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THAILAND EU-FTA NEGOTIATIONS: *HIDDEN HURDLES AND EASY WINS*

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Thailand–EU FTA Negotiations: Hidden Hurdles and Easy Wins

Despite confidence from leaders, both parties are walking a tightrope between their international interests and domestic anxieties.

In March 2023, the European Union (EU) and the Kingdom of Thailand resumed negotiations over a free trade agreement, nearly a decade after the EU withdrew from talks in response to the 2014 military coup. Since then, three rounds of fruitful negotiations have increased optimism about a near-term conclusion to the deal. Thai Prime Minister Srettha Thavisin has expressed his desire to finalise the agreement by the end of 2025. With talks having resumed for a third round on 17 June 2024, it is crucial to consider the state of play of these negotiations and how the EU and Thailand might seek to advance their trade and Indo-Pacific interests and potential roadblocks. Whilst all parties hope the talks will remain constructive, significant gaps remain between Thailand and the EU regarding freedom of association and collective bargaining, among other issues such as public procurement. The most crucial and contentious concerns surround the regulation of Thai fisheries. Though surmountable, these issues are complicated by local Thai business owners' desire to either maintain the status quo or further deregulate the industry. For better or worse, the outcome of these negotiations may significantly impact EU-Thai trade relations moving forward.

Trade between the EU and Thailand primarily involves machinery and other manufactured articles and is of significant economic value for both

parties. In 2023, the trade volume reached 38.9 billion EUR, with Thailand enjoying a trade surplus of 3.8 billion EUR with the EU. Despite being the EU's 26th largest trading partner, the EU is Thailand's fourth largest. Moreover, the EU is the second largest foreign investor in Thailand after Japan, with a surplus of 19 billion EUR in Foreign Direct Investment (FDI) in 2022. This trade dynamic, coupled with Thailand's position as the second largest economy in ASEAN at 17% of total bloc GDP, presents a strategic opportunity for the EU to advance its interests in the Indo-Pacific. An EU-Thailand FTA would promote access to long-term markets, connectivity and a united digital strategy, as well as "strengthen cooperation on research and innovation."

EU reports from the first and second rounds of negotiations were positive, with issues like anticompetitive conduct, merger control, and small and medium enterprises (SMEs) being solved substantially. Other sections, such as the Trade and Sustainable Development chapter, began text-based consolidations in the third round. The EU's focus for the FTA is mainly centred around sustainability, harmonisation of environmental protection legislation, labour rights, alignment with the UN sustainable development goals (SDGs) and dispute resolution mechanisms, amongst other clauses. For Thailand, the FTA is part of a broader strategy to boost trade and investment and increase market access, especially in digital trade and green technologies.

Trade, Sustainable Development and Labour Rights

During the second round of negotiations, the agreement's Trade and Sustainable Development chapter was subject to a phase of clarifications, with a complete reading of the EU text proposal aiming to improve Thai familiarity with EU regulations. Text-based negotiations for this section commenced in the third round, with reports that "very good progress" was made during text-based consolidation, "notably on provisions related to labour." Moreover, the Partnership and Cooperation Agreement (PCA) signed between the two parties refers to "respect of international labour standards of the ILO, with a view to eliminate child labour and forced labour in global supply chains."

Nevertheless, Thailand is yet to ratify 57 ILO conventions, including five fundamental and priority governance rights surrounding labour inspection, occupational health and safety, and, most importantly, C087 (Freedom of Association and Protection of the Right to Organise Convention) and C098 (Right to Organise and Collective Bargaining Convention). There are also concerns regarding the potential relaxation of migrant labour protections in fisheries. It thus remains to be seen how the EU might leverage its position, for example, by allowing Thai citizens to travel visa-free in the Schengen area to improve labour rights in Thailand. It has been argued that similar actions the EU took during FTA negotiations with Vietnam compelled the nation to reform its labour code.

Environmental Protections, Seafood Markets and Sustainable Fishing

The decrease of carbon emissions, protection of biodiversity, and strengthening of food system sustainability are key EU environmental protection goals in the Indo-Pacific. These priorities are mirrored by Thailand, which "as a developing country highly vulnerable to the impacts of climate change attaches great importance to the global efforts to address this common and pressing challenge." An area of success in the second round of negotiations was in the Energy and Raw Materials section of the proposed treaty, with "constructive exchanges" on "environmental impact assessment and off-shore risk and safety."

However, two key points of difference will need to be comprehensively addressed in the coming rounds beyond the initial text consolidation reported to have occurred in the third round. The first is illegal, unreported and unregulated (IUU) fishing. Part of the EU's Indo-Pacific strategy is "strengthening ocean governance in the region, including increasing the EU's support for Indo-Pacific countries' fisheries management and control systems." Thailand received a yellow card from the EU concerning IUU fishing but had it lifted in 2019 after "comprehensive and structural reform of their fisheries legal and policy systems." However, in February 2024, the Thai parliament unanimously voted to loosen fishing regulations and is currently reviewing proposals to deregulate trawling equipment, remove jail time for any IUU offences and substantially decrease fines for fishing in protected marine areas. Moreover, these regulations also plan to decouple labour and fishery laws, potentially encouraging fishing operations to return to employing migrant workers without providing them adequate

protections and pay. Whilst EU bodies have not directly responded to these parliamentary votes, a consortium of EU fishing industry representatives and NGOs published an open letter in May 2024 pleading that the European Commission must “ensure that the EU’s trade aspirations strengthen rather than undermine its anti-IUU fishing policies, nor provide trade facilities to Thailand under these circumstances.” However, there are also local economic interests at play. The European Union’s seafood industry has expressed concerns that a free trade agreement could enable Thai companies to gain a competitive edge in the domestic market. This issue gained traction in June 2023 when the European Parliament passed a resolution stating that “a free trade agreement with Thailand could pose a serious threat to the EU canned fish and seafood industry, which is vital to many coastal regions.” Given the domestic political will in Thailand to support commercial fishing operations, this potential rollback could be a significant hurdle to any final free trade agreement.

