

Submission No:9.....

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ACTU Submission to the Joint Standing Committee on Treaties regarding the Australia-Thailand Free Trade Agreement

1 The ACTU welcomes the opportunity to present a submission to the Joint Standing Committee on Treaties regarding the Australia-Thailand Free Trade Agreement (ATFTA). There are important issues to be considered in relation to ATFTA that are at risk of being overlooked in light of the attention being paid to the free trade agreement with the United States.

2 As a matter of policy, the ACTU prefers multilateral trade agreements, while reserving the right to evaluate and criticise their content. According to the Regulation Impact Statement (RIS) submitted by the Department of Foreign Affairs and Trade (DFAT), one of the main objectives of ATFTA is to "add momentum to Australia's regional and multilateral trade liberalising efforts". The ACTU concedes that trade agreement negotiations with Thailand and Singapore might have contributed to the recent invitation from ASEAN that Australia and New Zealand attend the summit in Laos later this year, but their contribution is outweighed by the change in political leadership in Malaysia. The ACTU doubts the multilateral significance of this agreement.

3 The ACTU agrees with the RIS, however, that in the wake of Cancun "bilateral free trade negotiations are likely to deliver faster and deeper tariff cuts in individual markets for good of Australian origin". However, they also deliver faster and deeper cuts to Australia's tariffs to other countries' goods.

4 The desirability of this is debatable, having regard to both the low overall level of Australian tariffs, the state of Australian manufacturing, and the circumstances of our trade and economic relationship with particular bilateral partners. Further, there are associated risks of diversion of effort from multilateral negotiations, and diversion of trade with other countries that are outside the limited network of those that have bilateral free trade agreements with Australia.

Service Sector Issues

5 The ACTU welcomes the predominantly positive list structure of the services chapter of ATFTA and the degree of congruence between Australian commitments on services in this agreement and those made under the General Agreement on Trade in Services (GATS). However, officials of DFAT with whom ACTU representatives discussed the course of ATFTA negotiations indicated that this outcome reflects Thailand's policy, and falls short of Australia's ambitions for the services sector and the Services Chapter of the agreement.

6 Australia's services sector commitments may be altered as a result of the second round of negotiations prescribed by Articles 812.1. The ACTU cannot be comfortable with the ATFTA outcome on services until this second stage process is completed. The Joint Standing Committee on Treaties should recommend that DFAT consult

extensively with the ACTU and its affiliates on proposed additions to Australia's services sector commitments.

7 The ATFTA commitments on Movement of Natural Persons apply to all service sectors, rather than only to nominated sectors as is the case with GATS. The ACTU has no objection to this given that the commitments are limited to the categories of business visitors, and managers, executives, and specialists seeking entry as contractual service suppliers. However, there needs to be proper domestic enforcement mechanisms. The ACTU also queries the omission from ATFTA of the safeguard specified by the Commonwealth under GATS that allows for the suspension of commitments on Movement of Natural Persons in a particular area, in the event of a labour dispute.

Dispute Resolution

8 The ACTU does not support the dispute resolution provisions of ATFTA. ATFTA provides for investor-activated dispute resolution, and inappropriate arrangements for the hearing of disputes between the Parties.

9 The contrast between the AUSFTA and ATFTA provisions for dispute resolution between the Parties is significant. The former allows for public hearings of disputes and public release of the Parties' submissions, subject to the protection of confidential information. The latter specifies that hearings are closed and that the documents submitted to the arbitral tribunal shall be kept confidential.

10 AUSFTA requires the arbitral panel to consider requests from non-governmental persons or entities to make written submissions on a matter in dispute. In contrast Article 1807 of ATFTA on the Proceedings of Arbitral Tribunals contains no such provision.

11 The ACTU therefore proposes to the Joint Standing Committee on Treaties that it recommend the renegotiation of the ATFTA dispute resolution provisions, in line with the AUSFTA standard.

