

## **THE “THAILAND LABOUR STANDARD”: A TOOL TO VALUE THAI LABOUR LAWS IN THE CONTEXT OF ECONOMIC GLOBALISATION.**

Suphasit Taweejamsup  
Chulalongkorn University  
Thailand

Work conditions, work safety, child labour, employment discrimination, especially towards female or foreign workers, have been issues for Thai governments for many decades. The Labour Protection Act of 1998 focuses on these matters. For instance, under the Act, the minimum age for hiring children as workers increases from 13 to 15 years<sup>1</sup>. The Act sets rules to give better protection to women, children and pregnant women, forbidding various hazardous or degrading works for these categories of labourers<sup>2</sup> in agreement with ILO conventions<sup>3</sup>. The Labour Protection Act of 1998 guarantees equal treatment to all workers<sup>4</sup>; males and females but also Thai nationals and foreign workers, regardless of their status, i.e. illegal migrants shall be protected by labour laws in every aspect concerning their employment. The Act establishes a list of sanctions for whom will not respect the rules<sup>5</sup>; nevertheless, the law is barely enforced. Therefore, the real issue of Thai labour laws is not their content but rather their efficient enforcement.

In the current economic context (financial crisis, borderless trade...), the challenge Thailand has to face is to balance, with care, two opposite requirements. On the one hand, the country shall continue to improve labourers' protection in order to comply with international standards, and keep good trade relationship with developed countries in which ethical consumerism is growing. On the other hand, Thailand shall find ways to remain attractive for investors and competitive compared to developing neighbouring countries, which often means cheap labour and minimum protection for workers. In the 1980's, companies from industrialised countries have invested a lot in developing economies, among which Thailand, mainly for their low salaries and low protective standards allowing them to produce low added value items (food, clothes...) for less. Recently, the phenomena of “social ethics” and “fair trade” have changed the situation. Indeed, developed countries consumers demand a better treatment for workers producing the goods they buy. To respond to this new requirement, many brands have set up ethic standards and created social labels to guarantee both quality of goods and quality of labourers' treatment in the producing country.

However, an international visibility is hard to get, especially for local companies. Moreover, the lack of control on private standards is one of the reasons explaining the lack of confidence in those labels. A solution to this matter might be to comply with international social standards such as the SA (for Social Accountability) 8000<sup>6</sup>, nevertheless some requirements of this standard are incompatible with the Thai employment market situation. Thailand's Labour minister has hence created a national standard, the Thailand Labour

---

<sup>1</sup> Labour Protection Act B.E. 2541, article 44.

<sup>2</sup> Labour Protection Act B.E. 2541, chapters III and IV.

<sup>3</sup> Legal work conditions for children in Thailand were promulgated under the influence of ILO Conventions No. 138 « minimum age convention, 1973 » and No. 182 « convention on the worst forms of child labour, 1999 ». Regarding female workers labour, the Act B.E. 2541 follows ILO convention No. n°127 « maximum weight convention, 1967 ». All these conventions had been signed by Thailand.

<sup>4</sup> Labour Protection Act B.E. 2541, article 4.

<sup>5</sup> Labour Protection Act B.E. 2541, chapter XVI.

<sup>6</sup> Details on: <http://www.sa-intl.org/>

Standard (TLS 8001-2546)<sup>7</sup>. Companies are completely free whether to adopt or not this standard. For the ones which decide to comply with it, they rigorously must respect work conditions stated in labour acts and additional conditions in favour of labourers. Labelled companies show their willingness to be ethically and socially responsible, responding such to demands from industrialised countries consumers (I). It is to note that this standard is a way for Thailand to increase labour protection progressively. A new act will require every single company in the country to comply with it, which would be difficult especially for small companies. The TLS, based on free will, allows companies to improve their work conditions at their own pace. The idea behind the TLS is that the market will eventually force companies to adopt better work standards; indeed if they want to keep on doing business with western countries, Thai entrepreneurs will have to comply with better labour conditions, and thus ask to be certified “TLS compliant”. This standard is, we believe, an efficient tool to accustom and orientate the national labour market towards new regulations (II). Its strength resides in its non compulsory character, there is no legal obligation to adopt it; market only is the key to its success. We can expect that world oriented companies will ask to be certified to remain “ethically competitive”, while other companies will have the choice to delay the adoption of new work conditions so as to remain “cost competitive”. With the TLS, Thailand has given itself a tool to answer the need of *social progress compatible with economic growth*.

#### **I. TLS: a tool to respond to social and ethical demands from developed countries consumers.**

It has been more than a decade since the developed countries failed to introduce a social clause in international trade agreements (WTO meeting in Singapore in 1996, new failed attempt in 1999 in Seattle). Indeed, some developing countries consider the social clause as a hidden protectionist barrier, which would bring a bias in free and undistorted competition, in favour of rich countries. Still, it is undeniable that the idea of an international social is growing. The Worldwide Responsible Apparel Production (WRAP), the Fair Labour Association (FLA), the Worker Rights Consortium (WRC), the Ethical Trading Initiative (ETI), the Ethics Compliance Management System Standard (ECS 2000) and the ISO/WD 26000 are evidence that not only the quality of the product is crucial but that the ethics of production and labourers’ treatment are equally important. Neither the WTO, nor the ILO advocates an international labour standard. Still, in practice, it is agreed that free trade must be fair for workers, and that lowering the rights and protection of labourers so as to reduce production costs in order to remain competitive should not be an option. Thus one can say that the social clause is not on the agenda of the WTO or the ILO, but it is widely consensually accepted. In this respect, the TLS is Thailand’s answer to guarantee the social and ethical responsibility of Thai entrepreneurs.

