

## Advice

### Negotiation of EU – Thailand Free Trade Agreement

Brussels, 31 January 2024

#### 1. Background

In March 2013, negotiations for an EU-Thailand Free Trade Agreement (FTA) were launched, but there were put on hold in 2014 following the military take-over in the country. Following the Council Conclusions of 2019<sup>1</sup>, the EU took steps towards broadening its engagement with Thailand, including towards the resumption of negotiations on a comprehensive FTA. In March 2023, the EU and Thailand announced the relaunch of negotiations for an FTA<sup>2</sup>.

The EU-Thailand trade in goods was worth over €42 billion in 2022, while trade in services was worth over €8 billion in 2020. The EU is Thailand's 4<sup>th</sup> largest trade partner. Thailand is the 4<sup>th</sup> most important trading partner for the EU in the ASEAN region and 25<sup>th</sup> worldwide. The EU is the 3<sup>rd</sup> largest investor in Thailand, representing around 10% of the total Foreign Direct Investment in the country, while being the 2<sup>nd</sup> largest destination of Thai Foreign Investment.

#### 2. EU-Thailand trade data for fishery and aquaculture products

In a yearly average between 2020 and 2022<sup>3</sup>, the EU imported 39.644 tons of fishery and aquaculture products from Thailand for EUR 213 million, representing 0,77% of the EU's extra import in quantity and 0,83% in value (5,37€/kg). The EU exported 18.153 tons to Thailand for

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<sup>1</sup> <https://www.consilium.europa.eu/en/press/press-releases/2019/10/14/thailand-eu-to-broaden-its-engagement-following-elections/>

<sup>2</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_1628](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_1628)

<sup>3</sup> <https://marketac.eu/wp-content/uploads/2023/12/Copy-of-COMEXT-EU-THAI-FAPS-20-22.pdf>

EUR 37 million, representing 1,07% of the EU's extra import in quantity and 0,69% in value (2,04 €/kg). According to the latest data for the period of January – October 2023, the EU imported from Thailand a total of 25.165 tons of fishery and aquaculture products valued at EUR 156 million, representing a 28,18% decrease in a volume and a 26,68% in value when compared to the same period of the previous year.

The main product imported into the EU from Thailand is prepared and preserved fish. In the period of January – October 2023, the EU imported a total of 16.290 tons, worth EUR 71 million, representing a decrease of 29.6% in volume and a decrease of 30.6% in value when compared to the same period of the previous year. The main product imported by the EU in that period is canned and preserved tuna<sup>4</sup> (8.476 tons valued as EUR 38 million), representing 33,7% in volume of the total of fishery and aquaculture products from Thailand and 52% of the total volume of imports of canned and preserved fish and seafood. In the same period, the EU imported 286 tons of tuna loins.

### **3. EU's offensive trade interests**

As regards to a potential liberalisation of fisheries and aquaculture products by Thailand, no offensive trade interest was identified by the EU operators. There were also no trade barriers when exporting to Thailand identified.

### **4. EU's defensive trade interests**

According to the latest FAO data<sup>5</sup>, as of 2021, Thailand, with more than 470.000 tons (94,5% of which is canned tuna), is the world's leading producer of canned and prepared tuna, accounting

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<sup>4</sup> Excludes tuna loins of tariff items 16041426 / 16041436 / 16041446.

<sup>5</sup> FAO. 2020. FAO Fisheries and Aquaculture - FishStatJ - Software for Fishery and Aquaculture Statistical Time Series. In: FAO Fisheries and Aquaculture Division [online]. Rome. [Cited 3 November 2021]. <https://www.fao.org/fishery/en/topic/166235?lang=en>.



for more than 22% of the world production of canned and prepared tuna. Thailand has a great export potential and, with more than 29%, it is the world's largest exporter of canned and preserved tuna. Thailand's geographical location is also a determining factor in its prominent position in the global tuna industry.

Currently, the EU imposes a Most Favourable Nation duty of 24% *ad valorem* on tuna loins and canned tuna. Under the Autonomous Tariff Quotas system, Thailand benefited, on average, for the period of 2020-2023, of tariff exemptions for 1190 tons of tuna loins. Even without enjoying tariff preferences, Thailand is in the top ten EU suppliers of canned and preserved tuna. The main fishery and aquaculture product exported by Thailand to the EU is canned and preserved tuna, especially canned tuna.

