

CHAPTER IV

FTA WATCH AND THE MAKING OF POLITICAL SPACE

This chapter presents the findings of the research and the analysis of how FTA WATCH has made the political space in the policy governance of bilateral FTAs. It examines FTA WATCH's mobilizing structure, operation, strategic use of mobilized resources, such as knowledge and channels, to influence changes within the political contexts. The impacts or changes can also be seen through the levels of changes that have been made.

The contexts are drawn from the situations and movement's actions taken upon four major FTAs such as Thailand-China EHS, TAFTA, TUFTA, and JTEPA during the period of 2003 to 2007. The background issues of discourse formulated by FTA WATCH are investigated of when and how it is used, contested, and taken by the society.

4.1 The mobilizing structure and strategies

FTA WATCH's "mobilizing structure" includes the mechanisms created by FTA WATCH that contribute to the operation and the development of the movement. Although the movement has depended on the contexts from the global to the local level, "mobilizing structure" means not only the organizational structure, but also the main strategies and the abilities to mobilize resources that it entails. It includes main strategies that contribute to the "mobilizing structure" of FTA WATCH are the strategies on organization, framing, and media relation. There are also short-terms strategies and tactics used in operation that are determined by the factors of opportunities and constraints.

4.1.1 Organization

The initial strategy on the organization includes the process of organizational structuring, resource mobilization and framing. From an interview on February 2nd 2006, Kingkorn Narintharakul Na Ayuthya, one of

the founding members of FTA WATCH, noted that the recruitment of the FTA WATCH members was “a strategic move.” The members were selective in terms of inviting individuals and organizations to be in the coalition as the core members have set the strategy of FTA WATCH to take actions on convincing, negotiating, and mobilizing diverse targets, from grass-root organizations, media to politicians. Therefore, FTA WATCH coalition is composed of a wide range of social actors, from academics, researchers, NGOs working with grass-root organizations, policy advocacy and media campaigners. The coalition has a strategy on the organizational positioning which is to be a knowledge-based monitoring unit that keeps track of and speculates implications of FTAs and the FTA policy. They set its major tasks which are to produce and to disseminate the discourse based on facts and statistics, not just rhetoric. In terms of the operation, the members have envisioned FTA WATCH to be up-to-date, active, and flexible, but also systematic and consistent in terms of keeping up with and responding to the rapid growth of bilateral FTAs.

Kingkorn Narintharakul Na Ayuthya also added in the interview that these strategies were set to overcome the limitation of the local NGOs which took part in the coalition. At the time, the local NGOs were “struggling to maintain their political space with the emergence of a populist government” that gained the support from the people (Daorueng, 2004; 408) The government propagandized the discourse which stereotyped NGOs as people who “serve foreign agenda” and their method was “violent.” (Social science Research Institute, 2002; Daorueng, 2004 : 408) She also saw that NGOs often had little systematic planning on their movements and based their discourse from empirical evidence and phenomenon.

In the operation, the members contribute their time and knowledge in the planning and assessment of situations. There is a core group of members which meet regularly to assess the situations. They also meet on the basis of the needs, such as for important decision making and planning of actions. In the meetings, they share information and updates on situations. For the major actions such as organizing seminars, campaign activities, protests, and press

conferences, the members meet to discuss and to make consensus. They also make use of new technology for corresponding and communicating matters like tossing up of ideas, voicing of opinions, and making urgent decision. These actions are often done through email communication between members within the working group. They also set up the website www.ftawatch.org which is discussed in the section of media strategy.

4.1.2 Framing of discourse

The frame bridging process started before the establishment of the coalition as members were drawn together by the shared concerns on the shift of multilateral to bilateral agreements. As the coalition formed, the framing process continued as the members shared and bridged their accumulated knowledge together to constitute a set of shared preferences. They work on identifying the problems of the issues, assessing the implications, and strategically forming categories of counter-weighting discourse to contest with the dominant discourse which is set by the neo-liberal agenda and the FTA policy governance.

During the period of negotiations of early FTAs such as Thailand-China EHS and TAFTA, the academics and NGOs working on agriculture issue collaborated with members of the Parliament in the Senate. As Buntoon Srethsirote was the advisor of the Senate Committee on Foreign Affairs, he proposed the Senate Committee to investigate the matter as a government's new initiative in engaging in foreign relation. Issues related to FTAs had been on the main agenda of the Committee. The Senate Committee called on responsible government officials to testify in the Committee's hearings about the Thailand-China EHS and TAFTA.

FTA WATCH found that FTA policy was being implemented while the government still did not have adequate safeguard measures to protect domestic farmers nor adjustment plans for those who are already affected or will potentially be affected. FTA WATCH started to raise the question about the lack of impact assessment, people's participation, transparency, and

accountability of the policy. It led to the formulation of the discourse in the “lack of legitimacy” and “violation of national sovereignty” There was no public announcement on the thorough assessment on economic and social impacts before the negotiations by the government. (Iammayura & Chetsumon, 2007: 3) The FTA process has been done in secret manner without adequate opportunities for the public and their representatives to cooperate with the administrators during the process. The problem can be called the “anti-democracy of the FTA process.” (Iammayura & Chetsumon, 2007: 3)

1) Legitimacy

Due to the problem with the governance such as intransparency and lacking of people’s people participation, FTA WATCH formulated the discourse of that FTA governance and FTAs are not legitimate. They referred to Section 224 in the 1997 Constitution which states the check-and-balance measure on treaties. Section 224, paragraph two states that

“A treaty which provides for a change in the Thai territories or the jurisdiction of the State or requires the enactment of an Act for its implementation must be approved by the National Assembly.”

FTA WATCH members and legal experts see bilateral FTAs as “treaties” which should comply to Section 224, paragraph two. They raise the issue that as Thailand is committing to comprehensive and rule-based agreements with FTA partners, there must be changes of domestic laws and regulations in accordance to the agreements. FTA WATCH members and network allies who are legal experts have interpreted that a change of laws should be regarded as “a change in the jurisdiction of the State.” Therefore, it would require the National Assembly or Parliamentary to endorse the text prior to the signing of agreements.

This discourse has generated political debates in the society and led to legal challenges between FTA WATCH and the government. The governing

polity disagreed to the call for parliamentary scrutinizing process. The political and bureaucratic polities interpret that establishment of FTAs does not require the Parliament's approval process because there are no laws to be amended and FTAs would not change the "jurisdiction of the State." It is because that the notion of "jurisdiction of the State" is referred to states' rights and jurisdiction in maritime areas according to the United Nations Convention on the Law of the Sea 1982, explained Virachai Plasai, the legal expert in the Ministry of Foreign Affairs who hold the high-level positions in several negotiation teams for FTAs during the hearing of the Senate Committee on Foreign Affairs on July 14th, 2004.

The Fiscal Policy Research Institute Foundation (FPRIF), a government appointed working group on assessment of the impact of FTAs, headed by Narongchai Akrasanee, former commerce minister, published an analysis on the legal dimension of FTA on its website www.ftamonitoring.org, stating that the FTAs that Thailand is engaging with only require the elimination of tariffs and are not in conflict with the Thai laws. The elimination of tariff is done under the Custom Tariff Act, therefore "the amendment of new law is not needed." It states that "so far the negotiation process has been done under legal framework of the 1997 Constitution."

With the government's continued disclosure of information and deny the need of Parliament's approval process, FTA WATCH continued to amplify the discourse through their channels of power and translated it into a series of actions and products of the movement such as legal challenges, petition letters, the drafting of International Agreement Bill (See APPENDIX A) and the drafting of Section 190 of the 2007 Constitution. These actions have stimulated counter-movements from the institutionalized polity which will be discussed further in this chapter.

2) National Sovereignty

The discourse refers to the protection of national sovereignty. They see that liberalization under FTAs poses impact on policy options and rights-based

development, because the models of FTAs have been set by laws of other countries such as the US's TPA. Thailand does not have the law that requires the government to amend a new law to regulate the process of certain treaties like FTAs. (Jantajira Iammayura & Chatchai Chetsumon, 2007: 3)

From their monitoring process, FTA WATCH has been aware that the US would try to push for further expansion of IPR protection by referring to the modalities which are set by its TPA, the US legal framework. FTA WATCH points out that most FTAs which done by the US contain "the same pattern in the issue of IPRs which include patenting of life form, extension of patent monopoly, limit on compulsory licensing, which are known as TRIPS-plus provisions. FTA WATCH feels that such political, social and economic disadvantages should not be exchanged with benefits of some sectors of the Thai society through FTAs. FTA WATCH sees that if this manner continues, it would not only allow transnational companies to benefit from patent monopoly in sectors like agriculture, medicines, and technology, but it would also put further limits to the nation's sovereignty in policy making. (Jakkrit Kuanpoth, 2005 : 51)

They use the discourse of Thailand's rights to development, livelihoods, and community's rights which local people should be able to secure their livelihoods through the access to biological resource base, traditional knowledge, health care system, and affordable medical treatment.

3) Food security

The discourse on "food security" is related to two major issues of FTAs, agriculture and intellectual property protection. FTA WATCH is highly concerned about the liberalization of agricultural products and the strengthening of IPR regime as it would prevent people's access to biological resources for locally food consumption, cultivation, and innovation. From studying on the impacts of NAFTA and the US FTAs with Chile and Singapore, they see the implication that transnational agribusiness that support genetically modified crops and patent of life form would gain benefit, while

the loss would be on small farmers, consumers, and the accessibility of people in general to affordable drugs. (Kuanpoth, 2005: 30)

They use the term “food security” to promote the practices of sustainable agriculture, preservation of biodiversity and local wisdom among the grass-root network and other constituents. It is the alternative to the issues of liberalization of trade in agricultural products in Thailand-China EHS, as well as, the expansion of IPRs protection and TRIP-plus provisions in the US framework.

There is also the set of discourse which set the positions of FTA WATCH by issues. It includes the issues which are related to each other such as intellectual property rights, health, agriculture, environment, and investment.

4) Intellectual property rights (IPR)

Due to the pressure from the US on the extension of IPR protection, FTA WATCH demanded the issue of extending or strengthening intellectual property rights should be taken out of the FTA negotiations. They based the reason on the grounds that this agreement is more restrictive than the TRIPs agreement of the WTO. They also view that Thailand has already operated in accordance with the WTO agreement on intellectual property. There is no just reason for further intellectual property requirements under the FTA, regarding extension of patent protection and data exclusivity. In their views, they think that “when a company is allowed to own patents on biotechnological inventions, the patents would act as a barrier to the transfer of technology to development countries” (Kuanpoth, 2005 : 31)

For JTEPA, FTA WATCH also points out that if the government allows Japan to patent micro-organisms, Thailand would lose the opportunity to study micro-organisms which are being used to solve the environment problem and in many industries.(Pratruangkai, 2007)

5) Health

They are concerned that TRIP-plus provisions in TUFTA will lower the domestic standards of protection of the people's right to access medicines by expanding the patent protection and protection of undisclosed information concerning medicines. It will increase the monopoly of patent owners and cause patients and vulnerable groups such as people living with HIV/AIDs unable to afford highly-priced drugs. Also, restrictive intellectual property rights will prevent Thailand from producing and using locally produced affordable generic drugs when necessary, or the use of compulsory licensing (CL.) (Limpananont, 2005 : 74)

On the impacts on agriculture, they see that IPRs will create the problem of a monopoly on the factors of agricultural production through reliance on patents on life forms. as granting monopoly rights on life forms under patent systems is a barrier to free trade. (FTA WATCH, 2005 : 221) During campaign activities, the movement uses slogans such as "no patent on life" and "no patent on humanity."

