

28th November 2024

Your Excellency, the EU Chief Negotiator, European Commission

Subject: Thai Civil Society Organizations' Concerns over the Adverse Impact of the European Union's Free Trade Agreement (FTA)

In responding to the 4th round of the Free Trade Agreement's Negotiation between Thailand and the EU held in Bangkok on the 25th – 29th November, the civil society and non-government organizations in Thailand, who have been working on the issues related to access to medicines, public health, biodiversity, food sovereignty, and consumer protection, would like to express our grave concerns over the on-going free trade agreement negotiation and oppose the provisions proposed by the EU that will have a vast and adverse impact on access to medicines, universal health coverage scheme, agriculture, food sovereignty, consumer protection, and livelihoods of Thai people.

In 2001, World Trade Organization (WTO) members agreed to the Doha Declaration which affirmed that the Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement can and should be interpreted and implemented in a manner supportive of WTO member's right to protect public health and, in particular, to promote access to medicines for all. Yet throughout the world, on a country-by-country basis, nations are being pushed to trade away their right to do so through free trade agreements.

Free Trade Agreements (FTAs) are threatening and undermining access to affordable medicines for millions of people fundamentally and permanently. New HIV & tuberculosis medicines, hepatitis C treatments, cancer medicines, life-saving medicines for many chronic diseases, and vaccines & medicines needed for fighting against pandemics, like COVID-19, are all under threat. Millions of people across the Global South, including Thailand, already have limited access to life-saving medicines due to the abuse of intellectual property; and new trade barriers will further limit their access to affordable medicines.

In the recent proposed negotiation text to Thailand by the EU, while it is different from the text proposed before Thailand's coup d'état in 2014, we remain gravely concerned about the various proposed provisions. We are aware that provisions related to intellectual property rights, government procurement, and remanufactured goods have been tabled, and if accepted, would force sweeping and drastic changes in related national laws and regulations, severely undermining access to affordable medicines and local medical and pharmaceutical R&D and production and preventing our government from regulating or enforcing laws and policies to safeguard the health and the interest of its people.

Studies on the impacts of the US¹ and the EU² FTAs and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)³ to Thailand's public health, show that the national medicine expenses will increase vastly by billions of Euros per year due to the inclusion of intellectual property provisions more stringent than WTOs' TRIPs Agreement, also known as TRIPs-plus provisions. Thailand's dependency on imported medicines will increase from 71% to 89%, as a direct impact of restrictions in the provisions related to patent linkage and government procurement.

Thailand's Universal Health Coverage Scheme (UHC) is recognized as a best practice for other developing countries because it enables the Thai government to provide quality healthcare services for its peoples at no cost. However, the Thailand - EU FTA with IPR and non-IPR provisions pose a great threat to Thailand's public health system and jeopardizes Thailand's UHC by putting it at risk of collapsing with exorbitantly high medicine costs and forcing patients in Thailand to be absent from quality and standard healthcare services. This is contradictory to the UN's SDGs.

In compliance with WTO's intellectual property on plant variety, Thailand has adapted the Plant Variety Protection Act. However, through the Thailand – EU FTA, the EU is attempting to push developing countries like Thailand to adopt the International Convention for the Protection of New Varieties of Plants (UPOV) 1991. Under UPOV 1991, Thailand will be forced to amend their national law to increase the multinational seed industry's monopolization and abolish peasants' right to seed as below:

- Extending the duration of the patent on new varieties from 12-17 years to 20-25 years;
- Undermining the existing system of biodiversity's access and benefit sharing; and
- Generating severe impact on Thai peasants' livelihoods and agricultural culture in seed saving for replanting, seed selection and improvement, and exchange of seeds, which is the foundation to promote biodiversity and people's food security.

Based on a study⁴, if Thailand adopts UPOV 1991, Thai farmers must pay 3-4 times more in cost for seeds in the long term.

We stand in opposition to all proposals that negatively impact access to medicines & public health and agriculture in FTAs' negotiations, including:

- **OPENING GOVERNMENT PROCUREMENT MARKET** that has restrictions not allowing the Thai government to have or enforce laws and policies supporting the use of domestically produced medicines and promoting medical and pharmaceutical R&D and innovations in the country.
- **DATA EXCLUSIVITY** that prevents governments from relying on clinical trial data to register generic versions of medicines even if they are off patent, their patents

¹ https://www.researchgate.net/publication/44800555_Impact_on_access_to_medicines_from_trips-plusA_case_study_of_THAI-US_FTA

²

https://www.researchgate.net/publication/46493153_Extension_of_market_exclusivity_and_its_impact_on_the_accessibility_to_essential_medicines_and_drug_expense_in_Thailand_Analysis_of_the_effect_of_TRIPs-Plus_proposal

³ <https://iththailand.net/en/resources/research-report-detail/17/128>

⁴ https://www.biothai.net/sites/default/files/2013_ftathai-eu-study.pdf

have expired or have been revoked, and complicates the issuance of compulsory licenses.