As demonstrated above, Thailand is a highly competitive country in the sector and does not need tariff preferences for the export of its products to the EU market. In comparison with the EU, Thailand is able to export products at a lower price, since the social, economic and environmental standards, including on the fight against IUU fishing and on sanitary rules, are not as high as the EU's. As such, the liberalisation of the tuna market in the EU for Thai products would impact the competitive balance, negatively impacting, economically and in terms of employment, the EU tuna industry, especially the Spanish one.

It is important to keep in mind that the Spanish and EU processing industries, which are located in regions highly dependent on fishing, generate more than 15.000 and 25.000 direct jobs, respectively. These industries have invested and continue to invest to develop with robust sanitary, social and environmental standards.

Additionally, the potential knock-on effect on EU trade with regions that built an EU supply chain, notably the ex-Cotonou regions of West and East Africa and the Economic Partnership Agreements with these regions should be considered.

Therefore, in the context of the negotiations for a potential EU-Thailand Free Trade Agreement, products from the tuna industry should be considered sensitive and deserving of a specific approach.

The significant competitive dimension of the challenges faced by the tuna sectors of the EU and of Thailand should be considered.

Due to the very significant competition, from a socio-economic and environmental perspective, in the case of a potential liberalisation for canned tuna and tuna loins products, to the EU producers and processors, the most concerned EU sector, specifically the Spanish canning industry represented by ANFACO-CECOPECA, with the support of ANCIT, IS&WFPO, ISEFPO, and IFPO, call for an exclusion of the following tariff items from the scope of the negotiations:

- Canned tuna (1604 14 21, 1604 14 28, 1604 14 31, 1604 14 38, 1604 14 41, 1604 14 48, 1604 14 90, 1604 19 39, 1604 20 70)
- Tuna loins (1604 14 26, 1604 14 36, 1604 14 36)
- Fresh whole tuna (0302 31, 0302 32, 0302 33, 0302 34)
- Frozen whole tuna (0303 41, 0303 42, 0303 43, 0303 44)

## **5. Chapters of the potential Free Trade Agreement and other issues**

For the fisheries and aquaculture sector, the three pillars of sustainability (social, environmental, and economic) and international governance are fundamental. Therefore, the Free Trade Agreement must include chapters that guarantee the effective implementation and control of compliance with regulations, to guarantee a level-playing-field.

### **5.1. Rules of Origin**

#### **5.1.1. Preferential rules of origin.**

Preferential rules of origin play an essential role in the trade of fishery and aquaculture products. Therefore, with the aim of contributing to a level-playing-field, the EU preferential rules of origin from the Union Customs Code (UCC) should be incorporated in the trade agreement, meaning where the definition of originating products for fisheries should meet the condition that the fish is wholly obtained. Currently, Thailand has scarce tuna fishing capacities, but, however, special attention should be paid to a possible development of their fishing fleet, which could be contrary to the provisions on sustainability of fisheries.

### **5.1.2. Cumulation of Origin**

In the framework of negotiations with member countries of the ASEAN regions, eventual cumulation of origin is an extremely sensitive issue, so the possible agreement should only incorporate bilateral cumulation, in order to avoid market disruptions.

### **5.2. Fight against IUU Fishing**

One of the provisions mentioned in Trade and Sustainable Development Chapters concerns the management of living marine resources and aquaculture products. Under this provision, cooperation in the fight against IUU is emphasised. As enshrined in the Common Fisheries Policy and reiterated in President von der Leyen’s mission letter to Commissioner Sinkevičius, the EU intends to apply a zero-tolerance approach towards IUU fishing. Concrete actions need to be taken to this effect, including in EU trade policies.

On 21 April 2015, the European Commission issued a warning (“yellow card”) regarding its handling of IUU fishing<sup>6</sup>. Thailand responded positively, developing a Fisheries Act that brings their regulations in line with international best practices, imposing sanctions for IUU offenses, and improving fisheries control and traceability. These positive changes were widely

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<sup>6</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_15\\_4806](https://ec.europa.eu/commission/presscorner/detail/en/IP_15_4806)

acknowledged, by the European Court of Auditors<sup>7</sup> and stakeholders<sup>8</sup>. These reforms also boosted the country's international reputation in the fisheries and aquaculture sector.