6) Agriculture

The issue of agriculture involves two major aspects. First is the elimination of tariffs. FTA WATCH views that it can have a devastating effect on the livelihoods of small-scaled farmers. FTA WATCH publishes a fact sheet about the impacts on agriculture by explaining how import of cheap agricultural products will vastly affect the livelihood of small-scaled farmers and lead to a decrease of local food production. Their concerns are that, by depending on food from outside, it will pose threat to food security and the ecology due to the decrease of local plant and animal varieties. From the analysis of experience from NAFTA, they also find that the claim that FTAs will allow consumers to enjoy cheap products is a myth. In Mexico, even though the price of maize corn from the US is low, consumers have to bear 300 percent increase of the price of tortilla, the corn product which is the main food of Mexican people, for the past ten years.

FTA WATCH have advocated with the dairy farmers that TAFTA and Thailand-New Zealand FTA posed threats on 100,000 dairy farmers. Although the government has argued that tariff reductions and quota increases for meat and dairy imports from Australia and New Zealand will be gradual over a period of 20 years, farmers have already been put in vulnerable situations.

Secondly, FTA WATCH views that even the agreement states that the two countries would have to reduce the tariff on agricultural goods, but there are still non-tariff barriers (NTBs) and internal subsidies that the US use to protect its domestic market. From the study in the agriculture issues, they gave the reason that Thailand had encountered problems with the US measures such as anti-dumping and health regulations on the imported shrimps and frozen seafood from Thailand before. Corn and soybean farmers have already been affected by market liberalization under the WTO and consequent dumping by the US agri-businesses for the past ten years. (Lianchamroon, 2005 : 138)

FTA WATCH members and network allies studied the impact of the US's Farm Act in 2002 and found that the US has supported and provided subsidy to American farmers, rice farmers who that enjoys a great deal of support for export and subsidy for domestic market. From their study on Farm Act and NAFTA, Farm Act has caused great damage to Mexican agricultural sector, especially, maize farming which has been part of local Mexican livelihood. Mexican farmers could not compete with the US farmers, who were heavily subsidized by the US government through the Farm Act. FTA WATCH's proposed the Thai government to include these NTBs issues to the negotiation table in order to seek most appropriate framework.

Thirdly, FTA WATCH is concern about the issue relating to IPR protection on biological resources such as patent on life form which will allow patenting on animals, plants, gene, biological process, and gene sequences. It is part of the TRIP-plus provision proposed by the US which will be a threat to the ecology and biodiversity. FTA WATCH sees that if Thailand accepts it, it will allow the US biotechnology industry to dominate the country's farming

sector and to exploit its abundant biological resources. It will prevent the rights of farmers and local communities to fair benefit sharing, conservation and sustainable agriculture.

7) Environment

FTA WATCH's major concern on the issues of environment lies in two FTAs, TUFTA and JTEPA. With TUFTA, FTA WATCH is concerned on the Environment Chapter which the US has indicated that it will accept only commitments in international multilateral agreements to which both Thailand and the United States are member states. FTA WATCH sees that this provision will bring conflicts concerning both countries' commitments with different multilateral environmental agreements (MEAs)

On TUFTA, FTA WATCH views that Thailand and the US have different legal frameworks on the protection of biological resources. The U.S. is not a member of the multilateral environmental agreements (MEAs) such as the Convention on Biodiversity, Bio-safety Protocol, and International Treaty on Plant Genetic Resources (ITPGR) which Thailand has committed with. While the US has been using the Protection of New Variety of Plants (UPOV) system, Thailand has resisted ratifying UPOV. Jakkrit Kuanpoth explains that the Thai law, the Plant Variety Protection Act B.E. 2542, protects the rights of breeders, farmers, and communities as it "aims to at promoting the creation of new varieties of plants but also the conservation and encouragement of agricultural practices in the country." (2005 : 32) He recommends that FTA parties should have negotiated for options which are based on sovereign rights of states over genetic resources.

With JTEPA, FTA WATCH has raised the issue to public attention on the provision that can lead to import of hazardous waste into Thailand. JTEPA contains the provisions on the reduction of tariffs of toxic waste, including pharmaceutical waste and oil waste containing PCBs.

8) Investment

FTA WATCH calls for FTA policy governance to be carried out in transparent manner by including public participation because trade and investment liberalization will pose impacts on the people in Thailand at large. FTAs, especially between the U.S. and other countries, cover issues of service which are essentials to ways of living, including education, environment, transportation, communications, and utility services. FTAs also allow short-term investments which are likely to be speculation funds which caused the 1997 Asian economic crisis. (Chomthongdi, 2005 : 154)

FTAs give the US business more privilege than the Treaty of Amity which has already allowed the US business national treatment. After liberalization, the matter of great concern is the privatization of state-own enterprises which provide public utilities. Thailand's state enterprises are cost-intensive. In the condition of Thai market, there will be few competitors. It is likely that if Thai state enterprises are privatized they will fall into the hands of multinational corporations, especially the US private service providers. (Chomthongdi, 2005 : 152)

4.1.3 Media relation

The media is considered another significant space which FTA WATCH aims to capture through effective media strategy. The media space is also a platform where the movement contests their discourse and positions with the authority. FTA WATCH's media strategy includes the followings.

1) Building relation with journalists

FTA WATCH they have built strong media relations and built capacity of media personnels by frequently and willingly disseminating information and analyses to the media. FTA WATCH members who are campaigners, such as Saree Aongsomwang and Witoon Lianchamroon, have had strong connections with the media from their previous campaigns on issues of

consumer rights, anti-corruption case, and biodiversity, for example. Their close connection with the Thai Journalist Association (TJA) also benefits the movement's media coverage. TJA often provides its facility for FTA WATCH to hold press conferences. It is a strategic venue as FTA WATCH can gain attention from members of the press who are familiar with the venue.

2) Taking roles as journalists and media contributors

Some members of FTA WATCH act as movement reporters and contributors for mainstream media such as daily radio program, newspapers, and magazines. They strategically disseminate the body of knowledge and updated analyses to the various media's audience. Kannikar Kijtiwatchakul, the media campaigner of MSF, is also an experienced journalist. She utilizes her direct access to various media channels to capture media space for FTA WATCH.

One channel is through "Chao Tun Lok" (Morning World Update), the week-day radio program which she hosts in the morning from 6.00 AM to 7.00 AM. She regularly puts on air the issues related to FTAs, excerpts from meetings which FTA WATCH participate in, lessons from other FTAs and recorded comments of FTA WATCH members and allies. She is also a columnist who contributes to magazines such as Way and now-ceased A Day Weekly. The magazines target young and mid-career readers who are interested in current affairs. She also writes books on consumer rights, drug patent, and Thailand policy on compulsory licensing (CL).

Buntoon Srethsirote also presents his view points through articles which he contributes to Thansrethakit, a business newspaper. His articles are published in rotation with the proponents of FTA policy from business sector. The media space is another venue where they exchange and counter each other view points with structured arguments.

3) Producing own media outputs

When FTA WATCH was formed, it was when the freedom of the press in Thailand was at stake. The media space for civil society, NGOs or social movements was very limited. Many civil society, NGOs or social movements looked for alternative channels to communicate their ideology and discourse through creating their own media outputs and depending on alternative media channels. It is part of the media strategy to produce and disseminate information through publication of various types. The website (www.ftawatch.org), multimedia and printed materials are produced to provide the public with in-depth analyses, research outcomes, and comprehensive recommendations on issues related to FTA policy. It acts in parallel to the movement's strategy in policy monitoring and countering of the government dominant information.

The movement's media outputs include the followings

- Books, booklets, reports
- Website www.ftawatch.org
- Bi-monthly E-Newsletter, distributed for members free of charge which started in June 2004.
- VCD and Audio CDs, featuring interviews, statements, and documentary.

FTA WATCH has formed its own media team which is mainly comprised of four people. They work on the weekly editorials, news archiving, and managing the website www.ftawatch.org. On the technical aspect, BIOTHAI, which has been developing their own database on community rights and biodiversity, is providing part of the organizational resources.

FTA WATCH's website is contains a database of information and documentation on FTAs and their actions. It features statements, analyses, newsletters, reports on events, seminars, news clipping and news archive. The multimedia library contains interviews in digital audio and video formats. The

website has been providing information free of charge as a public domain and public good. The website has increasingly been used by visitors residing in Thailand and outside Thailand. According to the statistics provided by Truehits.net web statistics service, the website visitors in 2007 reached 235,989. During the first ten days of 2008, the number of visitors has already reached 15,192. (See Table 4.1)

Table 4.1 : Numbers of FTA WATCH's Website Visitors
from July 2006- January 2008

Years	Number of Visitors	
	Page Views	Unique IPs
July – December 2006	31,083	17,179
January – December 2007	621,817	235,989
January 1-10, 2008	33,055	15,192

(Source: Truehits.net web statistics service, retrieved on January 10th 2008)

By looking at the on-line poll result, there were 375 people who participated in the poll which asked about the users' age range. The result, retrieved on May 8th 2006, has shown that the group of visitors that participated in the poll the most are those who are thirty-six years old and above. They made up 33 percent, while the smallest group is from age ten to fifteen that made up 4 percent. (see Table 4.2)

Table 4.2: On-line Poll Result showing the age range of people visiting the website

Age Group	Number of Vote	%
10-15	14	4
16-20	37	10
21-25	78	21
26-30	63	17
31-35	59	16
36 and above	124	33
	Total 375	

Source: "FTA Poll" <http://www.peoplechannel.org/live/live.php>,
retrieved on August 5th 2006

The documents published in English language provide international viewers access to their information as the group also works with international and regional research groups and NGOs. There are a series of statements and petitions written to international and responsible institutions in FTA negotiating counterparts; such as UN Human Rights Committee, the US Trade Representative, Speaker of Parliament in Australia. From the statistics in Table 4.3, the website has been visited mostly from people in Thailand. However, there are visitors from other countries such as the U.S., Italy, Japan, China, the U.K. and etc.

Table 4.3: The Total Number of Visitors by Countries

Countries	Unique IPs	Percent(IP)	Pageview
Thailand	10,530	95.66	22,950
United States	62	0.56	99
Italy	54	0.49	58
Japan	39	0.35	90
China	17	0.15	19
United Kingdom	17	0.15	27
Australia	13	0.12	18
Singapore	13	0.12	17
France	11	0.10	14

(Source: Truehit Statisticsm, retrieved on January 10th 2007)

By January 10th 2008, there are 218 documents available. The most downloaded ones are “FTAs: Conflict of Interest” which gets downloaded 575 times and “The Continuation to Use Compulsory Licensing for Thai People’s Access to Drug” which gets downloaded 547 times.

4.2 The operation

This section provides the examination of the movement’s operations by each FTAs. It will look at the situations, actions, strategies, tactics, as well as, the outcomes which bring about opportunities and constraints to the movement.

In the movement operation, FTA WATCH has taken a combination of institutional and non-institutional actions. Channels of power and allies are the resources which FTA WATCH has mobilized and used in the dynamics of FTA proliferation. It also provides the evidence of changes and impacts, resulting from the movement operation to contest with the government and counter-movements.

4.2.1 The emergence of new generation of FTAs before the emergence of FTA WATCH (2002- October 2003)

Before FTA WATCH was established, the government has already signed the Trade and Investment Framework Agreement (TIFA) with the US on October 23th 2002 which led the way for the preceding of bilateral FTA negotiation, and signed Thailand-China EHS on June 16th 2003.