- **PATENT TERM EXTENSIONS** that extend patent life beyond 20 years.
- **UPOV 1991** that facilitates the monopolization of plant varieties & biopiracy and undermines the capacity of small-scale farmers to safeguard their livelihoods and food sovereignty.
- **REMANUFACTURED GOODS** that requires Thailand to accept the import of remanufactured products from Europe, including remanufactured medical devices causing patients to get substandard diagnoses and treatments and using Thailand to be a dumping ground for second-hand and non-durable medical devices from Europe, that becomes costly burdens for Thailand to dispose of the devices properly.
- **INCREASE IN IMPORT OF TOBACCO AND ALCOHOL DRINKS** that encourages higher consumption of products hazardous to health, causing Thailand to allocate higher health budget and limiting their policy space to control consumption of tobacco and alcohol drinks.
- **INJUNCTIONS** that undermine the independence of the judiciary in developing countries to place the right to health of patients over the profits of multinational companies.

In addition, we are also concerned about other measures that were introduced in other FTA negotiations and may be brought back on the table for negotiation. The concerns include:

- **INCREASING PATENTABILITY SCOPE** that significantly increases the number of medicines under patent by forcing governments to give 20-year monopolies on new uses and new forms of old medicines thus allowing the extension of monopolies on these medicines by a decade or more through minor changes in drug formulation or process.
- **PATENT LINKAGE** that prevents the registration of generic versions of patented medicines thus undermining the early working and research exceptions thus delaying generic entry even when a compulsory license is issued, the patent expires or is revoked.
- **RESTRICTIONS ON COMPULSORY LICENSES** that seek to limit the right of all countries to use compulsory licenses to ensure access to medicines for all even though this right has been repeatedly affirmed by international treaties and declarations.
- **RESTRICTIONS ON PARALLEL IMPORTS** that prevent the import of the cheapest-priced patented medicines from anywhere in the world.
- **BORDER MEASURES** that will deny medicines to patients in other developing countries with custom officials seizing generic medicines being imported, in transit, or that are being exported.

- **OTHER IPR ENFORCEMENT MEASURES** that put third parties like treatment providers at risk of police actions and court cases and draw the whole manufacturing, distribution, and supply chain for generic medicines into litigation.
- **INVESTMENT RULES** that allow foreign companies to sue governments in private international arbitration over domestic health policies like compulsory licenses, health safeguards in patent laws, price reduction measures, environment and health protection policies and may prevent governments from enforcing laws and policies to protect their people's benefits.

The WHO and UN reports⁵ on commercial determinants of health recommend that governments should adopt the principle of “the polluter pays” to address the adverse effects of commercial determinants of health, particularly the four types of products including alcohol, tobacco, processed foods, and fossil fuels. These four products are significant causes of economic, social, and health inequities. These four industries are major contributors to the global non-communicable disease (NCD) epidemics and are responsible for 19 million deaths annually. In the Chapter on Trade and Sustainable Development, the EU should have provisions on preventing inequities and negative impacts due to the commercial determinants of health, as setting a good example to ensure the trade and sustainable development, by adopting the WHO's and the UN's recommendations seriously. In addition, the EU should not have provisions allowing corporations to have policy interference and influence over governments to favor trade benefits over the public interest or to limit governments' policy space to protect their peoples.

We, therefore, would like to urge the European Union to remove and not to propose additional provisions in the ongoing FTA negotiation with Thailand, that introduces any TRIPs-plus and non-IPR rules that jeopardize access to affordable medicines, public health, and the universal health coverage scheme, requires Thailand to ratify UPOV 1991, or limit or prevent the Thai government's rights to regulate laws and policies to safeguard their people's interests.

Sincerely yours,

Kannikar Kijtiwatchakul
Vice Chairperson of FTA Watch

On behalf of
1. AIDS Access Foundation
2. Alternative Agriculture Network (Thailand)

⁵ https://link.springer.com/epdf/10.1186/s12889-020-09126-1?sharing_token=RJhTImQ3fRYFvjNclR-kT2_BpE1tBhCbnbw3BuzI2RM4JsoQOdS5yfkNA8s6U7BfcyK-CeSVv3_uSv_zf0h6l4AbXkLN7tyVm_6wbQor8BP5XqkH7XRdbu8pWxHXcYWhNcnl1M-VGsCMdbtsaGrHxNMGD8fl_7yPFBec2MPQIHl%3D

3. BioThai Foundation
4. Drug Study Group
5. Drug System Monitoring and Development Center
6. Ecological Alert and Recovery - Thailand
7. Foundation for Action on Inclusion Rights (FAIR)
8. Foundation for Consumers
9. FTA Watch
10. Friends of Kidney-failure Patients Club
11. Greenpeace Thailand
12. Health and Development Foundation
13. Institute of HIV Research and Innovation (IHRI)
14. Stop Drink Network Thailand
15. Thai Network of People Living with HIV/AIDS (TNP+)
16. Thai Holistic Health Foundation
17. Thailand Consumers Council
18. Thailand Health Promotion Institute, National Health Foundation
19. The Rural Pharmacist Society