However, the abovementioned reforms are at risk of being undone. Despite a partial implementation by Thailand, since 2015, of the Agreement on Port State Measures of the UN's Food and Agriculture Organisation, the Thai Department of Fisheries plans to replace the Fisheries Act with new legislation to "free Thailand from IUU"<sup>9</sup>. The legislative changes would undermine the current legal framework in critical areas, such as:

- Removing restrictions on at-sea transshipment of seafood catch and at-sea crew transfers;
- Permitting child labour on fishing vessels as part of an apprenticeship programme;
- Weakening punitive measures designed to deter IUU fishing;
- Extending the permitted number of fishing days per trip;
- Extending the time period for vessel operators to revise crew lists after leaving port;
- Abolishing the electronic payment system for fishers;
- Reverting to day-rate fisher salaries;
- Eliminating the requirement for vessel operators to record fishing coordinates in vessel logbooks.

These proposals would roll back the substantial progress, which was achieved with considerable time and resources dedicated in Brussels and Bangkok over the past eight years. The rollback of

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<sup>7</sup> European Court of Auditors (2022) Special Report 20/2022: EU action to combat illegal fishing, [https://www.eca.europa.eu/Lists/ECADocuments/SR22\\_20/SR\\_Illegal\\_fishing\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/SR22_20/SR_Illegal_fishing_EN.pdf).

<sup>8</sup> Such as the EU IUU Coalition. See EU IUU Coalition (2022) Driving Improvements in Fisheries Governance Globally: Impact of the EU IUU Carding Scheme on Belize, Guinea, Solomon Islands and Thailand, <https://www.iuuwatch.eu/wp-content/uploads/2022/03/2022-EU-IUU-Coalition-Carding-Study.pdf>.

<sup>9</sup> MGR News (2023) "ภูมิธรรม" จ่อขง ครม.เห็นชอบ พ.ร.บ.ประมง ฉบับใหม่ ปลดไทยพ้นทาสไอยูยู ["Bhoomtham" plans to get the Cabinet to approve the new Fisheries Act, freeing Thailand from IUU slavery], <https://mgronline.com/business/detail/9660000107719>. Also, <https://www.bangkokpost.com/thailand/general/2652375>.

the reforms presents risks for the sustainability and reputation of the Thai industry. There are risks for international ocean governance and the global efforts for increased transparency and accountability in the sector. Additionally, the rollback represents risks for the efforts to protect, conserve and enhance the world's natural capital, and to achieve decent work worldwide<sup>10</sup>.

The MAC believes that policy consistency is essential and, as such, supports the inclusion under the Trade and Sustainable Development Chapter, of legal provisions on IUU fishing, so that the trade agreement is contingent on actions to combat and end IUU fishing. Any future Free Trade Agreement with Thailand must include clear safeguards and mechanisms applicable in case of non-compliance with the commitments taken.

### **5.3. Fight against Forced Labour**

Regarding labour standards, there are core conventions of the International Labour Organisation that should be ratified and enforced<sup>11</sup>. Even though Thailand has ratified the bulk of these core conventions, to date, Thailand has failed to ratify the ILO C87 on Freedom of Association and Protection of the Right to Organise and the ILO C98 on the Right to Organise and Collective Bargaining. Therefore, the ILO C87 and C98 should be explicitly mentioned in the Free Trade Agreement as fundamental conventions to ratify. Without these remaining ratifications, there will be little to no protection of workers' fundamental rights, fishers and all migrant workers in Thailand, leaving them subject to forced labour, human trafficking, and slavery. The agreement

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<sup>10</sup> It is worth noting that 90 civil society organisations signed a statement which was sent to Prime Minister Srettha Thavisin expressing concern over Thailand's Fishing sector: EJF (2023) Joint Civil Society Statement Concerning Thailand's Fishing Sector at a Critical Crossroads, [https://ejfoundation.org/resources/downloads/CSO-Joint-Statement-Critical-Crossroads\\_EN-1.pdf](https://ejfoundation.org/resources/downloads/CSO-Joint-Statement-Critical-Crossroads_EN-1.pdf).

<sup>11</sup> The ILO Conventions on the Right to Organise and Collective Bargaining (C98), Forced Labour (C29), on non-discrimination (C100 and C111), on child labour (C138 and 182), and on work in fishing (C188). The ILO C188 Work in Fishing Convention is particularly important for the EU fishing industry and has been transposed into Council Directive (EU) 2017/159.

cannot disregard responsible fishing by failing short of protecting the living and working conditions of fishers on board.