Industrial Goods

12 ATFTA provides for the abolition on the date of entry into force of the agreement of most of Australia's tariffs, not only those that are 5% or less but also tariffs on vehicles that would otherwise be 10% on 1 January 05, and tariffs on 48 automotive parts and components tariff items. On date of entry into force, the agreement will cut to 5% tariffs on another 98 automotive parts and components tariff items. ATFTA also locks-in a phase down to zero of these tariff items, and of Textile, Clothing, and Footwear products.

13 The RIS records that the modelling of the impact of the tariff changes by the Centre for International Economics (CIE) forecasts a positive outcome for manufacturing, as part of a rather small economic benefit to Australia from ATFTA generally. Setting aside the debate about the merits of the CIE's modelling, it should be noted that the RIS records that the CIE did not estimate impacts on particular sub-sectors of manufacturing.

14 The RIS acknowledges that Thailand has “some competitive strengths” in the automotive and TCF industries, and that any effect of ATFTA on Australian manufacturing is likely to be strongest in Victoria and South Australia. The RIS refers to the concern of sections of the Australian TCF industry about an increase in Thai imports, and to the view of some sections of the industry that job losses can be expected.

15 DFAT nevertheless concludes in the RIS that it is more likely that Thai TCF imports will displace imports from other countries, such as China. This conclusion presumably depends in part on the outcome of the current feasibility study on the issue of negotiating a free trade agreement with China.

16 Manufacturing sector affiliates of the ACTU are likely to provide the Committee with submissions on their concerns about the effect of ATFTA on the industries they cover. In the ACTU’s view, given the difficulties experienced by manufacturing in Australia and the importance of retaining policy options for a strategy to maintain and expand a high value added domestic manufacturing sector, the Commonwealth should not negotiate new free trade agreements that lock-in phase-downs of tariffs to zero. In the absence of such agreements, the Commonwealth is able to delay or amend, if appropriate for the purposes of domestic manufacturing policy, the scheduled reduction in automotive and TCF tariffs.

17 An additional argument against the tariff provisions of ATFTA is that, judging by the policy and practice of Thai authorities, Thai and Australian manufactured goods will not compete on the basis of common acceptance and implementation of core international labour standards.

Labour Standards

18 ATFTA has no Chapters setting out the Labour, or for that matter the Environment, obligations of the Parties. The issue here is not ATFTA’s failure to match the AUSFTA provisions, because those provisions are inadequate for the respective Parties and would be grossly so for an agreement with Thailand. Compared to Australia and the United States, Thailand has a poor record on labour issues.

19 This record was highlighted in a report presented by the International Confederation of Free Trade Unions (ICFTU) to the WTO General Council, as part of the Council’s November 2003 review of the Trade Policies of Thailand.

20 According to the ICFTU report, Thailand has ratified only four of the eight core ILO labour conventions. Thailand has not ratified the Conventions on the Right to Organise and Collective Bargaining, Freedom of Association, Discrimination, and Minimum Age. The Report provides examples of problem with Thai labour law, restrictions on the right to organise, conditions in the garment industry, the prevalence of forced labour and child labour, exploitation of migrant workers, and punitive actions by employers to prevent the establishment of unions in their premises. The Report is provided as an Attachment to this submission.

21 The ACTU recognises that there may be competition between countries' goods based in part on differences in labour costs. However, the extent of the cost - differential should not be exacerbated or created by systemic violation of international core labour standards.

22 The range of examples cited in the ICFTU report cannot be explained away as a result of lack of capacity to enforce labour standards. Moreover, well-resourced transnational corporations have invested in Thailand, and acted to prevent their employees from unionising. While there may be a case for a range of special measures to assist particular developing countries to comply with core international labour standards, that case does not justify the omission of labour standards from ATFTA, or trade agreements generally. The Committee is asked to recommend that ATFTA should contain a labour clause upholding the core ILO Conventions.

INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU)
INTERNATIONALLY RECOGNISED CORE LABOUR
STANDARDS IN THAILAND
REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE
TRADE POLICIES OF THAILAND
(Geneva, 12 and 14 November 2003)

EXECUTIVE SUMMARY

Thailand has ratified only four of the eight core ILO labour Conventions. In view of restrictions on the trade union rights of workers, and continuous problems with discrimination, child labour and forced labour, determined measures are needed to comply with the commitments Thailand accepted at Singapore, Geneva and Doha in the WTO Ministerial Declarations over 1996-2001, and in the ILO Declaration on Fundamental Principles and Rights at Work.

Thailand has ratified neither the ILO core Convention on the Right to Organise and Collective Bargaining nor that on Freedom of Association and Protection of the Right to Organise. There is insufficient protection against anti-union discrimination. The right to strike and the right to collective bargaining are severely restricted, in particular for public sector workers.

Thailand has ratified the core ILO Convention on Equal Remuneration but not the Convention on Discrimination. Despite theoretically adequate legal provisions, in practice women have less access to quality employment, receive lower wages, and are less protected.

Thailand has ratified the ILO core Convention on the Worst Forms of Child Labour, but not the Convention on Minimum Age. Child labour is highly prevalent in Thailand. Children work especially in agriculture, domestic work and services. The worst forms of child labour are prevalent: child prostitution, begging, drugs trafficking and child domestic work.

Thailand has ratified both ILO core Conventions on forced labour. Forced labour exists in various forms such as exploitation of illegal migrant workers (including in the production of garments for exports) and forced prostitution (national and international trafficking of women and girls). Forced labour also exists in sweatshops, where sometimes entire families work in debt bondage.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN THAILAND

Introduction

This report on the respect of internationally recognised core labour standards in Thailand is one of the series the ICFTU is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) (Singapore, 9-13 December 1996) in which Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards." The fourth Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998.

The ICFTU's affiliates in Thailand are the Labour Congress of Thailand (LCT) and the Thai Trade Union Congress (TTUC). Less than 2 percent of the total work force are unionised, although this accounts for nearly 11 percent of industrial workers and over 50 percent of state enterprise workers. The majority of total employment is in the agricultural and informal economy.

Thailand has a market-based economy and a strong tradition of private enterprise, although state enterprises play a significant role in some sectors. Approximately 60 percent of the population is employed in the agricultural sector, although agriculture only accounts for 8.5 percent of GDP. Industry provides 42 percent of GDP, including manufacturing at 33.3 percent of GDP, and services accounts for 49.5 percent. Thailand exports rice, tapioca, rubber, canned pineapple, frozen shrimp, sugar, corn and poultry. A growing agro-industry sector has emerged with the emphasis on adding value to these products before they are exported. Thailand has long been famous as an exporter of food and traditional commodities, and while their importance is still great, high technology exports have become the largest and fastest growing part of the economy. Large investments from multinationals have helped Thailand to become an important Southeast Asian production centre for many manufacturers of computers, electronic integrated circuits, automobiles, auto parts and air conditioners.

Total exports in 2001 amounted to US\$ 63,190 million. Rice exports provided US\$ 1,585 million, rubber US\$ 1,325 million and manufactures US\$ 55,532 million.

I. Freedom of Association and the Right to Collective Bargaining

Thailand has ratified neither Convention No. 87 on the Freedom of Association and Protection of the Right to Organise, nor Convention No. 98 on the Right to Organise and Collective Bargaining.

The 1975 Labour Relations Act recognizes the right of private sector workers to organize and bargain collectively, and prohibits anti-union discrimination by employers. Ten workers in the same factory or industry can apply to form a union, which must be registered with the Ministry of Labour and Social Welfare (MOLSW).

Workers can be legally fired for any reason provided they receive severance pay, even if they are union leaders, a provision which can easily be abused. Members of the bilateral Worker-Employer Welfare Committees are protected from dismissal under the 1998 Labour Protection Act, but even in such cases reinstatement for unfair dismissals is a very lengthy process.