During June 1-3rd 2003, the APEC meeting of ministers responsible for trade (APEC MRT 2003) took place in Khon Kaen province. Thailand was looking to establish FTAs with APEC members. The USTR chief Robert Zoellick and Commerce Minister Adisai Bodharamik announced the official negotiations on TUFTA would begin in July 2003 after their private sectors finish studying its impacts and benefits.

The period of negotiation for Thailand-China EHS only took about four months and the EHS started to take effects on October 1st 2003. While the WTO Summit in Cancun during September 10-14th 2003 failed to deliver consensus. The US Trade Representative Robert Zoellick announced that the US would take progress in trade liberalization through bilateral agreements.

The academics, anti-globalization activists, and grassroots organizations started to mobilize people and resources in order to gain attention and to convince the allies and the public about the implications of FTAs. They worked on the alternative proposal to the Thai government on WTO negotiations in Cancun.

While, some farmer leaders, HIV/AIDS activists and labor unions, joined the World Farmers Network's protest against the WTO ministerial meeting in Cancun. On September 9th 2003, nearly 2,000 anti-globalization activists and farmers gathered in front of the US Embassy in Bangkok to protest the FTA initiatives proposed by the US ahead of WTO meeting in Cancun, Mexico.

The academics who worked in collaboration with parliamentarians, such as the Senate Committee on Foreign Affairs and the Senate Committee on Social Development and Human Security, brought the issues and recommendations to policy makers through Committees' hearings. Members of the press were allowed to witness the hearings. It led to the public seminar organized by four Senate Committees on October 10th, 2003. Academics and NGOs, who are the working group of FTA WATCH, were the key speakers and moderators in a four-panel seminar organized by four Senate Committees; Senate Standing Committees on Foreign Affairs; Economic, Commercial and Industrial Affairs; Agriculture and Cooperatives; and Finance, Banking and Financial Institutions. The panels involved negotiators in the Ministry of Foreign Affairs, Ministry of Commerce, business organizations, NGOs and academics. It was in parallel with the announcement and formation of FTA WATCH on the next day, October 11th, 2003.

The academics, the Senate Committees, activists, and grassroots groups relayed similar discourses raising concerns on the impacts on Thai farming sectors and the legitimacy of FTA policy governance. The Senate Committees called for the government to seek Parliament's endorsement before entering into FTA negotiations.

4.2.2 The proliferation of FTAs and the Free Thai Movement (October 2003 – June 2004)

APEC Leader Summit took place in Bangkok. On October 19th 2003, the US President George W. Bush and Prime Minister Thaksin Shinawatra announced their intention to launch negotiations for TUFTA during Thaksin's visit to the US. President George W. Bush designated Thailand as a "major non-NATO ally. On the same day, the Australian Prime Minister John Howard and Thaksin Shinawatra announced that TAFTA negotiations were concluded and ready to be signed. Also, the Thai and Japanese prime ministers announced, on December 11th 2003, that the two nations were ready to start JTEPA negotiations in 2004.

In the early 2004, the government started to adjust its policy governance by appointing seven committees to be responsible of FTA negotiations, including FPRIF which is responsible on the impact assessment of FTAs on January 21st 2004. It also increased the budget on public relation of FTA policy by 10 million baht to promote the positive side of FTAs, especially on the benefits of TUFTA. The official announced that the public relation campaign was needed "because of the public's growing concern over the proposed Thai-US FTA." (Maneerungsee, 2004) The government still denied the need to bring the issues regarding FTAs to the Parliament for approval process.

FTA WATCH and with its international and local allies responded to the proliferation with a series of actions. One of the important cases was when FTA WATCH, jointly with its international and local allies, organized the "Conference on FTAs: Impact Analysis and Proposal from the People's Sector" on February 9-10th 2004, at the Faculty of Education, Chulalongkorn University. On the first day, it was able to mobilize about 456 participants from politicians, government officials, academics, media, students, trade unions, NGOs and grass-root networks from four regions, as well as, staff of embassies of Australia and the U.S. The conference was intended to be public capacity building and a networking activity which provides participants with

the discourse and information related to FTAs ranging from IPRS, agriculture, trade and investment, public health and medicine. Each panel was set for panelists to exchange points of views from the research-based information of academics and the experience-based of NGOs and grass-root leaders. On the second day, it was a workshop which catered exchange between international NGOs and FTA WATCH members in terms of sharing experiences and setting strategies for the movement. FTA WATCH assessed the result of the conference, they found that issue-based networks from agriculture, fishery, people with HIV/AIDs, labor unions, and consumer groups, have gained understanding about of other issues and aware of the threats of FTAs to the livelihood. At the same time, the exchange between WTO WATCH, academics and legal experts, and international networks such as Aziz Choundry from GATT Watchdog & Asia-Pacific Research Network, Renee Vellve, and Camila Montecinos from GRAIN, motivated each organization to work on in-depth analyses and to organize by-issue seminars in the own capacities. (FTA WATCH, 2004 : 26)

The conference was to drum up the mobilization before the USTR chief Robert Zoellick officially notified the Congress, on February 12th 2004, of the Administration's intention to initiate FTA negotiations with Thailand. Under the requirement of TPA, the US Administration has to consult with Congress for 90 days before commencing formal negotiations by June 2004. On that same day, "Friends of Thailand Caucus" was formed comprising of the US Congressional members.

On February 27th 2004, FTA WATCH, the Drug Study Group, the Center for Social Development Study, Faculty of Political Science, Chulalongkorn University, the Senate Committee on Public Health and the Senate Committee on Social Development and Human Security co-organized a seminar "TUFTA: Impacts on public health system" at the Parliament.

On March 23rd 2004, the US-Thailand FTA Business Coalition was launched. It is made up of approximately 100 the US companies interested in

supporting the negotiation, passage, and implementation of a premium trade agreement between the United States and Thailand.

On April 7th 2004, the cabinet approved that Thailand to apply for Paris Convention for the Protection of Industrial Property and Patent Cooperation Treaty (PCT) as proposed by Ministry of Commerce. These treaties are related to IPR protection which many critics suspected that the Thai government was complying with the US' request.

On May 3rd 2004, FTA WATCH released its study on the "Ten Years of NAFTA: Experiences that Thailand Must Learn From" at the Faculty of Political Science, Chulalongkorn University. FTA WATCH invited Alejandro Villamar from the Mexican Action Network on Free Trade and Lori Wallach, director of Global Trade Watch, to share the information about the impacts of NAFTA. It was projected before the government brought the issue to the cabinet meeting on the next day that TUFTA negotiation was ready to start on June 28th 2004. TAFTA was to be signed on July 5th 2004 as Thailand's first bilateral FTA covering a comprehensive list.

On June 5th 2004, senators from the Senate Committees that worked with FTA WATCH raised the problems of FTA policy in the debate on the third year performance of the Thaksin's government. John Ungphakorn criticized the government of "lending a deaf ear to public opinion" regarding FTA policy. ("Key points of Senate debate," 2004)

At the dawn of June 28th 2004, FTA WATCH and networks of grass-root organizations, including small-scale farmers and dairy farmers, staged its first anti-FTA rally and protest. The activities started with protesters announcing the "Free Thai Statement for National Sovereignty in Opposition to the Negotiations and Signing of Free Trade Agreements led by Pol.Lt.Col. Thaksin Shinawatra et al." that the FTA would make people of Thailand lose their economic and legislative sovereignty. The statement was declared at the Khana Rat plague, the Royal Plaza. The campaign was meant to be symbolic as a revolutionary action. As Khana Rat is the People's Party, a coalition of

civil servants, princes, and army officers, which seized power from the absolute monarchy in a bloodless coup on June 24th, 1932. The People's Party initiated the first provisional constitution of Thailand. The plaque at the Royal Plaza is the only monument of the Khana Rat.

Throughout the operation, they translated the discourse on violation of national sovereignty in to rhetoric slogans such as “sovereignty is not for sale”, “Thailand is not for sale.” They also declared that they “will not accept any free trade negotiations” carried out by Thaksin’s government because such agreements “will take the country on the path of becoming a US colony.” The rally marched along the road to stage a protest in front of the Government House FTA WATCH staged a protest in front of the Government House. It was recorded that there were about 500 participants.

The protest was aimed to pressure the signing of TAFTA which was scheduled o July 5th 2004 and the first Round of UFTA negotiation that took place on that day. It was an attempt “drum up the beat”, meaning that it was to show the negotiators both from Thailand and FTA partners that resistance to what the governments were doing existed, said Kingkorn Narintharakul Na Ayuthya in the interview on February 2nd 2006.

The slogan “Khabuankarn Seri Thai” or the “Free Thai Movement” was used during the periods of mass mobilization against the TUFTA negotiation rounds in order to stimulate the public with the nationalistic sentiments on the values of sovereignty of the nation and its people. Also, it aimed to provoke the government that its actions could lead the country to the loss of sovereignty, similar to the mistake in past which Thailand almost lost its sovereignty after World War II. As in 1941, Field Marshall Phibun Songkhram, then the Prime Minister who happened to be the father of the head of the TUFTA negotiation team during 2004- February 2006, allied with Japan and declared war against the United States and Great Britain. The “Free Thai Movement” is the name of an underground movement, much revered in the Thai society about their resistance against the Japan’s military occupation. At the end of the war, Thailand was not considered to be on the Japanese side as

the operation of the Free Thai Movement demonstrated that Thai people were not willing to side with Japanese imperialism. Otherwise, Thailand would have been treated much more harshly by the war's victors.

4.2.3 TAFTA and The 2nd Round of TUFTA (July 2004 – October 2004)

On July 5th 2004, TAFTA was signed and has become Thailand's first bilateral FTA covering a comprehensive list.

Before the 2nd Round of TUFTA which was scheduled to take place during October 11-15th 2004 in Hawaii. Claudia McMurray, the US State Department's deputy assistant secretary for environment revealed that the issue of genetically modified organisms (GMOs) would be on the agenda of the talks. As the world's largest producer of GM products, the US has lobbied several other countries to accept and open their markets to GMOs.

FTA WATCH still worked with and Senate Committee on Foreign Affairs and members of parliament to put pressure on the government to reveal the substances in FTA negotiation, as well as, to convince for changes in the policy process. On July 14th 2004, Senate Committee on Foreign Affairs called on heads of negotiation teams to the Committee's hearing to question them on the government's positions for each FTA and the interpretation of Section 224, paragraph 2. Also, FTA WATCH and Senate Committee conducted a field research to assess the impacts after one year of Thailand-China EHS in Chiang Mai.

On September 20th 2004, Senator Kraisak Choonhavan criticized the government over the FTA policy in the 2005 budget proposal budget debate. With the help of Buntoon Srethsirote in briefing of the points of concern, Kraisak Choonhavan expressed concern over the impacts of Thailand-China EHS and TAFTA. He stated that, the government used about 514.72 million in 2004. Within the amount, DTN received 150 million baht and MFA 364.72

million baht. "For TAFTA, the government told dairy farmers to give up if they cannot compete and to do other things instead. This is not good governance. It is not acceptable and has to be reconsidered. The government has to take people's participation into the account before making decision by including people in every sector and the Parliament. Otherwise, the government has to take the responsibility of the impacts."

FTA WATCH held a press conference on October 11th 2004 calling on the Thai negotiating team to exclude IP from the second round of negotiations until a well thought-out strategy which includes participation from all stakeholders is devised.

