

Human Rights Expectations for an EU-Thailand Free Trade Agreement

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There are an increasing number of Free Trade Agreements (FTAs) established between the European Union (EU) and single member states of the Association of Southeast Asian Nations (ASEAN). With the EU's growing emphasis on human rights within supply chains, the analysis of recent and emerging agreements is a valuable indicator for the implementation of the EU's value-based foreign trade policy and which obstacles to this exist. This study examines the case of a potential EU-Thailand FTA through semi-structured interviews with key stakeholders from ministries, civil society organisations (CSOs), trade unions, and academia. The article argues that EU FTAs prioritise and highlight various types of human rights, of which health, labour and environmental standards are the most important for an agreement with Thailand. Additionally, the EU appears to be seen as a credible advocate for human rights by Thai stakeholders; however, the extent of its impact and willingness to adapt depend on the official function the respective parties hold and the interests of the institutions they represent. Therefore, this article contributes to research on social and environmental perspectives in Thailand, and sheds light on value-driven EU policies and the implications of norms within global trade structures.

Keywords: ASEAN, environmental rights, health rights, labour rights

Southeast Asia and Differing Values in the Spotlight

In recent decades, the significance of international supply chains has experienced a notable increase, with many countries in the Global South that have made the manufacturing of goods and their export a central pillar of their economies. However, this globalisation of production also risks the transfer of negative impacts from importing to producing countries. These risks encompass human rights and environmental concerns such as insufficient health measures, labour issues, and environmental deterioration. Growing inequalities within and between nations and the increasingly international nature of national economies act as both drivers and obstacles for human rights efforts (Moore, 2004).

Free trade agreements (FTAs), in this regard, encompass significant implications that extend beyond economic and technical matters, by involving fundamental value questions. Some observers argue that human rights are often treated as a bargaining tool in FTA negotiations, primarily influenced by Western states (Franca-Filho, Lixinski, and Giupponi, 2014; Katsumata, 2009). A notable illustration can be found within the European Union (EU), where the connection between trade and investment policies and human rights is growing stronger (Micara, 2019). The discussion often revolves around the concepts of universalism and relativism, in which human rights are perceived to

be shaped by specific cultural, religious, or historical contexts (Ignatieff, 2001; Langford, 2018).

Ongoing debates within the EU have prompted a closer examination of the practical implementation of the EU's value-based foreign trade policy. Given the increasing number of FTAs between the EU and ASEAN countries and the EU's heightened focus on human rights in supply chains, the analysis of recent and emerging agreements between the two regions becomes a valuable indicator.

The EU has, thus far, established FTAs with two ASEAN member states, namely Singapore and Vietnam. Both are focusing on comprehensive trade in goods and services, government procurement, dispute resolution, and intellectual property protection. The EU-Singapore Free Trade Agreement (EUSFTA) became operational on November 21, 2019, while the EU-Vietnam Free Trade Agreement (EVFTA) took effect on August 1, 2020. Environmental standards are integral to both FTAs, with a specific focus on implementing International Labour Organization (ILO) conventions to be ratified in the on the side of Vietnam in the EVFTA.

Similarly, ongoing negotiations for an EU-Indonesia FTA have been underway since 2016, while talks for an EU-Malaysia FTA, initiated in 2010, were put on hold in 2012. Small-scale discussions for a relaunch have occurred since Malaysia's new government took office in December 2022. Additionally, negotiations between the EU and the Philippines began in 2015 to establish an agreement comparable to those with Singapore and Vietnam. After the second round in February 2017, negotiations were temporarily suspended. However, in July 2023, both

parties expressed intent to resume talks, marking progress in scoping discussions by the end of the same year.

Thailand instead is aiming to conclude an FTA deal within two years. The initial negotiation round took place in September of 2023 in Brussels, with Thailand hosting the second round in January 2024 in Bangkok, targeting completion in 2025. The negotiations span 19 subcommittees, covering various areas such as trade in goods, rules of origin, customs procedures, trade facilitation, trade remedies, and sanitary and phytosanitary measures. According to some of the interviewees, informal meetings were held with civil society representatives on potential issues of concern relating to an FTA with the EU in the run-up to the negotiations.

This article aims to provide an initial overview of the human rights challenges within the EU's FTA negotiations with Thailand, by investigating potential focus areas in an EU–Thailand FTA. Further, it gathers perceptions among Thai stakeholders on these focus areas and the EU as a human rights actor. The article is based on eight semi-structured interviews with varying lengths, conducted both in-person and online with various stakeholders, including Thai government officials involved in the FTA negotiations, academics, trade unionists, and representatives from civil society organisations (CSOs).