Each union is entitled to no more than two advisors, who must register with the Ministry of Labour, and have their registration regularly renewed. The Ministry of Labour has broad discretion to deny them such registration.

The Labour Relations Act requires that all members of a union executive must be full-time workers in the enterprise. They must therefore negotiate leave or absence for trade union work with the employer.

A trade union with a membership representing at least 20 per cent of the workforce may apply for collective bargaining. If the application is valid, negotiations have to start within three days. A new agreement must be formally registered within 15 days. If no agreement can be reached arbitration will take place in an attempt to resolve the dispute within five days. After this, workers may engage either in a lock-out or strike, provided 24 hours' notice is given. An employer may not dismiss or transfer employees, their representatives or trade union members during the dispute settlement procedure, except in cases of misconduct.

Private sector workers have the right to strike but the government may restrict strikes that would "affect national security or cause severe negative repercussions for the population at large." The Thai government is preparing a revised version of the Labour Relations Act, which would weaken the right to collective bargaining and the right to strike. The law would give the Labour Minister the power to impose arbitration and end any labour dispute by decree, or to order unions not to demand wage rises – and employers not to pay them. These powers could be invoked for reasons of "national security," "public order" or undefined "serious economic problems."

Employees of state enterprises regained the right to form trade unions and bargain collectively when an amended State Enterprise Labour Relations Act (SELRA) came into force in April 2000. At least 10 employees, representing at least 10 per cent of the workforce – administrative staff, casual, seasonal and contract workers excluded – may apply to establish a trade union. Each state enterprise can have only one union, and each state enterprise employee may be a member of only one union. Under the SELRA, there is a restriction on affiliation between state enterprise unions and private sector labour congresses or federations. The SELRA prohibits strikes and lockouts within state enterprises. Labour law forbids strikes in "essential services," which it defines in broader terms than the ILO's internationally-recognised definition of "services the interruption of which would endanger the life, personal safety or health of the whole or part the population", to cover sectors such as telecommunications, electricity, water supply, and public transportation.

Civil servants are excluded from the SELRA or the Labour Relations Act, and there are government regulations prohibiting them from forming unions. There is no protection for the right of civil servants to strike.

Unions in Thailand report that employers frequently dismiss workers who try to form trade unions. In some cases, they are dismissed while awaiting registration, while in others they are dismissed ostensibly for non-union reasons invented by the employer. Thai law does not provide for punitive damages in cases of wrongful dismissal.

For example, the management of Gina Form Bra Company Ltd. has been harassing and intimidating union members since it was taken over by a new owner in 2001. Actions have varied from threats to call in the police to stop the union from collecting union dues; not paying damages to 24 workers that had been laid off in August 2001; the dismissal of new Welfare Committee members and a union member after elections; violence against the former union treasurer; removal of Welfare Committee members to sections with lower wages and lower benefits; and the forced signing of blank pieces of paper which were later presented as an agreement between employer and workers, containing provisions below the existing benefits.

Another example is the Auto Alliance, a joint venture uniting Ford Motor Co. and Mazda Motor Corp., which suspended four union leaders for allegedly instigating a refusal of overtime on the part of the workers. Three were then fired outright and the case of the fourth (who could not be fired immediately because he was a member of a legally mandated committee) was pending before the Thai labour authorities. After strong protests by the International Metalworkers' Federation (IMF) and its affiliates, an agreement was reached for the reinstatement of the workers.