The Democrat Party member Kalaya Sophonpanich made a press conference on October 11th 2004, calling the government to scrap the negotiation with the US. She criticized the government which lacked of transparency and demanded for the Parliament's involvement.

Jade Donovanik wrote an article "Is there a magic solution to international patents?" published in Bangkok post on October 15th 2004. He stated Thailand's joining of Patent Cooperation Treaty (PCT) was evident that Thailand was influenced by the US. The government assigned the Department of Intellectual Property (DIP) to dig up its old file prepared nearly two years ago to make Thailand a member of PCT.

4.2.4 Re-elections and the 3rd Round of TUFTA (November 2004 – 2005)

On November 4th 2004, the US President George W. Bush was re-elected for second the term. TUFTA was expected to run smoothly. However, Thailand wanted to delay the 3rd round of TUFTA until after the general elections in February 2005. It was because issues of FTAs have become highly politicized and Prime Minister Thaksin and the Thai Rak Thai Party could be the target of criticism. TAFTA was due to take effects on January 1st 2005.

At that time FTA issues seemed to be part of the Thai society. As Kiat Sithi-amorn, a Democrat Party member, release a book titled "When FTAs Catch You" in December. It was a best-seller book. FTA WATCH sent a letter to the President of the Parliament on December 7th 2004, requesting the Parliament to scrutinize the Government FTA policy which may conflict with the 1997 Constitution on the case of TAFTA.

Thaksin Sinawatra won the general election with bigger majority of Thai Rak Thai Party members in the House of Representatives in February 2005. The new government wanted to move forwards with the 3rd round of TUFTA. The 3rd round of TUFTA negotiation took place during April 5-7th 2005.

During the negotiation, FTA WATCH and eleven alliance organizations staged a protest in front of negotiation venue which was at the Royal Cliff Beach Hotel, Pattaya, in Thailand. There were about 5,000 participants. Most of them were farmers and people living with HIV/AIDS. The rally also drew the light to the presence of FTA WATCH. The Assembly of the Poor (AOP) advisors advised FTA WATCH and the networks during the preparation process. They suggested the protest should be able to speak to a wide public that FTAs would affect the Thai people from all walks of life.

In terms of discourse, FTA WATCH and the networks chose to use World War II rhetoric, calling for independence and nationalistic sovereignty. It was meant to annoy Nitya Pibulsongkram, the Thai Chief negotiator, as he is the son of the late Field Marshal P. Pibul who sided with the Japanese during World War II and allowed Japanese troops to station in Thailand.

The tactics were devised and carried out throughout the dynamics of the protest cycle. The protestors divided into two separate groups. One group was to stage a march from a temple to the site. The leaders' aim was to call for negotiation. They were wearing masks, wreaths, and holding placards containing messages "Thailand is not for sale." Along the road, the members distributed fliers to the passerby's. Another team of operation was assigned to

sneak into the hotel in order to drop a flyer down from a building, after the meeting finish. The protestors managed to come as far as in front of the hotel entrance, facing a blockage by police officers. They negotiated with the police, conveying to the negotiation team that they would like to speak to the Chief of Thai negotiation team in order to voice their concern on TUFTA. The pressure was high to the extent that it could stop the meetings of the high-ranking negotiators. The protesters demanded to table a negotiation and to file a written statement to the Chief of Thai negotiating team. However, Nitya Pibulsonggram's response was that the concern in the statement should have been filed directly to the US Chief of negotiators. As the meeting was witnessed by members of the press, Nitya Pibulsonggram's remark was publicized and taken as an issue which made a negative impact to the Thai negotiation team. They were perceived as, not only lacking of accountability, but also lacking of decision-making power on behalf of Thai people's demand.

The media team informed journalists who have been following the negotiation process about the rally before hand. In result, some journalists went into the negotiation room with members of FTA WATCH to witness the negotiation between the Thai negotiation team. The media team also prepared and sent press releases in both Thai and English language instantly after the rally in order to receive new coverage by the end of the day.

After the TUFTA's 3rd Round of Negotiation, some government officials decided to reveal to FTA WATCH members, in personal capacity and in meetings. It was over their concern on the provisions on IPR and patent on life forms proposed in TUFTA negotiations. Those officials felt that the provisions would affect the public interests by limiting public access to health and biodiversity resources. With the access to information, FTA WATCH has learned that the issues on IPR are as crucial as they speculated. They have speculated it from their knowledge on the issues in multilateral framework and other FTAs. From their study on previous FTAs signed by the US and the draft text on IPR, they found that access to medicines in Thailand would be limited by the US' proposed measures, which goes further than current provisions under Thai law. It would put restriction of the grounds for

compulsory licensing (CL) by making it more difficult for governments to increase access to affordable medicines when necessary. It would also extend patent protection beyond twenty years which will delay the introduction of more affordable generic medicines. This draft text appears to be similar to the text which is accessible through the website www.bilaterals.org.

FTA WATCH also received the text on investment chapter from another concerned source in the governmental body. It appeared, as they expected, that the provisions contained similar requirements as the ones in NAFTA and Singapore-US FTA. The requirements are already set in the TPA framework. They also found out that Singapore-US FTA contained some alterations from NAFTA which even benefit the US further on the opportunity to take legal actions on the other parties.

Buntoon Srethsirote's participation in GSEI's research project, "The Environmental Review for the Preparedness for the Thai-US FTA Negotiation" in 2005 - 2006 has contributed to FTA WATCH's knowledge on Environment Chapter in TUFTA. By working as a researcher, Buntoon Srethsirote had the opportunity to exchange and give advice to the Thai negotiators during negotiation periods, the 3rd to the 6th Round of TUFTA negotiations. This capacity did not provide the opportunity to access to the actual text in the beginning. But, he had the opportunity to interact with the negotiators responsible for the Environment Chapter, as they are also on the research team. They exchanged information with him on related to provisions on the basis of shared concern. He learned that the negotiators were quite aware of the secrecy and Buntoon Srethsirote's role in FTA WATCH. But, they paid mutual respect of his academic positions the research project. Later, Buntoon Srethsirote gained the text on Environment Chapter during the consultation session held by the former head of environmental negotiation team for TUFTA and GSEI researchers. The staff circulated the copies of the text to participants. By chance, the staff did not collect back all the copies.

As FTA WATCH members continuously raise their concerns and disseminated information on negative implications on many sectors, there are

some government officials who start to be convinced and share similar concern. Some officials understand the issues and problems well, but in their capacity as bureaucratic entities, they cannot fully express themselves as opposition to the government's policy. There are cases that policy-makers and officials give confidential information to FTA WATCH members. Or, FTA WATCH members receive information from others who gain access to information from concerned government officials. FTA WATCH members also worked with government officials on the country's proposal on IPR. After the informal talk with the US negotiator, the Thai negotiator on TUFTA revealed to Prachachart Newspaper, on November 10th 2005, that the negotiation on IPR might be delayed. Thailand proposed the protection of four areas 1) geographical indication 2) traditional knowledge 3) facilitation for Thai SMEs 4) co-ownership and benefit sharing. The official stated that the US refused to negotiate on the proposal by saying that the US team did not have experts on the proposed issues.

FTA WATCH continued to pressure the government on the policy governance. It took the discourse to the level of the United Nation Human Rights Committee. They submitted "Thailand's Free Trade Agreements and Human Rights Obligations", a document prepared by FTA WATCH in March 2005, to the 84th Session of the UN Human Rights Committee. FTA WATCH explained the illegitimate governance of FTA policy, the plight of farmers, and the threats on HIV/AIDS patients' access to medicines. It led to the questioning by the UN Human Rights Committee to the Thai Government on petitioned points. FTA WATCH and Focus on the Global South were among several Thai NGOs attended the session. Together they held an informal briefing, which focused on the signing of free trade agreements that violate Articles 1, 6, 9, and 25 of the International Covenant on Civil and Political Rights 1966.

In further result, the Government replied in written form that "Thailand's trade negotiation process is based on Thai people's interests. The government has been doing its best to ensure transparency of and participation by parties concerned in the process." On the question of Parliamentary

scrutiny, the Government claimed that "Senate and House committees regularly invite officials from the Ministry of Commerce and other relevant agencies to testify and provide updates on FTAs. To date, there have been more than 80 hearings." On people's participation, the Government referred to the Ministry of Commerce's 20 round-table consultations with producers and exporters of agricultural and industrial products. The Government claimed that in TUFTA, agricultural products had not been negotiated. It ensured that "when it is negotiated, the Royal Thai Government will apply the same criteria as applied in the FTA agreements concluded with other countries, i.e. putting the interest of Thai farmers first." It is noted that "the competition of imported goods created by FTA agreements help raise both farmers' and public agencies' productivity." (The Royal Government of Thailand, 2005)

The topic of FTAs had become an issue within the Parliamentary budget approval debate. Senate However, the government changed the way to specify the how the budget was allocated in 2005. It stated that for the government's strategy in international economic development, including the budget for FTA negotiations, in an overall amount. DTN received 366.66 million baht and MFA received 4,494.12 million baht for implementing the policy according to the strategy. Kraisaak Choonhavan scrutinized over the issue again on September 19th 2005. "We, the Senate through four standing committees, have warned you for two years about the preparedness before entering and signing of FTAs. Now, we have lost the balance of trade to China in 2005 by 68,000 million baht and 12,991 million baht with Australia. I have a question on this policy. I cannot approve the budget for the government to carry on negotiations with the US, Japan, and other countries, until there are thorough impact studies and transparency. The government must submit the framework to the Parliament's approval process prior to the negotiations like other civilized and democratic countries do."

As senators had gained acquaintance to FTA issues from FTA WATCH's contribution, the some former senators became more aware and active in scrutinizing the Government on the policy. In Senate Assembly,

some former senators including Kraissak Choonhavan and Niran Pitakwachara, urged the government to bring in the content of FTA provisions for parliamentary debate. They voiced the opinion that "Prime Minister Thaksin Shinawatra and the government should not have decided this matter on their own. They must consult parliament first" and "60 million Thai people should be able to listen and judge for themselves whether FTAs benefited the people, the politicians or businesses." ("Senators say Thailand being exploited, seek joint debate," 2005)

4.2.5 The 6th Round of TUFTA (2006)

The 6th Round of TUFTA was scheduled to take place at the Sheraton Hotel in Chiang Mai, Thailand during January 9-13th 2006. The IPR related issues were very sensitive, especially among the people living with HIV/AIDs. Before the negotiation, Prime Minister Thaksin Shinawatra announced that Thailand had to move forward with FTAs in order to secure its market access in the US market, otherwise Thailand would lose its competitiveness to the countries that do not have to pay tariffs.

On January 5th 2006, FTA WATCH and allies held a press conference to affirm their stances that TRIP-plus provision should be excluded and the FTA policy process should include people's participation, as well as, the parliamentary endorsement. They objected to the US stance that which use the TPA as the legal framework to set the modalities in the negotiations. NESAC organized a seminar "TUFTA: Benefits and Impacts."

FTA WATCH planned a series of disruptive measures on the negotiation. The coalition of seventeen organizations, including NGOs based in Chiang Mai like Northern Development Foundation and farmers. Friends of the People (FOP), Thai Agricultural Alternative, and NGO-COD mobilized and brought the regional grassroots network from four regions. About 12,000 people staged a continuous and massive protest from the downtown and the Sheraton Hotel in Chiang Mai.