Democratic Rights

The EU’s return to the negotiating table was informed by the fact that in May 2023, Thailand conducted “competitive parliamentary elections,” a progression towards democracy compared to the military junta that ran Thailand from 2014 to 2019. Nonetheless, the appointed Senate, composed of 250 military-selected legislators, ensured that the socially democratic Move Forward Party could not form a coalition government. Instead, the Senate approved a coalition government between the centrist Pheu Thai party and military-backed junior partners. Democratic institutions in Thailand are often considered unstable and

vulnerable to be undermined by vested political interests, whose role in the legislative process was enshrined in the 2017 Constitution. A priority of the 2021 EU Strategy for Cooperation in the Indo-Pacific is to “solidify and defend the rules-based international order (...) including a commitment to respecting democracy, human rights and the rule of law.” While Thailand’s current political system is undoubtedly an improvement from the previous administration of the National Council for Peace and Order junta, it is a puzzle to see how this hybrid regime aligns with the EU’s commitment to a rules-based, liberal international order given the enduring influence of military-appointed officials, strict lèse-majesté laws and constraints placed on genuinely democratic processes.

There is precedent for the EU conducting a free trade agreement with Southeast Asian states that do not necessarily subscribe to its perspective on “democratic principles and human rights.” The EU-Vietnam FTA, despite including a suspension clause “if Vietnam fails to meet its obligations under the PCA (for example, respecting human rights and democracy),” is unlikely to be threatened by domestic anti-democratic action, given the stability of Vietnam’s political regime. However, Thailand is a trickier case, as its democratic future is more unstable and unpredictable. Will Thailand remain a “like-minded partner” if it were to undergo democratic backsliding? Signs point to yes. The European Association for Business and Commerce’s (EABC) Business Confidence Survey in 2015 found that, despite the coup the previous year, over 60% of respondents (who were “senior executives of companies within the

European business communities") expressed confidence about Thai "business growth, profitability, and sales in the next six months." Historically, EU executives have demonstrated a willingness to continue doing business in Thailand even in the event of democratic backsliding. In 2024, another survey by the EABC of EU business leaders on the forthcoming FTA found that their most important concern was "transparency and effective regulatory practices" and "cooperation between regulatory bodies in both the EU and Thailand." Thus, any FTA agreement would likely continue to render economic benefit for both Thai and EU businesses in the event of Thai democratic backsliding as long as government institutions chose to remain cooperative in areas of financial, rather than political, interest.

Nevertheless, European negotiators find themselves in a catch-22, where implementing a human rights clause frequently *or* sparingly would inevitably spark critiques of their objectives. Should the EU refuse to withdraw from the FTA in the event of democratic shortfalls, it would add to criticism that the bloc's trade policy puts economic interests above human rights, as previously evidenced by their reluctance to withdraw trade preferences to nations with labour rights violations like El Salvador and Pakistan. However, if the EU *were* to withdraw, would they forgo their tenuous ability to influence the Indo-Pacific's ocean governance and green transition policies? Withdrawal has in the past, alongside condemnation of human rights abuses, been seen as an antagonistic act, as shown by former Filipino President Rodrigo Duterte's colourful accusations of moral posturing by the EU in 2017 in

response to his extrajudicial drug war.

Whether the EU's rights-based version of economic statecraft is principled or rather pragmatic remains somewhat unclear. Does the EU see human rights clauses as a genuine avenue for promoting global cohesion and moral principles or rather as an escape hatch if the situation in Thailand were to take an unfavourable turn and the political costs of the FTA would suddenly outweigh the economic benefits?

Perhaps focusing on human rights is a strategy to place the other party in FTA negotiations in a weaker position upon commencement of discussions, an ever-present concern to refocus on whenever Europe's primary trade interests are not being suitably represented. These questions and their associated strategy are factors negotiators will be weighing internally when outlining the human rights clauses of the FTA during the upcoming rounds.

Future Prospects

The points of contention regarding fisheries, labour rights and democratic values should not undermine the fact that an EU-Thai FTA is ought to be mutually beneficial and would undoubtedly "strengthen EU trade ties with the Indo-Pacific region (...), boost the scale and sustainability of our trade, drive innovation and strengthen our supply chains." In 2022, the EU and Thailand finalised their PCA, already portending future collaboration. Nevertheless, despite the optimism displayed by Prime Minister Srettha Thavisin and President Emmanuel Macron, Thailand and the EU have yet

to resolve their challenges conclusively.

The third round of negotiations passed without incident, but observers should hedge their bets until the incoming 10th European Parliament and yet-to-be-finalised European Commission present their updated perspective on the Thailand-EU FTA. They should also closely watch for new deregulation legislation from the National Assembly of Thailand. The fourth round of negotiations is scheduled to take place in November 2024 in Bangkok. After some easy wins, both parties must now navigate the hidden hurdles of later stage negotiations.

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