At the Light House production plant (Light House is a sub-contractor of the American luggage multinational, Samsonite Corporation), in October 2001 600 workers were dismissed (out of a total workforce of 1,400). The majority of these were women with more than 10 years of experience with the company. Overtime benefits were cut and wages slashed by 25% to \$3.60 per day for the remaining workforce, despite a dramatic increase in their workload. Large-scale protests ensued in Bangkok, culminating in 200 protesting workers from the Light House Labour Union presenting a letter written in their own blood to the Thai parliament. In June 2002, 20 elected union representatives at Light House were dismissed, and when 849 workers stopped working to protest, all were immediately dismissed. 200 workers were taken back on new contracts on July 12, following a further walkout, but many others, mostly women, are still waiting to be reinstated. The management has claimed that it did not have sufficient work for them, yet it has forced non-union workers to work overtime and continued to hire new staff. Samsonite distributes its merchandise in over 100 countries and has production sites across the world. The company has a strong international profile but allows its contractors to act in a lawless and irresponsible manner on occasions such as that of Light House.

The Garment Industry in Thailand

In 2001 the Thai garment industry employed over 800,000 people in more than 2,000 factories. The dollar value of the industry was US\$ 3.16 billion, which makes it the third largest export industry in the country. International competition has increased over the past years and will increase even more after 2005 with the phase-out of the Agreement on Textiles and Clothing (ATC), given the increasing role of China in the market for garment production. The competitiveness of the sector has decreased due to rising costs and increased skill requirements without productivity gains. Most of the garments are not high value added products and so cost cutting measures have been taken, which have adversely affected working conditions.

Most garment workers are women, who are commonly only employed following pregnancy testing. Wages are often below the living or minimum wage, which forces workers to work long overtime hours. Production targets are unrealistically high and working and living conditions are unsafe. The managements generally have a negative attitude towards trade unions. Collective agreements and formal trade unions hardly exist at most factories in the garment sector.

While there has been pressure from US consumers for the inclusion of Codes of Conduct, the effects have been questionable. A study by the Clean Clothes Campaign on sourcing by Nike shows that Nike's Code of Conduct is not very well-known by its workers.

There has been an increasing use of subcontractors by multinational companies. The conditions are even worse at subcontractors, where there is no sign at all of a code of conduct, wages are lower, there are no unions, and there is forced overtime work.

Source: Overview of the implementation of voluntary labour standards and codes of conduct in the Thai garment industry, Kenen Institute Asia; and Clean Clothes Campaign

The Thai government is using the legal division between the private sector and the public sector (the private sector is covered by the Labour Relations Act, the public sector by the SELRA) to restrict freedom of association, in the context of an ongoing privatisation process. When a state-owned company passes to the private sector, the Ministry of Labour cancels its trade union registration, on the grounds of the difference in legal status. This is what happened, for example, to the Bangchak Petroleum Public Co. Ltd. Employees' Union (BCPEU).

There are frequent abuses of the provisions of Article 75 of the Labour Protection Act of 1998, according to which the employer may temporarily halt his operations for any cause other than force majeure, provided that the employer pays the employees at least 50 per cent of their normal working day's wage during that period. Employers have used this provision to indefinitely keep trade union members out of the factory on half pay, thereby forcing them out of the company.

The unions also report that tripartite labour courts are very slow in handling disputes, and tend to side with the employer in cases where union leaders have been dismissed. Even where a

court has ordered the reinstatement of an illegally dismissed worker, employers often react by offering substantial severance pay instead of reinstatement. Another means of circumventing trade union activity is outsourcing, which has proved increasingly popular among employers, notably in the garment and textile industries.

It is difficult to organise migrant workers. Employers regularly take advantage of the difficult situation of migrant workers to dismiss them whenever they please. In September 2001, the Government undertook an open legalisation campaign directed at the estimated 1 million to 1.5 million illegal Burmese, Cambodian, and Lao workers already present in the country. 508,000 migrants registered, and were allowed to remain in the country with specified employers for 1 year. Provisions of the 1998 Labour Protection Act technically apply to this group, but due to the lack of enforcement, migrant working conditions hardly improved. In September 2002 the Government extended this program for 1 more year, but only for already registered migrants.

