

Concerned about the glut of illegal, unreported, and unregulated (IUU) fishing and raising questions about production and origin of the 1.8 million tons of seafood exported from Thailand since 2005, the EU had warned consecutive Thai governments about the possibility of an import ban if it did not take corrective measures.²² Thailand's fishing industry issues were the product of major industrialization in the 1970s, where it became largely export driven,²³ but continued expansion was labor intensive and led to erosion of labor standards and practices, where currently it is mainly migrant workers who often work illegally and in dangerous conditions on Thai fishing vessels.²⁴ The main reason for the adoption of those standards was a major reduction in local fish stocks, which required more time at sea, thereby increasing costs.²⁵ Over the past decade or more, Thailand's fishing industry became a pariah in international circles, with the human rights community condemning what had been deemed

as conditions that were akin to modern-day or slavery-like practices, terms coined by the ILO.²⁶ As was documented at the height of Thailand's fishing industry related human traumas, as many as 200,000 migrant workers from neighboring Cambodia, Myanmar, and Laos would be ensnared into desperate working conditions, while IUU stocks of so-called "trash fish" would end up being sold in supermarkets around the globe.²⁷ International pressure led to the EU issuing a yellow card warning²⁸ to Thailand about its IUU practices and later, began a bilateral dialogue aimed at resolving the crisis. Thailand, over the next four years, began a process to combat IUU through the Command Center on Combating Illegal Fishing (CCCIF) under the umbrella of the Department of Fisheries, through a revision of its legal framework, review of penalties, labor monitoring, and international cooperation with the EU. Some of the more comprehensive reforms included new electronic systems fitted to licensed vessels, improved monitoring and inspection of crew and cargo, and a more controlled limit on catch allowance to prevent overfishing.²⁹ While Thailand was still in the process of reforms, the yellow card was lifted in January 2019,³⁰ although to heavy criticism from industry and human rights groups, who complained that the enforcement and protection mechanisms employed by the Thai fishing industry and government were weak and both high levels of IUU as well as labor abuse and debt bondage were still present within the Thai fishing industry.³¹

Thus, fisheries will be a major issue of contention in EU-Thailand trade discussions because of the vulnerability of both industries, as well as lingering human rights and labor concerns. According to the 2023 EU Fish Market Report produced by the European Commission, the production of fishery and aquaculture products, which include both EU and non-EU countries in Europe is the third largest in the world, with production in 2021 totaling 17.2 million tons.³² However, vulnerabilities are also numerous, evidenced by recent food price inflation resulting from the ongoing war in Ukraine, which impacted fish prices by 10 percent from 2021 to 2022.³³ Worse, according to the same EU report,

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a majority of the EU supply of fish comes from imports and the combined impact of decreased at-home consumption and inflation saw a volume drop of 17 percent in the largest fish-consuming countries in the EU during the same period.³⁴ Thus, greater emphasis has been made by advocacy and industry groups calling for increased protection of the EU's now fragile fish and seafood market, and EU Parliamentarians are raising questions regarding the handling of such "sensitive products"³⁵ in trade negotiations as the Srettha government mulls potential revisions to its Fisheries Act that was instrumental in overcoming the previously issued EU yellow card warning. More specifically, the Brussels-based Market Advisory Council (MAC), an organization established in 2016 through the EU's Common Fisheries Policy to advise on fisheries and aquaculture products, warned in a late January 2024 note of potential rollbacks of the progress made between the EU and Thailand since the yellow card announcement, including the removal of restrictions on at-sea transshipment of seafood catch and crew

transfers, revisions of child labor standards on fishing vessels, weakening of punitive measures to prevent IUU fishing, and eliminate the requirement that vessel operators must record coordinates in approved logbooks.³⁶ While the Thai government has noted the importance of its 130.3 billion baht fisheries sector as critical to its economic growth, a government committee overseen by the Ministry of Agriculture and Cooperatives ensures that any potential amendments to the Fisheries Act will remain compliant with its obligations to Brussels by including the Food and Agriculture Organization of the United Nations (FAO) in its proceedings.³⁷

Critical to FTA negotiations are these contested regulations, which various EU advocacy groups claim are essential to creating a level playing field. For example, *Europêche*, the representative body for fishermen in the EU, representing as many as vessels, has advocated for a number of safeguards, including equal compliance requirements for non-EU products, equal standards for all vessels catching seafood in the same areas, as well as different market rules that would prevent discriminatory treatment that would unfavorably affect EU fishermen, and control regulations at all stages of the supply chain.³⁸ EU fishing bodies are not the only organizations concerned about IUU activity.