This broad participation is crucial since, to develop a multi-faceted picture of the research aim, the inclusion of actors in the process is necessary. Merry (2017, p. 141) points out that 'human rights reports rely on individual narratives'. The interview questionnaire consists of three parts. First, the introductory part, which provides background information on the participant. The second part, with condition- and outcome- oriented questions regarding human right types and their supposed inclusion in FTA negotiations target standardised answers, which allow for a general analysis. Third, further individual information can be added by

the interviewee in an open-ended question part. Simultaneously, the design aims to represent the mix of global intentions and indicators for global governance, such as human rights guidelines in trade relations, and their local implementation.

However, the selected interviewees determine the research design as power-centred, examining voices of those already receiving public attention, regardless of its limits. In the context of the selected topic, elite interviews emerge as a valuable and appropriate methodology due to the constrained nature of participation in negotiations and decision-making processes in Thailand. Notably, this study incorporates perspectives from civil society leaders who actively engaged in campaigns during previous FTA negotiations with the EU. The chosen civil society interviewees primarily focus on health and environmental rights, a deliberate selection reflecting the distinct concerns of this subset, as opposed to union leaders who are more attuned to labour rights and working conditions. In addition, the inclusion of two representatives from different ministries provides a comprehensive view of the negotiation landscape, as both are actively working with their EU counterparts surrounding a potential FTA.

The concerns articulated by the stakeholders in relation to a FTA encompass a spectrum of issues such as health, environment, migrant workers, and the welfare of women and children. These concerns are derived not only from a quantitative ranking obtained through interviews but also from the nuanced insights provided in open-ended responses and the specific working priorities of the stakeholders. Consequently, the article is strategically organised to prioritise and delve into these dimensions, offering a comprehensive examination of the multifaceted implications of the FTA on health, environmental sustainability, migrant labour, and the well-being of women and children. The study thus aims taking a perspective from below but falls short of the provision of real-life examples by those affected, for example factory workers and their needs.

Human Rights in Trade and the EU's Approach

This article defines social and environmental standards as practical implementations of specific human rights. For instance, social standards commonly encompass aspects such as minimum wages, while the right to a living wage is enshrined in multiple ILO Conventions (Vandergeest and Marschke, 2020). Recently, the recognition of a clean and healthy environment as a human right has garnered increased international attention, for instance with a UN resolution that emphasises the importance of a safe, clean, healthy, and sustainable environment (UN, 2023). Additionally, the significance of the right to health enshrined in Article 25 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in shaping global standards has been steadily growing as well (OHCHR & WHO, 2008). Equally, this has been raised in connection to intellectual property rights and access to medicines on highest levels, including the special rapporteur on the right to health (Grover, 2009).

Nevertheless, given the absence of comprehensive global regulations on trade and human rights, the focus is increasingly shifting towards bilateral forums, with the EU and the US in the lead (Nessel & Orbie, 2022). Hereby, Cole observes a transformation in the EU's approach, with a shift from a regulatory stance to a conditional human rights approach that links all economic activities to improvements in human rights (Cole, 2022). This conditionality extends across various economic areas, including development cooperation, aid (Cole, 2022); trade preferences for less developed countries within the Generalized Scheme of Preferences (GSP) (Garcia, 2022); and FTAs (McKenzie, 2018).

This strategy becomes particularly intriguing as Southeast Asia gains prominence and attracts the attention not only of great power China but also Western industrialised nations (Adriaansen & Postnikov, 2022). The region is experiencing

significant economic growth and ASEAN officials are courted for cooperation and support in international organisations (Bhasin & Kumar, 2022). Many ASEAN officials consider the EU a model for their own institutional development (Chen & Yang, 2022). For instance, the EU's efforts to combat illegal, unreported, and unregulated (IUU) fishing practices in Thailand have caused institutional improvements and are hence considered a success of "Normative Power Europe" (Kadfak & Linke, 2021). This success is also attributed to the EU's market power and leverage in pressuring supplier states (Kunnamas, 2020).

However, Western normative credibility appears fragile, especially when considering discriminatory structures within their own territories (Regilme, 2019). Further, the EU faces heightened competition from trade rivals such as China, which has established itself as a global power with different normative value sets (Brown and Winter, 2021). Moreover, the EU faces additional value challenges as many ASEAN states consistently rank poorly in global human rights assessments (Hutt, 2023). Thailand for instance is ranked 106 out of 180 countries according to the World Press Freedom Index (RSF, 2023). The Prayut government that served until September 2023 has also implemented crackdown measures on protests and is associated with various human rights violations, as documented by Human Rights Watch (HRW, 2023). V-Dem ranks Thailand at 124 and cites a "surge in autocratization" (V-Dem, 2023, p.11) that has led to the country's regression into a closed autocracy. Instances of physical attacks by police and security forces are reported regularly (Freedom House, 2023).