In June 2003, 420 legal Burmese workers from the King Body Concept Co. Factory were dismissed and deported for submitting a complaint after a dispute over wages and working conditions. All these workers were legally registered under the Thai Ministry of Labour scheme, and should have received the same rights and protection as Thai workers. However, they received less than half the minimum wage and one fifth the rate for overtime work. Their normal working hours were from 8 a.m. to 10 p.m. and they were frequently forced to work overtime. During peak production periods, the workers were sometimes forced to work until 3 a.m. The factory owner also withholds the original copy of the Burmese workers' work permits, thus violating Thai immigration law. On June 23, the labour official held a meeting at the factory with the factory owner and 10 workers elected to be representatives. However, before the meeting the factory owner called the local and immigration police and border patrol soldiers. All the workers were sent to an immigration detention centre on June 23, 2003 and deported to Burma. This action directly violated Thai law, which guarantees a period of 7 days for the workers to find new jobs and requires the employer to pay the workers two months' minimum wages if they do not want to employ the workers any longer.

No separate labour legislation applied in the nine export processing zones.

Conclusions

Freedom of association is recognised by law, however there are legal restrictions and serious discrepancies in the legislation applying to private sector workers, state enterprise workers and civil servants. In practice the right to organise is often violated and union members meet a lot of difficulties. The right to collective bargaining is protected by law, but in practice this right is not ensured, and only a small percentage of workers is covered by a collective agreement. The right to strike is recognised but restricted for public sector workers and civil servants.

II Discrimination and Equal Remuneration

Thailand ratified Convention No. 100 on Equal Remuneration in 1999, but has not ratified Convention No.111 on Discrimination (Employment and Occupation).

The Constitution provides for equal treatment under the law with respect to race, sex, religion, disability, language, or social status. However, in practice, discrimination exists, and there is a lack of enforcement by the government.

Government regulations require employers to pay equal wages and benefits for equal work, regardless of gender. In practice women receive lower pay for equal work in virtually all sectors of the economy. There is discrimination in hiring, and a significant gap between the average salaries earned by men and women, because women are concentrated in lower paying jobs.

Women constitute around 44 percent of the labour force and their share in professional positions is increasing. Women are able to own and manage businesses freely. However, a 2000 UNIFEM study showed that women have generally less education and fewer opportunities for higher education than men. Half of the female population finishes only primary education. In 1994, illiteracy rates of the female and male population aged 13 years were 62 percent and 38 percent respectively. Women and girls are more likely to select subjects related to their traditional roles, e.g. home economics and commerce, while most males choose industrial and agricultural subjects. Participation of women in non-formal education is higher than for men.

Women comprise 90% of Thailand's export-oriented workforce. Electronics is the most common industry in the zones.

According to a report presented at an ESCAP expert group meeting most companies in the private sector practice equal opportunity employment. Few women participate in various professional areas especially at the decision-making level, where gender discrimination exists both de jure and de facto, but where tradition and family obligations also play a role. However, many discriminatory practices have in theory been changed, such as those in the public sector whereby now women can become governors, generals in the armed force, district officers and so on.

The National Declaration on Women, which is the national policy on women is intended to be implemented cooperatively by all related governmental and non-governmental organisations, private sector, the mass media and the Thai population in general. The Declaration focuses on a number of issues, including equality of treatment before the law, equal opportunity to participate in employment and social development and increased educational opportunities for women. It states that women and men have an equally important role to play in the process of national development.

Conclusions

Although by law there is no discrimination between men and women, in practice women are concentrated in certain jobs, in the public and private sector. There exists a salary gap and an educational gap between men and women. Illiteracy among women is much higher than among men.

III. Child Labour

Thailand ratified Convention No.182, Worst Forms of Child Labour Convention in 1999. Thailand has not ratified Convention No.138, the Minimum Age Convention.

The legal minimum age for employment is 15. The law permits the employment of children between the ages of 15 and 18 only in "light work". The lifting of heavy loads and exposure to toxic materials or dangerous equipment or situations is restricted. The employment of children at night (from 10 p.m. to 6 a.m.), or in places where alcohol is served, is prohibited by law.