The binding section of the agreement should include provisions on trade and sustainable development that do focus on promoting decent work conditions and environmental protection. This is even more important considering that, as the main tuna processing country, Thailand is one of the major importers of tuna from countries with low labour conditions on board their fishing vessels (e.g., Indonesia, Taiwan, Korea, China). Any commercial agreement should include guarantees to prevent forced labour for fishery and aquaculture products as well as for all other products. Thailand should strive for similar or equal levels of social and environmental sustainability standards as the ones that the EU industry must meet under the EU regulations.

As an example, the International Labour Organisation has pointed out that, in the fishing industry, the salaries of workers represent between 30% and 50% of the operating costs, which is why, in many regions of the world, there are operators who try to reduce labour costs through harmful of unlawful practices<sup>12</sup>. The EU efforts to make fishing sustainable and socially responsible are incompatible with importing products from certain countries that demonstrate reduced concern for sustainability and social accountability.

In light of the ILO C188 and the EU directive implementing the mentioned convention, trade and IUU policies must be aligned with labour policies in order for the EU to respect these standards when negotiating trade agreements. Otherwise, the EU would send the wrong message to the international community by rewarding those who have done little for the sustainability of fish stocks and fair treatment of people.

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<sup>12</sup> ILO (2016), Fishers First. Good practices to end labour exploitation at sea, International Labour Office, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS), Sectoral Policies Department (SECTOR) - Geneva: ILO, p. 12.

## 6. Sanitary and Traceability Issues

The last Food and Veterinary Office inspection in the tuna products fishing sector in Thailand took place in 2016<sup>13</sup> and revealed weaknesses that can be considered systematic, including weaknesses in the control of the transport control of tuna species fishery products to the first establishment on land, in the control of cold storage and in the EU eligibility of raw materials imported by Thailand to be processed and subsequently exported to the EU market.

## 7. Recommendations

In the context of the ongoing negotiations of a potential EU-Thailand Free Trade Agreement, the MAC believes that the European Commission should:

- a) Ensure the involvement of the relevant stakeholders, including both industry and an empowered civil society, at all stages of the process;
- b) Take into account the lack of offensive trade interests for the EU operators of the fisheries and aquaculture sector;
- c) In terms of defensive interests, identify canned tuna and tuna loins products as “sensitive”, keeping in mind the competitiveness of the Thai industry, the differences in sustainability standards, and the potential negative economic and employment effects in the EU - note that the most concerned EU sector represented by ANFACO-CECOPECA, with the support of ANCIT, IS&WFPO, ISEFPO, and IFPO, calls for an exclusion of all tuna products from a potential liberalisation;
- d) Ensure the inclusion of chapters that guarantee an effective implementation and control of compliance with regulations on the three pillars of sustainability and international governance, guaranteeing a level-playing-field;

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<sup>13</sup> <https://ec.europa.eu/food/audits-analysis/audit-report/details/3733>

- e) Incorporate the EU's preferential rules of origin derived from the Union's Customs Code, only incorporate bilateral cumulation of origin, and exclude any potential regional cumulation with other ASEAN countries;
- f) Take into account ongoing legislative developments in Thailand and the potential rollback of standards concerning the fight against IUU fishing and the fight against forced labour;
- g) Guarantee policy consistency on the fight against IUU fishing, including through the inclusion of legal provisions that ensure that the trade agreement is contingent on actions to combat and end IUU fishing as well as on the inclusion of clear safeguards and mechanisms applicable in the case of non-compliance with the commitments taken;
- h) Ensure the Commission services are not prevented from using all tools foreseen under EU law, such as the EU IUU Regulation, if it is demonstrated that Thailand has failed to meet its international duties;
- i) Guarantee policy consistency on the fight against forced labour, including through the inclusion of legal provisions that focus on promoting decent work conditions, while ensuring that Thailand works towards similar or equal sustainability standards as those foreseen in EU regulations;
- j) Explicitly mention the International Labour Organisation's Conventions 87 on Freedom of Association and Protection of the Right to Organise and 98 on the Right to Organise and Collective Bargaining as fundamental conventions to ratify;
- k) Take into account potential weaknesses, on the Thai side, concerning sanitary and traceability matters.