Buntoon Srethsirote played another role as he gained access to the negotiation room on environment issue as a researcher in GSEI's Environmental Review project. He could monitor the updates and situations as there were daily briefing sessions held every afternoon during the negotiation period. The daily briefing was conducted by heads of issue-based groups to update the outcomes to the Chief negotiator.

The rally started with a long march from downtown. Their tactic was to stage an appealing rally that would catch media and public attention. The march was a non-violent, peaceful, and ritual. The participants held the portrait of Kruba Srivichai, the most revered monk widely respected by people in Northern provinces and around the country, and prayed for the spiritual protection of the national sovereignty. When they reached the hotel, TNP+ which made up of 2,000 participants blocked the entrance of the Sheraton Hotel. Twenty protestors swam through the river into the hotel. The police cracked down on this group when they reached the hotel.

The front-door blockage took place overnight with some members' attempt to run into the hotel's lobby. Nitya Pibulsonggram, Thai Chief negotiator, was pressured by the actions and had to come out for negotiation with the protesters. He made a promise that he would ensure the negotiation was based on Thai people's interest.

The significant outcome was the protest could halt the negotiation and pressure the negotiators to change the meeting venue, from the hotel to a golf course on the next day. The negotiation ended with no concrete conclusion, especially on IPR issue. The protesters did not follow the negotiation team to the other venue, but performed some ritual such as praying and burning of effigies of Nitya Pibulsonggram in a coffin.

During protest activities, the media team, Kannikar Kijtiwatchakul and the People's Channels, were in charge of relaying the movement message to the media. They distributed press releases, statements, and other publications to the reporters and FTA WATCH's website. FTA WATCH members also

produce briefing notes and send updates to the press which contains clear and detailed information and photographs. These coordinated efforts have led to the gain of media space. The protest received much of media coverage as daily newspapers put the news on the front pages as shown in Figure 4.1 – 4.4. It brought public attention to the problems of FTAs and the movement itself.

Figure 4.1 : Media Coverage (Bangkok Post, issue dated January 9th, 2006)

Bangkok Post

MONDAY, JANUARY 9, 2006 • 25 BAHT

THAI-US FTA SIXTH ROUND OF TALKS



An activist (left), a journalist (center) and a member of the Thai-US Free Trade Agreement (FTA) Sixth Round of Talks (right) are seen at a protest in Chiang Mai, where thousands of protesters gathered to demand a halt to the trade talks.

PM 'failed to consult the public'

PREEYANAT PHANAYANGGOOR
APIINYA WIPATAYOTIN

The civic sector joined forces against the ongoing Thai-US free trade agreement (FTA) pact by drawing up a petition stating that it does not approve the mandate of Prime Minister Thaksin Shinawatra as being a representative of the Thai people in signing the deal.

Pitaya Wongkul, chairman of the Campaign for Popular Democracy, said the government under Mr Thaksin was not in a position to sign the Thai-US FTA on behalf of the people because he had bypassed the public in the negotiation process.

"Mr Thaksin was not our representative because his government neither consulted the general public about the FTA deal nor the parliament, which is the representative of the people under the democratic system," he said.

He said the government negotiated the FTA without careful consideration and based its decisions on the interests of select people in government rather than the population as a whole.

"The petition will be evidence that the people do not want Mr Thaksin to sign the Thai-US FTA deal on our behalf," he said.

Mr Pitaya said the petition could also be useful in the future when a new gov-

ernment wanted to halt the pact and the case went to court, demonstrating that Mr Thaksin carried it out without the consent of the people.

He said the petition would be signed by as many people as possible, including activists, academics and the general public, to demonstrate their strong opposition to the Thai-US FTA pact. It would be handed to the US embassy before the sixth round of negotiations, which starts today in Chiang Mai and ends on Friday.

Kraisak Choonhavan, chairman of the Senate committee on foreign affairs also plans to petition the Constitution Court tomorrow to seek a review of the FTA claiming it contravened the constitution.

Jaroen Khamphirapap, deputy rector of Silpakorn University, called on the United States to halt negotiations with the Thaksin administration.

"The US, which always upholds the value of democracy and human rights, should not hold talks with the Thaksin government, which bypasses the democratic process and damages democracy," he said. "Once the FTA is signed, our people's constitution will have no meaning. International laws will outweigh our domestic laws. The rights of global investors will be protected while the sovereignty of Thailand will be destroyed."

Mr Jaroen expects the government to hastily wrap up the deal by June 2006

because some people in government wanted to protect their own interests as quickly as possible. "The deal, for example, will help guarantee the protection of licences and concessions which were granted to existing investors so they will not be revoked even if a new government comes into power due to the binding agreement under the FTA."

Democrat MP Kalaya Sophonpanich, urged Mr Thaksin to inform the people who or which businesses would benefit from the pact.

"I would like to ask the prime minister what right he has to trade the benefits of the people with the interests of some business groups," she said.

She said Thais would become slaves and economic victims of the pact which allowed foreigners to take advantage of Thailand in areas such as drug patents and the right to register patents of herbs or other living things native to the country.

Mr Thaksin did not want to submit the FTA deal to parliament for scrutiny as he feared "hidden truths" would be revealed.

Meanwhile, in Chiang Mai, police have beefed up security to prevent the possibility of violence breaking out during the Thai-US FTA talks. A police officer said they were told to keep an eye out for a group of Muslim students, who had reportedly travelled from the southernmost provinces to join the anti-free trade protest.

Figure 4.2 : Media Coverage (The Nation, issue dated January 11th, 2006)

The Nation

WEDNESDAY, January 11, 2006

FTA TALKS

Protesters storm trade negotiations



At least 10,000 anti-FTA protesters burst with police as they try to break through a barricade at Chiang Mai's Sheraton Hotel, where Thai-US free-trade negotiations met yesterday. About 100 police officers charged the police barricade surrounding the scene.

HIV/Aids groups lead charge on hotel, pledge to thwart talks on drug patents; PM says he's listening

By Prasanna Hongsongkro
The Nation
CHIANG MAI

NEARLY 10,000 protesters yesterday broke through police barricades surrounding the Sheraton Hotel, where Thai and US negotiators were engaged in free-trade talks.

The riotous brought the talks to a premature close. Health Minister Thaksin Shinawatra yesterday softened his stance, promising to listen to opponents of the FTA negotiations.

After a minor clash with police, about 500 protesters managed to enter the hotel compound, while the rest rallied outside the hotel's main fence.

Some 2,000 police officers and security forces formed blockades to prevent protesters entering the hotel, where trade talks are slated to resume today.

The stand-off continued late into last night, but protesters allowed garish free access to and from the hotel.

The 1000 protesters, most of them from HIV/Aids groups, vowed to make their way to the



A mass assembly outside free-trade talks at yesterday's rally.

meeting rooms to prevent negotiations and to protest against intellectual property rights issues.

Those contentious discussions are on today's agenda. "It is crucial for us to stop the negotiations, because our lives are at stake," said Noppapat Sangnuek, boss of an HIV/Aids group in Chachoengsao province.

"We are fighting against drug patenting with our lives. I know I might get arrested or injured in clashes with police, but we are all willing to face that, because we have more to lose if the talks succeed."

Nitya Pibulwongkarn, the wife of Thai negotiator, met with the protesters, but insisted he could not bring an end to the negotiations.

Nitya later told reporters that the talks had been pausing for some

years. "If we stop right now, we would have wasted time on all the issues we have negotiated."

He said the protest "fairly disrupted" the negotiations.

Nitya reportedly ordered an early end to yesterday's negotiations.

While the talks on Monday went on until 7pm, yesterday's discussions were abandoned at about 8pm, said a source in attendance.

An observer said that if the protesters managed to stop the FTA negotiations in Chiang Mai, it would be only the second time since the WTO's ministerial meeting in Seattle was cancelled in 1999 that a free-trade negotiation had been disrupted.

Asked why the Thai government did not make the entire process transparent, as in the US, which reported all conditions of

the talks to Congress before beginning negotiations with the Thai government, Nitya said: "Don't you know the American system is different from ours? Why do you want us to do things the US way?"

From the sidelines of a weekly Cabinet meeting convened in the northern city of Loei, Prime Minister Thaksin Shinawatra promised his government would listen to the protesters, who claim he has been too secretive about the substance of the talks, which are currently in their sixth round.

"I'm glad that there are protesters," Thaksin said.

"The government will use their presence as a bargaining tool in the negotiations, but I'd respect it. My government will listen to what the protesters say and will consider whether their points are reasonable or not, but if we consider that the deal is justified we will sign it," the premier said.

"If the deal is not justified and we are to discontinue it, we will not sign it."

However, Thaksin said none of the protesters were contacting, adding that the government would ultimately disclose all the details of its discussions with US trade negotiators.

Government spokesman Surapong Sathowongke said Thaksin had invited that all the recommendations from the public would be heard.

"We have to negotiate for the mutual benefit of both sides," he added.

Democrat MP Nakhon Wachon said the opposition might call for a special parliamentary session to debate the trade pact.

Figure 4.3 : Media Coverage (The Nation, issue dated January 11th, 2006)



When asked about the reason why the movement uses protest as their strategy, Kingkorn Narintharakul Na Ayuthya noted, in the interview on February 2nd 2006, that she had learned from the experience in working with many grass-root organizations that protests were the means of “direct democracy.” She explained that “direct democracy” can be achieved when people have direct experience in exercising their power and building their capacity. She added that she agreed to the statement of Assembly of the Poor (AOP) that “the most effective means to get people leaned is to participate in street protests.” Assembly of the Poor is a network of people based in Thailand who share the same grievance that is being marginalized by industrialization development policies. Most of the people in the network are from the rural agricultural sector.

Figure 4.4 : Featured interview in The Nation, issue dated January 15th, 2006

FTA WATCH

4A : THE NATION : Sunday, January 15, 2006

'Our movement is gaining strength'

Group says media coverage given to Chiang Mai protests has lifted its profile and govt will need to address concerns

■ *Subhata Bhumiprobhas*
The Nation

THE FIERY PROTEST that disrupted free-trade talks between Thailand and the United States in Chiang Mai last week was just the first victory for a movement that is gaining strength, says a key organiser of FTA Watch.

The extensive media coverage given to the protest has boosted the group's profile and morale, said activist Kingkorn Narintarakul na Ayudhya.

Moreover, now that FTA Watch has succeeded in putting its concerns on the national agenda, the government may have to address them, she said.

The group will continue monitoring the talks and informing the public about its concerns because it believes that the government has misled the public about the impact of a free trade agreement (FTA) with the US, she said.

Kingkorn said FTA Watch's 'ultimate goal was 'no FTA,' but she was quick to add that the group was not opposed to international trade.

FTA Watch says that the government has misled the public about the impact of an FTA with the United States.

"The government has said exports to the US will surge following the lowering of import tariffs, but this view is simplistic as it omits non-tariff barriers and contradicts the experiences of other countries that have signed FTAs with the US," Kingkorn said.

The absence of tariffs will not ensure fair trade as it does not

guarantee that Thai exports will have an easier time getting into a foreign market, she said, pointing to other trade barriers employed by developed markets such as quality and safety standards.



"The government has said exports to the US will surge following the lowering of imports tariffs, but this view is simplistic as it omits non-tariff barriers and contradicts the experiences of other countries that have signed FTAs with the US."

Kingkorn Narintarakul na Ayudhya
FTA Watch organiser

Last week nearly 10 thousand people rallied in Chiang Mai to oppose the sixth round of talks on the Thai-US FTA.

The protesters came from all walks of life, but people living with HIV/AIDS, farmers and labourers comprised the largest segment. The talks started at the

Sheraton Hotel in Chiang Mai on Monday with thousands of police officers protecting the venue.