#### **II. TLS: a tool to direct rather than dictate social progress.**

In order to modernise its social regulations, Thailand uses international norms as a new law source. The advantage is that modern social laws are generally compliant to international standards. Still, some would say that, in some instances, the new laws are not adapted enough to the specific situation of the country –its history, sociology, etc.– and are consequently inapplicable. The TLS 8001-2546 has been developed to be adapted to the country first (e.g. the requirements for big corporations are not the same as for small

---

<sup>7</sup> Labour minister decree dated 27 June 2546 B.E. (i.e. 2003 A.D.), published 10 November 2004 A.D. Details on <http://tls.labour.go.th>

companies), and to comply with international standards that have not been translated in Thai law yet. It thus seems to be well adapted to Thailand; the TLS respects Thai specificity, and guide companies to respect international standards on a free will basis. However, this national standard is still not very well known internationally. Thailand has to address two questions that arise regarding the TLS:

- How making it a trustworthy standard, internationally recognized as such (i)?
- How to guarantee that not only big corporations, but also small and medium enterprises will have the will and the ability to be TLS-certified (ii)?

*i. Attribution of the TLS warrant: the necessity to respect both national laws and international norms, but also workers and customers' ethic demands.*

As aforementioned, labour laws exist in Thailand but are hardly enforced. The TLS is an answer to that issue as it is granted only to companies which respect the Labour Protection Act of 1998 and the Labour Relations Act of 1975. These two acts cover almost every aspect of an employment such as working hours, remuneration, child and female labour, employee welfare fund, overtime wages, sick leave and maternity leave, holidays, employee dismissal, provident fund issues, workers' compensation, employee social security, hygiene and safety in the work place, equality of treatment for all workers, the right to strike, prohibition of forced labour, severance... Still, those acts were not very compliant with international norms. On the contrary, TLS certification requires full compliance with ILO Conventions No. 29, 87, 98, 100, 105, 111, 135, 138, 155, 164, 177 and 182, and ILO Recommendations No. 146 and 164, but also the ILO tripartite declaration of principles concerning multi-national enterprises and social policy of 2002, the UN Universal Declaration of Human Rights of 1948, the UN Convention on the elimination of all form of discrimination against women of 1979, the UN Convention on the rights of the child of 1989. In addition, TLS certification requires respecting work conditions that have not been implemented in the law yet (e.g. a better protection for subcontracting workers). The TLS label attribution process ask to follow international norms SA 8000 and ISO 9001-2000 (Quality Management System Requirements), with a few alterations to be fully adapted to Thai society.

To ensure the TLS is a high standard and that certified companies are to be trusted, Thailand has set up a rigorous process. To be certified, a company shall first edit a plan of actions identifying the improvements to be done and scheduling the procedures to reach the TLS requirements. Once the procedures have been completed, an internal audit is held to decide if goals have been reached. If not, procedures have to be amended and implemented until goals are reached. Finally, the new organisation of work is analysed by social partners, member of the TLS board, State representatives, workers from the company, company executives, but also representatives of the company customers. This way, Thailand hopes to have a social standard that will be recognized internationally as a high quality norm attesting the commitment of the certified company to a good work ethic.

*ii. A national standard, multiple levels of certification.*

It may be difficult for some companies to comply with international norms. It is indeed the case for small and medium enterprises which can not afford to hire new employees and often ask their workers to do overtime. Excessive overtime is a breach of SA 8000.

Nowadays in Thailand, the Labour Protection Act of 1998 allows a maximum of 36 hours overtime per week. This is not compliant with SA 8000 which states that the maximum overtime should not be over 12 hours per week. As such, small and medium businesses might

be penalised regarding the TLS compared to big corporations that can afford to hire new workers. To guarantee the access to TLS certification to every business, Thailand has set up various levels of TLS. The ultimate goal is that every company reaches the ultimate level, but a company showing its good will towards ethical treatment of worker should be encouraged and therefore can be granted a “basic level” TLS certification for one year. It is a way to support businesses in the process of labour ethic improvement. The TLS has two levels – basic and completion levels. The latter one requires compliance with all the TLS conditions and is subdivided into four categories: initiative phase (overtime not exceeding 36 hours per week), generative phase (overtime not exceeding 24 hours per week), progressive phase (overtime not exceeding 18 hours per week), and superlative phase (overtime not exceeding 12 hours per week). The certification is valid for one year except for the last phase (valid for three years).

To guarantee an equal access to TLS to all businesses, the certification process is free. The company has to produce evidence that it comply with TLS requirements but is not charged for the assessment of those or for audits.

As a conclusion, the issue regarding labour laws in Thailand is not a lack of texts or a lack of compliance with international standards but rather a difficulty to enforce the existing rules. As new laws do not seem useful to solve this matter, Thailand has decided to take advantage of the quite recent *social ethic responsibility* demands. The Thailand Labour Standard appears to be an adapted tool to both respond to social requirements and secure business deals, as those demands are coming from customers. The great advantage of the TLS is its free-will basis, it is not imposed, companies ask to be certified because they think a good image will be good for their business *in fine*. In this respect, it can not be argued that the TLS is a brake to competitiveness. A few questions remain open still; with no legal obligations, can Thailand rely on the market only to force most businesses in the country to adopt TLS requirements? What about the equality of treatment between labourers working for TLS certified companies and non-certified companies? Can we fear that Thai labour market would split in two in the near future, with on the one hand international oriented companies providing high standard protection and rights to their employees, and on the other hand local businesses whose workers would only have the minimum legal protection and would not benefit from international norms?

\*\*\*\*\*