For the year 2000, the ILO estimated that 173,400 children between 13-14 years and 1,956,900 children between 15-19 were economically active.

Estimations show that approximately 1 million children work on family farms. NGOs reported that 2 to 4 percent of children between the ages of 6 and 14 years worked illegally in urban areas, thus being at risk of becoming victims of abuses of labour laws. Most underage workers in urban areas work in the services sector, in particular at gasoline stations and restaurants.

There is a significant number of child domestic workers in Thailand, although estimates vary among organizations. Minimum wage and age provisions of the 1998 Labour Protection Act do not apply to domestic workers, many of whom are under 15 years old. According to NGO reports, child domestic workers are mainly migrants from Burma, Cambodia, and Laos. Most are in the country illegally, increasing their vulnerability to exploitation.

In 1996 some 194,180 foreign child labourers were estimated to work in Thailand. 70 percent were boys. Most of them were from Burma, Laos and Cambodia.

Estimates by the Government, university researchers, and NGOs show as many as 30,000 to 40,000 prostitutes under 18. The Prostitution Prevention and Suppression Act of 1996 made child prostitution illegal and provided for criminal punishment for those who use child prostitutes. Parents who allow a child to enter the trade are also punishable.

In late 2001, the Department of Public Welfare and the International Labour Organization-International Program for the Elimination of Child Labour (ILO-IPEC) estimated that around 20,000 street children are living in the major urban centres. Many come from neighbouring countries, including Cambodia and Burma.

Drugs trafficking by children is a serious problem in Thailand as well. Many of the children involved in selling drugs are addicts themselves.

Child labour laws are not well enforced, and inspectors usually respond only to specific public complaints, reports of absences by teachers, or reports in newspapers.

In August 1999 the Government promulgated the National Education Act. The act raised the compulsory educational requirement from 6 years to 9 years of age, and offers 12 years of

free education. However, only an estimated 23 percent of children completed six years at school, and only 10 percent completed all twelve years.

Conclusions

Child labour in Thailand is a major problem. Children work on family farms and in the informal economy (mainly in services). A large number of children from neighbouring countries work in Thailand, mostly as domestic child workers, in prostitution and in street begging.

IV. Forced Labour

Thailand has ratified both Conventions on Forced Labour. Convention No. 29, the Forced Labour Convention and Convention No. 105, Abolition of Forced Labour, were both ratified in 1969.

The Constitution prohibits forced or bonded labour except in the case of national emergency, war, or martial law; however, while these provisions generally are enforced in the formal sector, forced labour in the informal economy remains a problem. The law specifically prohibits forced or bonded labour by children, however forced labour among children occurs.

There are reports of sweatshops in which employers prevent workers (primarily migrant workers) from leaving the premises. There are no estimates of the number of such sweatshops, but the growing number of illegal workers from Burma, Cambodia, and Laos increase the opportunities for such abuse.

Trafficking is a large problem in Thailand. Thailand is a destination, transit and source country. The 1997 Prevention and Suppression of Trafficking in Women and Children Act increased the penalties for trafficking in women and children for the purposes of prostitution or slave labour, and provided for wide powers of search and for assistance to victims. However, law enforcement remains low.

According to domestic NGOs, girls between the ages of 12 and 18 years are trafficked from Burma, southern China, and Laos to work in the commercial sex industry. Women are brought into the country with promises of restaurant or household work and then pressured or physically forced into prostitution. The majority of prostitutes are not kept under physical constraint, but a large number work in debt bondage.