However, protesters managed to break through the police barricade and gain entry to the hotel compound on Tuesday.

They also torched effigies of the two lead negotiators, Nitya Pibulsonggram and Barbara Weisel, and camped in front of the hotel.

After the clash between the police and protesters on the second day of the talks, the government shifted the venue to a resort about 20 kilometres from the Sheraton Hotel, where negotiations continued.

Although they did not succeed in ending the talks, the protesters declared victory and said they would continue their campaign to counter what they saw as a one-sided sales pitch from the government.

Kingkorn said FTA Watch would focus its public-information campaign on three main areas: agricultural products, drug patents and investment.

The tariff reductions being negotiated will cover about 1,000 products in the agricultural, industrial and electronic sectors, she said.

Lowering tariffs on agricultural products will benefit American farmers much more than Thai farmers, she added.

Hundred of thousands of Thai farmers, especially those who grow soybeans and maize, would be harmed by the pact because Washington subsidises its farmers' exports, she said.

Kingkorn admits that the FTA with China, signed in 2003, has

allowed shoppers to pay less for products such as fruit and vegetables.

But she advises the public to take a longer look and, in partic-

ular, consider the example of Mexico. There, farmers had to stop growing maize because they could not compete with cheap imports from the US following a

free-trade pact between the two neighbours, she said.

Later, however, the price of corn rose 300 per cent in Mexico, she claimed.

On January 11th 2006, the chief negotiator of the US team made a courtesy call on Kraisak Choonhavan and the Senate Committee on Foreign Affairs. The meeting was attended by members of the oppositional party members and Buntoon Srethsirote. They relayed the view point which resonated with FTA WATCH's stance to the US negotiators.

Nitya Pibulsonggram, the chief negotiator of the Thai team, resigned from the position on January 25th 2006 without disclosing the reasons. It was said that he faced pressure from three sources; the pressure by the government to conclude the trade talks by April, a lack of unity among government agencies as opinions of officials from the Foreign, Commerce, Public Health and Agriculture ministries differed widely, and the pressure from the anti-FTA protests.

Another key event was the During July 27-29th 2006, FTA WATCH together with bilaterals.org, GRAIN and Medecins Sans Frontières organized “Fighting FTAs: An international strategy workshop” in Bangkok which contributed to the strength and coordination between social movement organizations from all over the world. The workshop gathered participants from Africa, Asia, Latin America, and other regions to share their experiences, tactics, and assessment on their struggles. The Thai participants including grass-root groups such as small-scale farmers groups had a chance to learn about the plight of other farmers and how indigenous groups in Mexico were put in landless condition. They are affirmed that FTAs all over the world have the same pattern, especially US TPA framework.

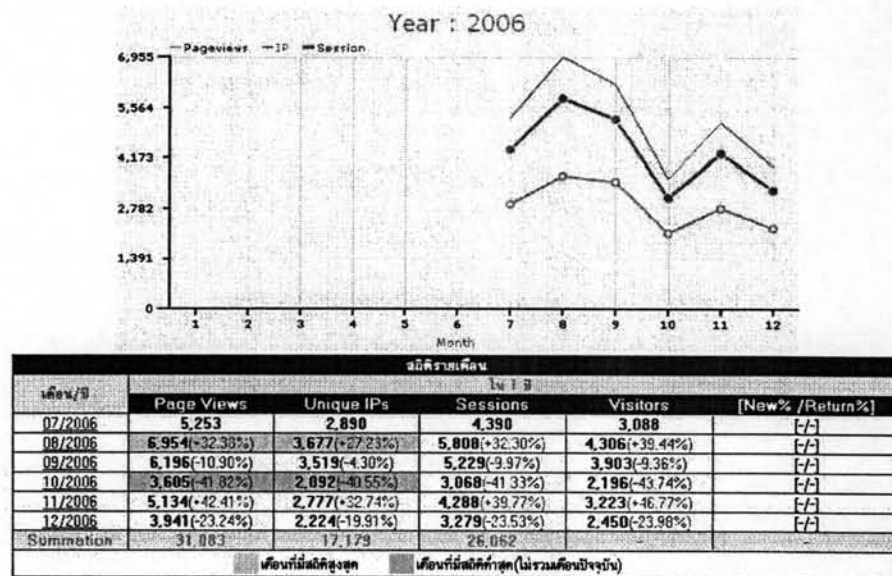
4.2.6 JTEPA (2006-2007)

In 2006, the political climate in Thailand was intensified with anti-Thaksin protests, dissolution of the Parliament, and the coup on September 19h 2006.

The mass mobilization against Thailand’s former Prime Minister Thaksin Shinawatra organized by People Alliance for Democracy (PAD) reached its hype in early 2006 after it revealed corruption cases in Thaksin’s government and the controversial sale of the Shinawatra family’s share of Shin Corporation to Singapore’s Temasek Holdings by criticizing on its tax-free transaction. FTA WATCH decided to join PAD and brought in their discourse

on FTA issues including the intransparency and the negative implications of FTAs. The constituents of PAD became aware of the issues of FTAs by receiving message through PAD's media output; cable TV, website, and newspapers. From the website statistics in Figure 4.5, the number of visitors in 2006 reached its peak in August with 4,306 visitors. It was when PAD mobilization was popular among the urban and middle-class population. According to the statistics on July 9th 2006, the most popular file was "The Consumers' Hand book for Democracy and National Security Enhancement: Blacklist of Products and" with 287 downloads. The document contains anti-Shinawatra family's business information which was widely circulated within PAD. At the time, the government did not make any progress with TUFTA or other FTAs.

Figure 4.5 : FTA WATCH's website statistics from July – December 2006)



(Source: Truehit Statistics, retrieved on January 10th 2007)

Meanwhile, FTA WATCH prepared a draft for "International Agreement Bill" with some legal experts. It was to fix the unclear parts of the 1997 Constitution which does not specify the types of treaties for which the government must obtain parliamentary approval before the signings, and the agency who has the final authority to settle the dispute in the case of

disagreement between the Parliament and the Cabinet concerning the interpretation of the Constitution.

As the intensification of the political situation led to a military coup d'état in 2006, it caused the end of the 1997 Constitution on September 19th 2006. The Council for National Security (CNS) seized power and later instigated the interim government and the 2006 Interim Constitution. The CNS appointed General Surayud Chulanont as the prime minister and Nitya Pibulsonggram, the former chief negotiator of TUFTA as the foreign minister. However, most FTA negotiating partners decided to halt FTA process with Thailand wait for a elected government, except JTEPA which the negotiation ended since the time of Thaksin's administration and waited for the signing process. However, the finished draft of JTEPA was held as "confidential" document by law.

FTA WATCH had to find ways to gain access to the draft of JTEPA as they have gained the knowledge on hazardous waste issue in Japan-Philippines EPA from NGOs in the Philippine. Their strong and extensive advocacy in the Philippines alarmed FTA WATCH on the environmental issue in JTEPA. (Kijtiwatchakul, 2006) During FTA WATCH's campaign against JTEPA, Japanese environmental NGOs such as Citizens against Chemical Pollution and the Japan Occupational Safety and Health Resource Centre, supported CAIN the information on Japan's waste management situations and facilitated CAIN to gain access to the waste dumping sites where CAIN took photographs and documented the situations of overloading industrial waste in Japan. CAIN used the information to create striking presentation on the potential impact JTEPA in allowing imports of hazardous waste. The presentation has been used in many venues including NHRC, Senate Committees, NLA, NESAC, TRF meetings and other academic seminars. It has convinced the mentioned organizations and the public through the media on the potential negative impact of JTEPA. The network of Japanese NGOs also sent a petition to the King of Thailand in order to warn the Thai public on the potential impact of JTEPA on the environment in Thailand.

FTA WATCH sent a letter to Pisan Manawapat, Chief Negotiator of JTEPA, asking for the draft text of JTEPA for educational purpose. After sending the letter, FTA WATCH received a letter dated February 21st 2006, replying that the Government could not disclose the text to the group because the negotiation process had not been finished. This reply also gave FTA WATCH a point to argue about in public forum. The point is if JTEPA was scheduled be signed by April 3rd 2006, as the Chief Negotiator said the draft could not be disclosed, by the time the negotiations were finished, the public would almost have no chance to review the concluded text nor assess the pros and cons. (Kijtiwatchakul, 2006) The situation led to FTA WATCH's action in launching petition to the NHRC to scrutinize the issues of JTEPA, February 22^{sd} 2006.

The problems about the lack of transparency within the bureaucratic polity also exist. It was revealed by government officials invited to focus group meetings of research projects which Buntoon Srethsirote worked as the director. These projects are the Knowledge Management on Environment and Trade: Studies of Non-Tariff Barriers" (NTBs Project) and Multilateral Environment Agreement Intelligence Unit (MEAs WATCH) which received funding from the Thailand Research Fund (TRF). They are research projects that provided exchange platforms for FTA WATCH to gain in-depth understanding of environment issues, NTBs, and the relationship between FTAs and MEAs. In some meetings and seminars organized by the two projects, government officials who are not directly involved with FTA policy or negotiations had an opportunities to express their concerns on the lack of coordination within the bureaucratic polity. Many of the officials are frustrated with the secretive manner and acceleration of FTA negotiations. For example, Pramual Chaleo, legal officer of the Pollution Control Department, Ministry of Natural Resource and Environment, revealed that "as a legal officer, I have never seen the draft of JTEPA. I have seen only the one from WTO and TUFTA negotiations on environmental issues which cover a far-reaching scope. If we get to see the whole agreements, we will know how trade issues in other chapters can invade the realm of environmental protection." He disagreed with the negotiation process which held the text in a very

confidential status as saying “if we find out about the text later after it has been signed, we could not make any change. The FTA will put Thailand in a disadvantage position.” He commented that “as the bureaucratic agencies usually do not work in coordination, they only receive separated parts of the text by their agencies’ tasks.” He saw the research project and academic forums useful in gaining information on the comprehensive scope of FTAs.(Chaleo, 2007)

He also revealed that not only JTEPA that contained the provisions on import of hazardous waste, TUFTA also had some implications on import of hazardous waste in the investment chapter. He explained that through investment chapter, major US recycling industry would be able to establish factories under the Department of Factory’s regulations number 105 and 106 and to import hazardous waste into Thailand by claiming that the waste are for recycling purpose. He further explained that at present US is one of the OECD countries which are not allowed to import waste into non-OECD or developing countries, even for recycling purpose. He implied that FTAs had potential conflicts with Thailand’s environmental protection policy and the multilateral environment agreements, if not study and make on the provision. (Chaleo, 2007)

Through the projects, FTA WATCH has also gained increased participation of academics that is supportive to the movement such as Professor Dr. Lawan Thanadsillapakul, investment law expert, Dr. Jade Donovanik, a legal expert on IPR, and Dr. Sujitra Vassanadumrongdee, an environment economist. Dr. Sujitra Vassanadumrongdee has contributed to the FTA WATCH’s proposal on hazardous waste issues in JTEPA.

After gaining more information about the risk of JTEPA, FTA WATCH sent a letter to Prime Minister Surayud Chulanont urging the halt on all FTA negotiations until there is a due process of law on international agreements that involves people’s participation, dated November 11, 2006.