Abuses are also evident within the business sector. While trade union independence and the right to bargain collectively theoretically exist, many workers remain non-unionised. Employers use anti-union practices, such as lockouts against union members, and non-Thai nationals and migrant workers are prohibited from forming trade unions (Freedom House, 2023).

Based on these preconditions, the article aims to analyse the extent to which stakeholder perceptions in Thailand align with the EU's human rights approach. It draws upon a theoretical framework that explores the interests of free trade and human rights, identifies potential contradictions between the two, and aims to address these contradictions through argumentation. In the pursuit of comprehensive insights, the methodological approach employed encompassed both structured comparative scaling questions, delineated by pre-defined literature-based categories, and open-ended sections, fostering a nuanced exploration of participants' perspectives. The study involves eight semi-structured expert interviews with relevant stakeholders from Thai ministries, trade unions, civil society organisations (CSOs), and academia. Pseudonyms are used to protect the identities of the interviewees. Further, the interviews were exclusively conducted in English without translation, enhancing the reliability of the data obtained. However, this approach may pose barriers for non-English speakers, disabling their participation in the interview process.

Human Rights Interests Along Domestic Political Divides

The Right to Health as a Thai-specific FTA case

One aspect that has received limited attention in the literature but is highly relevant in the context of Thailand is intellectual property rights (IPR), particularly regarding medicines. In the Thai case, the focus is on medications for HIV and AIDS patients, with an estimated 520,000 people that live with HIV (UNAIDS, 2022). In relation to the Doha Declaration negotiated in the World Trade Organization (WTO), a clash of interests arises from the need for affordable generic drugs among the Thai population on one hand, and the business interests of European

pharmaceutical companies and their IPR on the other. The Thai status quo refers to the government's support of local drug manufacturers, which allows state hospitals to bypass expensive purchases from Western companies. There are concerns that such arrangements could be undermined:

“At present we have, a universal health coverage scheme, a 100% from the government. And it allows the poor or even the middle class with assisted treatment at low cost. So it's very crucial as it's why every time 10 years ago people don't have to get them up when they go to hospital or even you know the poor can go to hospital and get the treatment for free. This never happened in the past” (Interview 3, 2022).¹

This fear is mainly fed by experience with other FTAs, but also the feeling that health concerns are not considered a relevant issue for the EU. The interviewee complains about a one-sided EU focus on civil and political rights, or what he refers to as “conservative human rights violations” (Interview 3, 2022). In this context, health concerns related to IPR enforcement would not be treated with the relevance they have, especially in Thailand. Rather, he feels that IPR issues are perceived as a trade-off matter. Regarding mediated agency, which can cover the issue in the negotiations, civil society fears do not seem to focus on the Thai side, but rather the EU. This is confirmed by the MOC official, who considers the issue the most important for civil society:

“In Thailand when you have stakeholder consultations, we have CSOs, but their focus is mainly on IPR, the drops accessions to medicine, or consumer protection (...)” (Interview 1, 2022).

¹ In 2002, Thailand achieved universal health coverage through the implementation of the Universal Coverage Scheme (UCS), which rapidly extended coverage to 75% of the population within a year, including 18 million previously uninsured individuals. The interviewee refers to this introduction and the subsequent possibility of receiving HIV treatment without facing immense financial pressures. See also: https://www.social-protection.org/gimi/gess/Media.action?jsessionid=YRk-t1X-gYx_X6ZQhYnNkoTbUo4sel11KaiD1jdiDuDGp1qBFa3eo11393577045?id=11841

The relationship between the Thai state and civil society representation is characterised by ambivalence. On the one hand, there are instances where medical benefits are provided in response to pressure from civil society. However, on the other hand, criticism often goes unnoticed or is suppressed, as seen in situations such as the sudden legalisation of cannabis in 2022 or the handling of the COVID-19 pandemic (Campbell, 2023).

Consideration of worker diversity for accurate labour rights

Another focal point for negotiations is labour rights. Thailand has significant export segments with human rights challenges. Hence, unionists and CSO representatives primarily argue for potential improvements in standards and empowerment facilitated by the EU. According to one unionist, European buyers should prioritise Thai suppliers who adhere to core labour standards promoted by the EU. Nevertheless, related international standards may at times clash with what many perceive as Thai cultural practices. For example, one commerce ministry official cites child labour regarding potential ignorance of local circumstances:

“But looking at other aspects like social structure, for example in Thailand or even in Asia, you have a culture of having a lot of children helping in the farms or planting plants. They don’t get paid because this is a family business” (Interview 1, 2022).