In October 2023, 90 civil society organizations from the Indo-Pacific region, including the Environmental Justice Foundation (EJF), Human Rights Watch (HRW), and Thailand-based Fortify Rights, sent a joint letter to the Thai Prime Minister, with specific concerns about the degree of overfishing in the Andaman Sea and the Gulf of Thailand, as well as the sustainability of fishing practices if the current upward trend of overfishing could “impede further recovery and potentially lead to even renewed collapses of fish populations, hinder Thailand’s ability to adapt to climate change impacts, and adversely affect Thailand’s international standing in the seafood market”, leading to additional concerns over migrant labor and erosion of human rights, which could derail a potential EU-Thailand FTA.³⁹

Human Rights and Migrant Labor

Thailand’s poor human rights record predates its EU yellow card, and is related to abuses of migrant workers living and working in reprehensible conditions on Thai fishing vessels. Issues related to migrant labor and broader conditions that spill over into other sectors of its economy are equally concerning. Part of what fuels human rights abuses are labor intensive sectors of the economy and these sectors were disproportionately negatively impacted by the COVID-19 pandemic. Key industries such as food and rubber production are heavily reliant on migrant workers for as much as half of their workforce, and exports were 45 percent of Thailand’s GDP during 2020.⁴⁰ In the context of IUU fishing and seafood products, a significant barrier to representation exists under Thailand’s Labor Relations Act (1975), which under Section 100, for example, excludes Labor Committee representation to Thai nationals only⁴¹ and the broader act prevents the establishment of labor unions by migrant workers alone, preventing the establishment of proper dialogue and negotiation with employers and management, or a formal collective bargaining agreement that Thai nationals would otherwise be privileged to.

The U.S. Department of State’s Trafficking In Persons Report for 2014 paid close attention to the deterioration in labor conditions in Thailand, placing Thailand on the Tier 3 list, the lowest ranking possible and reserved for a select group of states that were not conforming to the most minimal international standards and not making sufficient progress in that direction. The TIP Report for 2014 noted that “Burmese, Cambodian, and Thai men are subjected to forced labor on Thai fishing boats that travel throughout Southeast Asia and beyond; some men remain at sea for up to several years, are paid very little” and that a 2013 report reveals that 17 percent of surveyed fishermen had “experienced forced labor conditions, often due to threats of financial penalty including not being fully remunerated for work already performed.”⁴²

The International Organisation for Migration (IOM) estimated that as of 2019, Thailand was home

to 3.9 million migrant workers from neighboring Laos, Myanmar, Cambodia, and Vietnam, and that migrant workers comprised more than 10 percent of the total national workforce.⁴³ Regardless of the massive return of migrants due to COVID-19, the demand for cheap labor is expected to continue due to an ongoing demographic crisis.⁴⁴ Concerns persist over a retraction of labor standards in Thailand's Fisheries Law after an initial eight pieces of legislation in Parliament passed the first reading in a unanimous 416-0 vote that could potentially end a stern crackdown in IUU fishing.⁴⁵ For the EU, retraction in enforcement would send FTA negotiations back significantly, as the previous military-backed government created a number of labor inspection mechanisms, such as a collaboration between the Ministry of Labor, the Royal Thai Navy, and the Department of Fisheries in 22 coastal Thai provinces.⁴⁶ The labor inspectors themselves were trained by a joint EU and IOM project.

As of October 2022, in the post-pandemic recovery period, Thailand's fishing and seafood industry employed more than 160,000 registered workers from Cambodia and Myanmar alone,⁴⁷ and any rollback in existing regulatory frameworks put into place under the watch of EU-authorized monitors will complicate the conclusion of FTA negotiations within the desired two-year period. According to the IOM, some areas still require attention, such as the rights of migrant workers to access their entitlements under the law as a result of the complicated and fragmented workplace and supply chain, where migrant labor exists in both formal factories and informal settings, such as on docks, piers, and in garages.⁴⁸ The 2023 IOM Report, *In the Shadow of the Ships*, notes that not only supply chains are complicating matters, but also the interpretation of Thai labor laws, where on paper, migrant workers are protected under the Homemaker Protection Act, the Labour Relations Act of 1991, the Social Security Act of 1990, and a number of other legislative acts.⁴⁹ However, the Labor Protection Act can be manipulated by Ministerial Regulation No. 11 from 1998, which established protections for workers involved in the loading and unloading of

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cargo on sea vessels, allowing workers and employers to agree on different terms regarding some sections of the Labour Protection Act, thus creating significant confusion according to the IOM Report's findings.⁵⁰

Conclusion

With regard to the resolution of FTA negotiations, particularly the contentious issues of IUU fishing and related concerns over the rights of hundreds of thousands of migrant workers employed in these industries, the EU will scrutinize any developments that compromise actions that it deems originally warranted the yellow card nearly a decade ago. Further, the development of a regulatory framework for the construction of FTAs as supported widely throughout continental Europe, particularly the EU Trade and Sustainable Development (TSD) chapter requirements for future agreements, which not only provide a roadmap to sustainable practices that prevent overfishing and environmental damages, but require cooperation with international bodies to prevent widespread abuses of human rights.⁵¹ While MFP leader Pita has warned Thailand's Parliament that changes to the Fisheries Act must

also consider its obligations under international law,⁵² and perhaps in consideration of its years-long corrective mechanisms supervised by the EU, changes are being pushed by Agriculture Minister Thammanat Prompao, a controversial figure in Thai politics, who had served as Deputy Minister of Agriculture despite a 1994 conviction in Australia for heroin smuggling. Thammanat has previously suggested looking into changes after complaints to the new Srettha government by Thai fishermen and associated industry leaders.⁵³ While other issues, such as tariff rates, intellectual property rights, digital trade, rules of origin, as well as transparency will also occupy significant aspects of the FTA's negotiation, the twin questions of IUU fishing and the EU's related human rights concerns regarding the Thai fishing industry's treatment of migrant workers will not only be a major focus, but will draw significant international attention and scrutiny.

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