FTA WATCH's relation with alternative media is also important and useful for the access of information on JTEPA. To find out if JTEPA contains the provisions on hazardous waste, FTA WATCH worked with Prachadhrama News Network (PNN), an independent news organization has worked closely with NGO-COD and NDF. FTA WATCH and PNN thought of a tactic to extract the information on JTEPA from the Chief negotiator by having PNN reporter, Theeramol Bua-ngarm, wrote a letter to JTEPA Office on November 26th 2006. The questions were addressed to the Chief negotiator as an interview to him, asking about the existence of the provisions on tariff reduction on waste import. The Chief negotiator replied that provisions existed and stated that the issues would not be harmful as Thailand had some regulations. This has startled a concerted movement on JTEPA's environmental impact.

Another case which members of FTA WATCH gained access to text was when they negotiated with JTEPA negotiation team to view the text for one day at the Ministry of Foreign Affairs. On December 14th 2006, seven FTA Watch members; former senator Jon Ungpakorn, Lawan Sarovat (MSF Thailand), Saree Aongsomwang, Kingkorn Narintharakul Na Ayuthya, Nimit Tienudom (TNCA), Penchom Tang, and Sachin Prachason (Focus on the Gobar South), were given a one-day access to observe the 700-page text of JTEPA by the JTEPA Office, prior to the "public hearing" scheduled on December 22nd 2006 at Faculty of Economics, Chulalongkorn University. Saree Aongsomwang was quoted as saying "it was not possible to go through the 700-page text in one day." She urged the Ministry to consider allowing the activists to take the document home to study.(Ashyagachat, 2006)

One of the major events that FTA WATCH members and the allies had an opportunity to debate on the problems of FTA policy was when they participated in forum, which the policy makers called it a "public hearing." JTEPA Office, Ministry of Foreign Affairs, co-hosted with the Faculty of Economics, Chulalongkorn University, a "public hearing" one December 22nd 2006.(The Royal Government of Thailand, 2007) It was aimed to gather comments and recommendations on JTEPA before the signing schedule. It

was attended by government agencies, business associations, former members of parliament, NGOs and academics. While Deputy Prime Minister and Finance Minister M.R. Pridiyathorn Devakula, Somkiat Tangkitvanich (TDRI), and business sector echoed their claims the deal would benefit Thai economy, oppositional voices from FTA WATCH, allies and civic groups questioned the interim government's motives on the transparency and legitimacy in signing JTEPA.

FTA WATCH members raised concerns over the impacts on public healthcare, import of hazardous waste, intellectual property rights and non-tariff barriers. Also, FTA WATCH and the allies raised the issue on the legitimacy of the government that as a military installed government it should not engage the country in such comprehensive international agreements. The former senator Kraissak Choonhavan said "the interim government should not enter into any free-trade agreements" and "although the government would let the National Legislative Assembly vote on the pact, its members had been appointed by the coup-makers." (Ashyagachat, 2006) Jade Donovanik, the dean of the law faculty at Siam University, said the short-term government should not sign an agreement with long-term effects. A long-term government must be in place to assume responsibility for any fallout from the agreement, he said. (Chaitrong, 2006) It was also suggested by Kiat Sitthee-amorn, the member of Democrat Party, who has been following the FTA policy that JTEPA can be delayed as it would be "an appropriate time for the government to review the nation's trade-negotiation strategies before making any additional commitment" (Chaitrong, 2006)

Former Bangkok senator Chirmsak Pinthong, moderator of the debate session, noted that the session should not be called a "public hearing". He gave the reason that a "public hearing" should have been based on detailed knowledge of the subject discussed and included all stakeholders. He pointed out that "the way the session was planned and conducted, as well as, its format and substance, cannot be considered as a public hearing according to the Prime Minister Office's Order in 2005 on Public Hearing which stated that "a public hearing must reveal substantive information 15 days in

advance.”(Prachadhrama News Network, 2007) “The government should not publicize only the good side of the pact” (Chaitrong, 2006) and “there might be a need for further sessions to provide in-depth information for specific groups to wipe out mistrust among the public and the negotiators,” said Chirmsak Pinthong (Ashyagachat, 2006)

Pisan Manawapat, Chief Negotiator of JTEPA, then admitted that the session was not a “public hearing” during the session. But, on January 23rd 2007, he reported to the Cabinet that a “public hearing” had been conducted.” Moreover, he changed the wording in the content of the report by using the term “listening to people’s opinions” instead of from “public hearing” to avoid conflict with the Cabinet resolution on December 19th 2006.(Prachadhrama News Network, 2007)

This event led to the filing of a case to the Central Administrative Court. FTA WATCH and the allies such as Daycha Siripatra, president of the Khao Kwan Foundation, Sangsiri Teemanka, a representative of the Aids Access Foundation, seek the Central Administrative Court ruling on JTEPA. They refer to the flaws in the public hearing forum, under a cabinet resolution of December 19th 2007, which required the Foreign Ministry to assess public opinion on the issue. They alleged the ministry did not provide a substantial disclosure of relevant information to the affected groups of people, as stipulated by the Prime Minister's Office regulations in 2005. The defendants include the Ministry of Foreign Affairs, the foreign minister, the chief negotiator, the cabinet and the prime minister. But, the court refused to accept the case by ruling that it had no power to decide on the issue.

On the other hand, FTA WATCH members also worked with some NLA members to push through the International Agreement Bill to amendment. Dr. Surichai Wan’gao in his capacity as an NLA member appointed Buntoon Srethsirote to the advisor position in the NLA Committee on People’s Participation. FTA WATCH members have been able to follow and to monitor the FTA situations during the administration of Interim Government. It has opened their opportunities to push their movement’s

agenda through the NLA, especially on JTEPA and the amendment on International Agreement Bill. They have gathered 40 NLA members to sign in support of the proposal. The proposal is scheduled to be considered by the NLA session soon at the time this research is conducted.

The government brought JTEPA issue to the NLA's endorsement on February 15th 2007. NLA members only saw two-page fact sheet about the significance of JTEPA and discussed on JTEPA without making any resolution and without seeing the 942-page document. Khamnoon Sitthisaman, a member of NLA who used to be part of PAD, criticized the government accelerated process in bringing in the issue for NLA to oversee for one day. It led to The Cabinet's decision to make reservation on the two areas of concern; provisions on hazardous waste and patenting of micro-organism.

As the signing of JTEPA was scheduled in April 2007, FTA WATCH and the grass-root network expressed their opposition to the signing of JTEPA by marching to the TITV news station and requesting for air time on March 25th 2007. The action was aligned with the situation of TITV controversial. TITV staff was staging protest against the Interim Government's take over of TITV. It resulted in TITV agreed to give air-time for FTA WATCH to disseminate their concern over JTEPA.

4.2.7 The 2007 Constitution (2007)

The 2006 Interim Constitution specified a process for the drafting of a new permanent constitution. The selection of the Constitution Drafting Council (CDC) was to be from the CNS. The CNS appointed 2,000 people to join the National Assembly which had to select 200 of its members to be candidates for the CDC. The CNS selected 100 of those to the CDC. The CDC appointed 25 of its members as constitution writers, while the CNS directly appointed 10 writers.

During the first phase of the drafting process, CDC proposed the first

draft to the public which had raised a lot of concerns. FTA WATCH was one of the civic groups that criticized the section on international treaties. The first draft stated the notion on international agreements in Section 186. It was an altered version of Section 224 of 1997 Constitution. The underlined text is the added change from 1997 Constitution, Section 224.

Section 186: The King reserves the royal prerogative to enter into a peace treaty, cease-fire agreement, and other treaties with other countries or with international organizations.

Any treaty, which involves the change of national boundaries or jurisdictional areas or extraterritorial areas in which the Kingdom has a democratic right, or any jurisdictional area the Kingdom has acquired through treaty or through international law, an Act shall be issued to comply with the treaty. Any treaty, which has a serious impact on the economy and society of the Kingdom, shall have to be approved by the National Assembly.

Before proceeding to enter into a treaty with a foreign country or with international organizations, the Council of Ministers shall give information and hold public hearings and explain to the National Assembly about the proposed treaty.

After signing any treaty, the Cabinet shall give the people access to the detailed contents of the treaty. And where the implementation of the treaty has an adverse impact on the people, the Cabinet must remedy and compensate the affected people quickly, fittingly and justly.

FTA WATCH sent letters to 170 organizations obliged by the 2006 Interim Constitution to scrutinize the draft of 2007 Constitution. FTA WATCH urges the organizations to review and amend changes on the draft Section 186 which was about Thailand's engagement in international treaties. Another strategy that can be seen through FTA WATCH's action is the campaign activities that are creative and appealing. These events aim to attract media and general public attention. The situations and the timing of external events are the factors of their actions.

FTA WATCH also staged a constitutional reform campaign FTA by mobilizing 100 of people to wear green t-shirts and rally in bicycle ride around town. They distributed colorful leaflets and performed some ritual in front of the Ministry of Foreign Affairs and the Royal plaza. It occurred during the period CDC opened calls for recommendations on revising the draft of 2007 Constitution.

Later, the CDC opened a call for people's proposals on the drafting of 2007 Constitution. Although there has been a division in the society on the legitimacy of the CDC and the drafting process that the appointment of CDC did not reflect the notion of political reform. FTA WATCH was aware about the pressure from FTA negotiating partners with Thailand such as Japan, the US, and EU on the interim government. So, FTA WATCH decided to work on the proposal by using their drafted International Agreement law as the foundation in order to bring their agenda and desirable changes on the section that is related to FTA governance.

FTA WATCH took the chance to participate in the drafting process by proposing the draft by referring to the framework of the International Agreement Act that they worked previously with legal experts. FTA WATCH's proposal and discourse have been adopted onto the 2007 Constitution due to the members' collaboration with the lawyers and the constitutional drafters who used to work with members of FTA WATCH in other capacity such as Chirmsak Pinthong, a former senator, and Komsan Bhokong, a law lecturer. These CDC members were aware of the inadequate FTA policy and the gap in the 1997 Constitution played the key roles in facilitate FTA WATCH's proposal to be added onto the second draft.

In consequence, the changes in the second draft of the 2007 Constitution has appeared in Section 190. The underlined text is the added change from 1997 Constitution, Section 224 and the first draft of 2007 Constitution, Section 186.

Section 190: The King has the prerogative to conclude a peace agreement, armistice and other agreements with other countries or international organizations.

An agreement that provides for a change in the Thai territories, the extraterritorial areas in which the Kingdom has a sovereign right, or any jurisdictional area the Kingdom has acquired through treaty or through international law, or requires the enactment of an Act for its implementation, or has extensive impacts on the country's economic and social stability, or has significant bindings on trade, investment, or national budget, must be approved by the National Assembly. This approval of the National Assembly shall be made within sixty days as from the day such a treaty is received.

Prior to the conclusion of a treaty with other countries or international organizations under paragraph two, the Council of Ministers shall publicize relevant information, make arrangement for a public hearing on the matter, and provide clarification of such a treaty to the National Assembly, in which the Council of Ministers is required to propose the negotiation framework to the National Assembly for approval.

After the signing of the treaty under paragraph two, the Council of Ministers, before expressing its intent for any bindings, shall provide access to the details of the treaty to the public. In a case where the implementation of such a treaty will affect the people or the small or medium sized entrepreneurs, the Council of Ministers shall take actions to make corrections or help the affected individuals in a timely, suitable, and fair manner.

A law shall be enacted on the procedures of the conclusion of a treaty having extensive impacts on the country's economic and social stability, or having significant bindings on trade or investment, including actions to make corrections or help the individuals affected by the observance of such a treaty with consideration of fairness between those benefiting the observance of the treaty and those affected by it, and of people.