The perceived cultural inflexibility only partially applies, the ILO distinguishes on the fine line between child labour and light work in agriculture, a complexity equally mirrored by exceptions in the United States (ILO, 2024). In contrast, the EU maintains comparatively stringent regulations on child

labour, with no special exemptions afforded to the agricultural sector (Council of the European Union, 1994).

Here, a divide between stakeholders’ views on Thailand and hence accurate measures for rights protection becomes apparent. CSO representative, whose work primarily focuses on female home workers², hopes that EU certification would have a trickle-down effect on secondary and tertiary labour sectors that otherwise remain marginalised:

“In our cultures, especially for women, they are flexible and convenient to work at home, because they have to take care of their family. So, they want to work. But treat them in a better way and consider about labour rights standards” (Interview 7, 2023).

A significant aspect to consider in Thailand is the presence of migrant workers from neighbouring countries, who are not permitted to form trade unions. Balancing interests is especially important in FTA negotiations where economic interests are represented vis-à-vis another party. The MOC official describes this supposed confrontation of interests:

“If you are an entrepreneur and you have a lot of alien labourers working in your company, would you be happy to let them form associations? It’s a basic human right but if you put on the hats of the private sector, they would be reluctant. Because they would be afraid of (...) meeting the timeline to deliver the goods” (Interview 1, 2022).

² Home work in Thailand refers to subcontracted tasks conducted at home, oftentimes by women. Employed by businesses to lower production costs and enhance competitiveness, home workers typically utilise their residences as workplaces, assembling or producing items and delivering them to mediators, brokers, or employers, distinguishing it from direct sale production methods.

The green EU as a beacon of hope for the right to a clean, healthy, and sustainable environment

The third relevant human rights issue touches upon concerns about negative environmental impacts. CSO representative 1, for example, reports negative consequences from Thailand's FTA with Japan and states that "they're dumping all this kind of waste", because "Thailand doesn't have the proper mechanism or regulation to prevent" (Interview 3, 2022). Concerning protection schemes, unionist 1 detects a different mindset on human and environmental rights in EU countries, which he hopes will be transferred to Thailand:

"Free trade should take considerations of environmental problems more seriously; it should not destroy the environment more and more. But for the environment and human rights, the EU has much more of that than Thailand. (...) I think the Western countries more seriously take care about the environment (...). In Thailand people still destroy the environment" (Interview 5, 2023).

Thai negotiators are aware of this perception, as well as the EU's strong focus on sustainable development and green transition. The MOC official states that the EU is known for demanding unique environment provisions, even compared to other Western countries:

"So many unique characters which fit in the EU model. Others have some, for example EFTA, but not as much as the EU" (Interview 1, 2022).

Given the strong EU advocacy on the issue and related needs in Thailand, interviewees assess more room for manoeuvre in negotiations on environmental provisions than, for example, political rights. Academic 2 argues in favour of framing

overbroad targets environmentally for legal FTA obligations: "When it comes to the right of clean, healthy and sustainable environment, that's a very viable point of entry in negotiation" (Interview 8, 2023). Correspondingly, CSO representative 2 notices a much more credible position compared to other major powers such as the US and China. One signifier is, for example, the displeasure of Thai business representatives:

"I sometimes even hear from the business sector that they don't like the EU much because the EU forces on human rights issues (...) and I appreciate this. I believe in EU principles, in terms of human rights and climate change. (...) I talk to you based on this belief (...) The EU is better than China and the US" (Interview 7, 2023).

Internal political conflicts as a yardstick for FTA views

Regarding the concrete inclusion of human rights in FTAs, views vary more according to the respective stakeholder roles. Thus, the MFA official regards human rights as one aspect of FTAs, but a rather marginal one:

"Human rights are important, don't get me wrong. At the moment, I have been involved in a lot of FTA negotiations and I think, at least at this point in time, human rights are not the most important part. And I know that the EU is trying to streamline human rights issues into FTA negotiations, and I understand that and I'm not against. It's just that you can have a chapter or provisions on human rights in an FTA, but that should be secondary" (Interview 2, 2022).

Contrastingly, unionist 2 refers to the often-discussed EU role model character for ASEAN's institutionalisation in human rights:

“We see the EU as a model because ASEAN as a region cannot be underestimated at this time. And when we talk to ASEAN when it comes to human rights and labour standards, we particularly refer to the standards or what the EU has been doing. So, it has a direct influence on the way that we do our work” (Interview 6, 2023).