An ILO study on the trafficking of women and children in the Mekong region, where a number of trafficking routes are well-established, shows that the main reason for trafficking is prostitution, and mainly concerns women and children from Burma and Yunnan. The number of foreign prostitutes in Thailand is estimated at 16,423. Since 1990, 80,000 women have been trafficked to Thailand for prostitution. A second reason for trafficking is for begging or soliciting. The majority are boys, often very young, mostly coming from Cambodia. The third reason for trafficking is for other exploitative work, including work in construction, domestic workers, small shops and factories. In 1996 some 194,180 foreign child labourers were estimated

to work in Thailand. They are exposed to extremely exploitative working conditions, confined in the workplace, and often treated like slaves. Sometimes whole families are trafficked for these types of work. The children are exposed to drugs, sexually transmitted diseases and HIV/AIDS. Being illegal immigrants they have no access to health and social services or insurance.

Bonded labour also exists in Thailand. In September the country's central labour court awarded back wages amounting to \$46,600 (2 million baht) to a group of 33 Burmese migrant women and girls who were held in indentured servitude. The group, including 21 minors, had been brought 2 years earlier from Burma to a clothing factory in Bangkok where they were physically confined and subjected to forced labour. Upon arrival in Bangkok their wages were withheld for the first year of working 14-hour days, 6 days a week.

Conclusions

Forced labour is prohibited by law but is very common in Thailand. A large number of men, women and children are trafficked for prostitution, domestic work or work in sweatshops. Most come from neighbouring countries. Debt bondage also exists in Thailand.

Final Conclusions and Recommendations

1. The Government of Thailand is called upon to undertake the rapid ratification of the four ILO core Conventions it has not yet ratified: No. 87 and No. 98 on the freedom of association, No. 111 on Discrimination and No. 138 on Minimum Age. In 2002, the Government of Thailand announced the ratification of Convention No. 98 and No. 138 by the end of the year. So far these ratifications have not been effected.
2. There is a need for legislation to provide for adequate protection, with sufficiently effective and dissuasive penalties, against acts of anti-union discrimination for trade union membership or activities and against acts of interference by employers or their organisations in trade union affairs.
3. The government must withdraw its revised version of the Labour Relations Act which would weaken the right to collective bargaining and the right to strike. It has to change legislation in order to allow for the right to strike for state enterprise workers and civil servants, and for the right to collective bargaining for civil servants. The definition of “essential services”, where the right to strike does not apply, should be restricted to bring it into conformity with international norms.
4. In cases of privatisation, collective agreements and union recognition should be guaranteed by the new private owner as one of the conditions for purchasing the company.
5. The rights of migrant workers must be enforced fully, including the right to join trade unions.
6. Wage inequalities and inequalities in access to employment and education exist between men and women. Although programmes exist to reduce these inequalities, more active measures have to be taken to effectively improve the position of women, to eliminate direct wage discrimination and to improve access of women to education and training.
7. More progress has to be made with the effective elimination of child labour, including the worst forms of child labour that exist in Thailand: child prostitution, child domestic labour, drugs trafficking and street begging. Increased control and enforcement of legislation on child labour is needed, including concerning child labour among foreign children who are trafficked to Thailand and often exposed to dangerous conditions without any legal protection.
8. The increase in age for compulsory education is not enough to increase school attendance. Education has to be effectively promoted and more resources have to be allocated to education. More inspection is needed to ensure school attendance by children.

9. There is an overall need for increased labour inspection to ensure the application of the Labour Code as well as a need for training of labour inspectors.
10. There is a need for the effective elimination of forced prostitution and trafficking of women and children. Debt bondage must be eliminated. The laws are generally incomplete or lack clear instructions about penalties; in other cases they are rigidly applied and turn victims into criminals. Generally the issue is still treated as a low priority and law enforcement is weak. Clear policy instructions and guidelines are needed to change this.
11. In line with the commitments accepted by Thailand at the Singapore, Geneva and Doha WTO Ministerial Conference and its obligations as a member of the ILO, the Government of Thailand should therefore provide regular reports to the WTO and the ILO on its legislative changes and implementation of all the core labour standards.
12. The WTO should draw to the attention of the authorities of Thailand the commitments they undertook to observe core labour standards at the Singapore and Doha Ministerial Conferences. The WTO should request the ILO to intensify its work with the Government of Thailand in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

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