However, partial doubts remain about the EU's rights credibility. These particular concern a (lack of) belief in assertiveness and double standards in exchange for economic power. Academic 1, in this regard, focuses on the legal enforcement of potential provisions, while simultaneously also praises the EU's stance on rights violations in China:

“In practice, it's going to be in the appendix and not really enforced. But at least we can see some developments like the CAI with China. This was the first time the EU decide to suspend an agreement because of those labour slavery trade in Xinjiang, so this is a good sign in terms of protecting labour rights” (Interview 4, 2022).

In the context of EU-Thailand FTA negotiations, many dividing lines within the Thai political economy become clear. Especially, reference was made to the political situation and the weighting of different rights:

“On both sides, the one who pushed very hard to have this kind of FTA soon is the business or the private sector rather than the general people. (...) And it's what the government wants to hear, so they prefer to gain from the business sector rather than the people in general. That's quite a similarity between Thailand and the EU countries” (Interview 3, 2022).

Another aspect regarding access to FTA negotiations is that of education. Illustratively, this work is based on the ability of interviewees to speak English. Similarly, many of those involved in FTA talks, negotiate in English. This creates massive imbalances in access to information about the status and content of such, as trade unionist 1 describes:

“We think that it is only accessible by people who understand English or have graduated from university. But workers in Thailand mostly are professionals, they don't speak English and they don't think about free trade policy. This is very far away from them” (Interview 5, 2023).

Evenly, it is an expression of how fragmented Thailand is in terms of educational backgrounds, regional accessibility, capital, and cultural participation. In a society whose political system is primarily divided into an old powerful establishment and working classes deprived of agency, social mobility to the negotiating table is not guaranteed (Kongkirati, 2019).

Unionist 1, when asked if human rights are a Western concept, does not speak from his own perspective, but from those of “Thai people”:

“Thai people, they would agree that they believe human right is Western. Because Thai people don't pay too much attention to human rights. And sometimes the government violates human rights and people feel OK about doing that. So yeah, many people believe that (...) it's not our culture, it's Western culture, a Western belief” (Interview 5, 2023).

Another example for this division is provided by Academic 1, who normatively argues for a separation between human rights and political rights in negotiations:

“Human rights are moderately important; labour rights are important. But the other rights,

for example political rights should be separated” (Interview 4, 2022).

Referring to sovereignty claims on these issues, the MFA official illustrates such narrow spaces and highlights Thailand’s independent path. Besides the expectation of being treated equally in negotiations, he sets out fundamental differences between Thailand and the EU that supposedly will remain, regardless of a potential FTA’s design:

“Overall, we probably want the same thing you want, better living standards for your people and for our people. We want equality, but in a Thai way if you like. (...) We can see that European people have higher standards and live better lives. We want that for our own people as well, so we can see the destination. But how to get there? We have to figure out the best way for our people, our government, our system to reach that destination. Maybe we are making a mistake, but I think it’s necessary mistakes” (Interview 2, 2022).

Reasonable Credibility, Limited Traction

In summary, the most unique factor for a potential EU-Thailand FTA is its potential impact on the right to health rights. Stakeholders thus call for a thorough investigation of potential FTA effects on Thai medical provision and subsequent adjustments. Similar demands surround labour standards, with stakeholders that target the prioritisation of sustainable consumer choices. One best practice example often cited for Thailand is the EU’s approach on illegal, unreported, and unregulated (IUU) fishing practices. It is important to build on this success and focus on other vulnerable groups, such as migrant workers and women. Further, environmental rights and related legislation seem to be the most promising arena for cooperation between the EU and Thailand. Issue-linking potential exists in several

areas, for example in addressing health or labour aspects in environmentally destructive industries.

Finally, the EU is considered a global norm pioneer, when compared with other major players, and enjoys large value credibility. However, willingness to adopt EU values in Thailand highly depends on the respective stakeholder position. Their roles equally highlight internal Thai political conflicts, which also influence views on the EU and human rights in general. CSO representatives and unionists in Thailand, championing the cause for a more equitable society, find resonance with several EU values, in stark contrast to ministry officials who, as integral parts of power elites, often prioritise business and royalist interests, thereby creating a divergence from EU values. Consequently, the combination of core interests from political and economic elites in Thailand and a certain room for manoeuvre in EU enforcement issues leaves a question mark on the extent to which human rights, particularly civil and political rights, can be addressed accurately by a future FTA.

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