In the case where a problem occurs under paragraph two and cannot be resolved, the Constitutional Court shall have the power to make a final decision. Provisions under section 154 (1) shall be applied mutatis mutandis to the petition of the case to the Constitutional Court for decision.

On August 19th 2007, the second draft passed the referendum with the majority vote of 56.69 percent. From such efforts, the government officials have to review the FTA policy, from the institutional design to the implementation. The new Constitution binds the government to sets a new framework on the policy in the negotiation process, transparency, and the approval by the National Assembly, to the implementation. (See APPENDIX A)

4.2.8 The Ombudsman (2006-present)

With the growing concern on FTAs, FTA WATCH members and the two senators, Kraissak Choonhvan and Niran Pitakwachara, filed a petition to the Office of Ombudsman on May 24th 2006, asking the Ombudsman to seek the Constitutional Court's ruling of whether TAFTA was unconstitutional. It is to clarify if FTAs should be approved by the Parliament according to the provisions stated in 1997 Constitution, Section 224, paragraph two, or not.

The Office of Ombudsman replied to FTA WATCH and the allies on September 26th 2006 that since the CNS has annulled the 1997 Constitution, it brought an end to the Parliament, the Cabinet, the Constitutional Court and the Ombudsman.

In following, FTA WATCH members sent a letter, dated October 30th 2006, expressing its concern to the Ombudsman that even though the organizations under 1997 Constitution were put to an end, FTAs which have violated the 1997 Constitution still exist. They asked the Ombudsman to reconsider the matter again. Another letter was filed to the Ombudsman again from other set of members explaining in details about the groundwork and implication of FTAs. They asked the Ombudsman to seek ruling from the Interim Constitutional Court set up by the 2006 Interim Constitution on theses following matter

- 1) Does TAFTA which was agreed by the Cabinet Resolution on May 11th 2004 and not approved by the Parliament violate the Constitution and/or the democratic governance?
- 2) If TAFTA is unconstitutional, will the signing and the agreement be nullified?

4.3 Conclusion

The finding in this Chapter shows that FTA WATCH's operation from the period of 2003 to 2007 has encountered multidisciplinary approaches as if they have been trying to pry opened windows of opportunities into the policy governance and change it. The mobilizing structure, which comprises of the organization, strategies, and discourse, has been the driving mechanism of the anti-FTA movement in the Thai society. The roles of the members in various organizations have contributed to opening new channels, actions, access, visibility, authority, and changes.

The discourse created by FTA WATCH is considered as "tangible resource" that the members have mobilized, framed, disseminated, and translated into actions through institutional and non-institutional channels. The key frames which have been used by FTA WATCH throughout the movement are to counterweight the neo-liberal order, FTA policy governance, and issues in FTAs. They include the discourse on the illegitimate policy governance and the violation of national sovereignty and right-based development.

Through the institutional means, the movement has taken the legal approach by challenging the authority with legal actions and the constituting their discourse into the legal arrangement such as Section 190 of the 2007 Constitution. These actions were taken as the acts to safeguard the rights as the citizens under the rule of domestic laws. The legal challenges are put pressure on the government and to test if the legal mechanisms can rule the legitimacy of the FTA policy.

Through the political approach, the movement has lobbied, petitioned, and worked through their power relation with its allies. Since they argue with the government ignorance to bring FTAs to the approval of the Parliament, they work in collaboration with parliamentarians to scrutinize the government.

To gain the public and the media attention, FTA WATCH has used both institutional and non-institutional means to make themselves visible as

the voice of reason by raising awareness and opposing the FTA policy with sound argument backed by knowledge in the issues.

It is apparent that the operation has gained access, visibility, authority which enables FTA WATCH to influence changes. (See Figure 4.5) of the movement has made significant marks in putting the issues of FTA governance into the contemporary Thai politics. The discussion of the implication of the movement is emphasized in Chapter 5.

Figure 4.5: Outcomes from the Operation

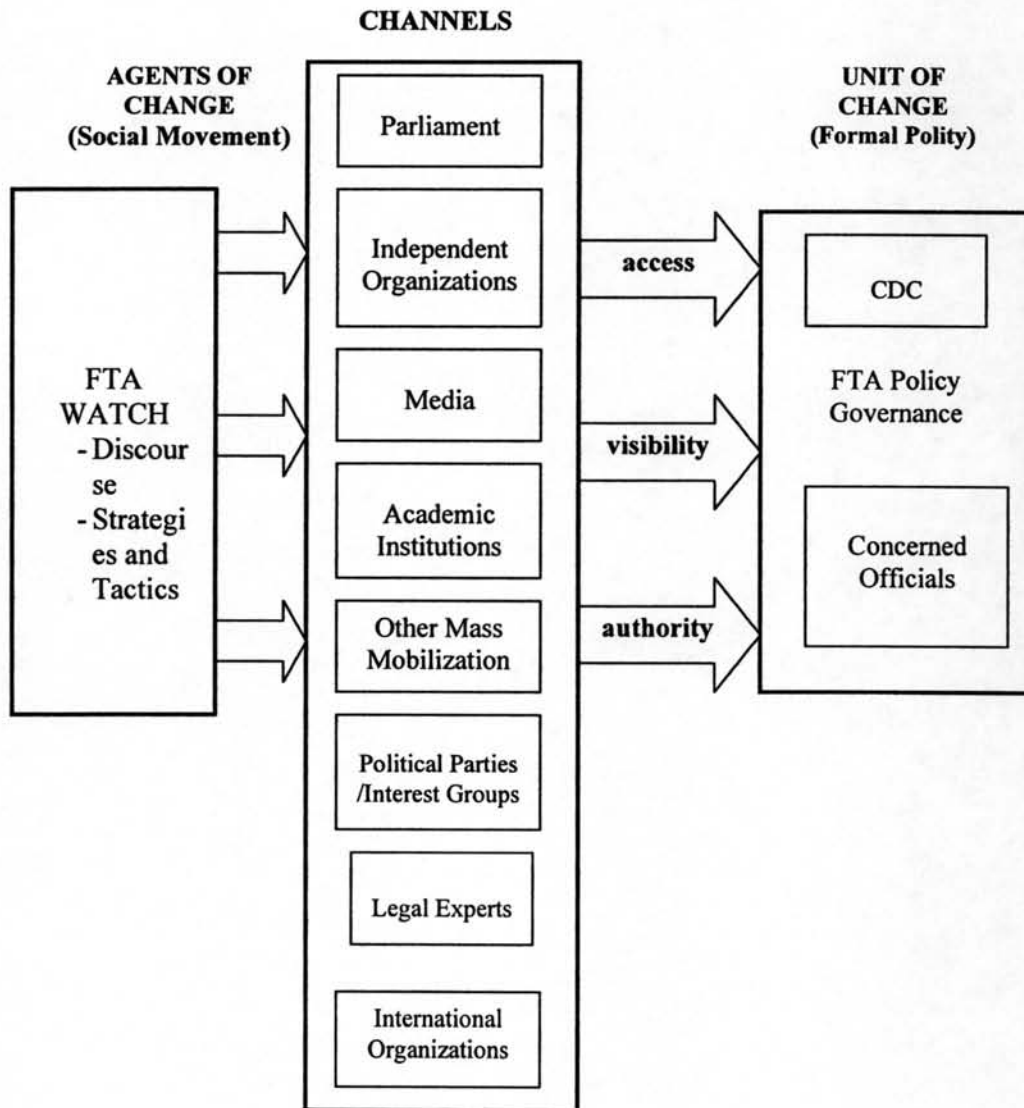


Figure 4.7 : The emergence of new generation of FTAs and FTA WATCH (February - October 2003)

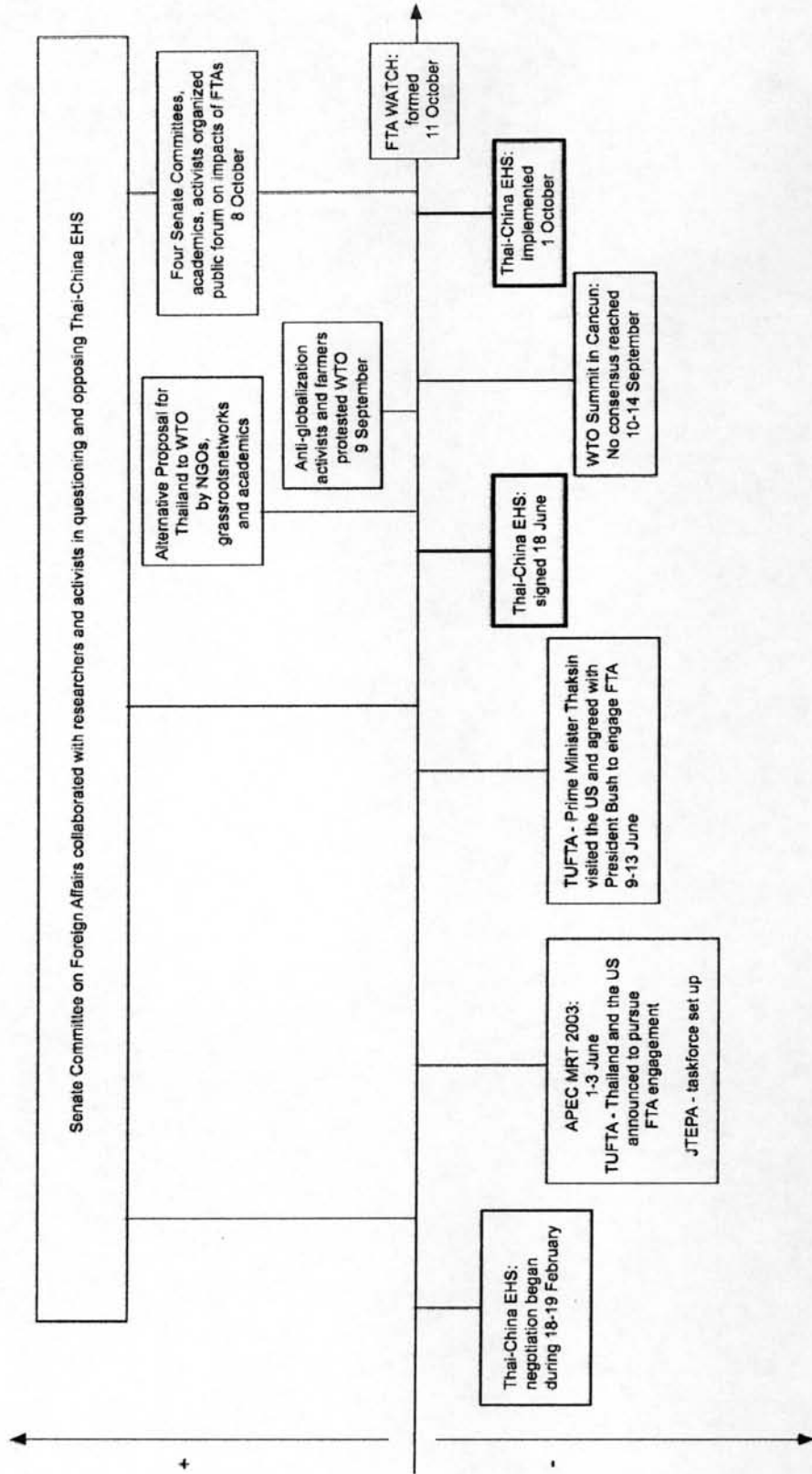


Figure 4.8 : The proliferation of FTAs and the Free Thai Movement (October 2003 - June 2004)

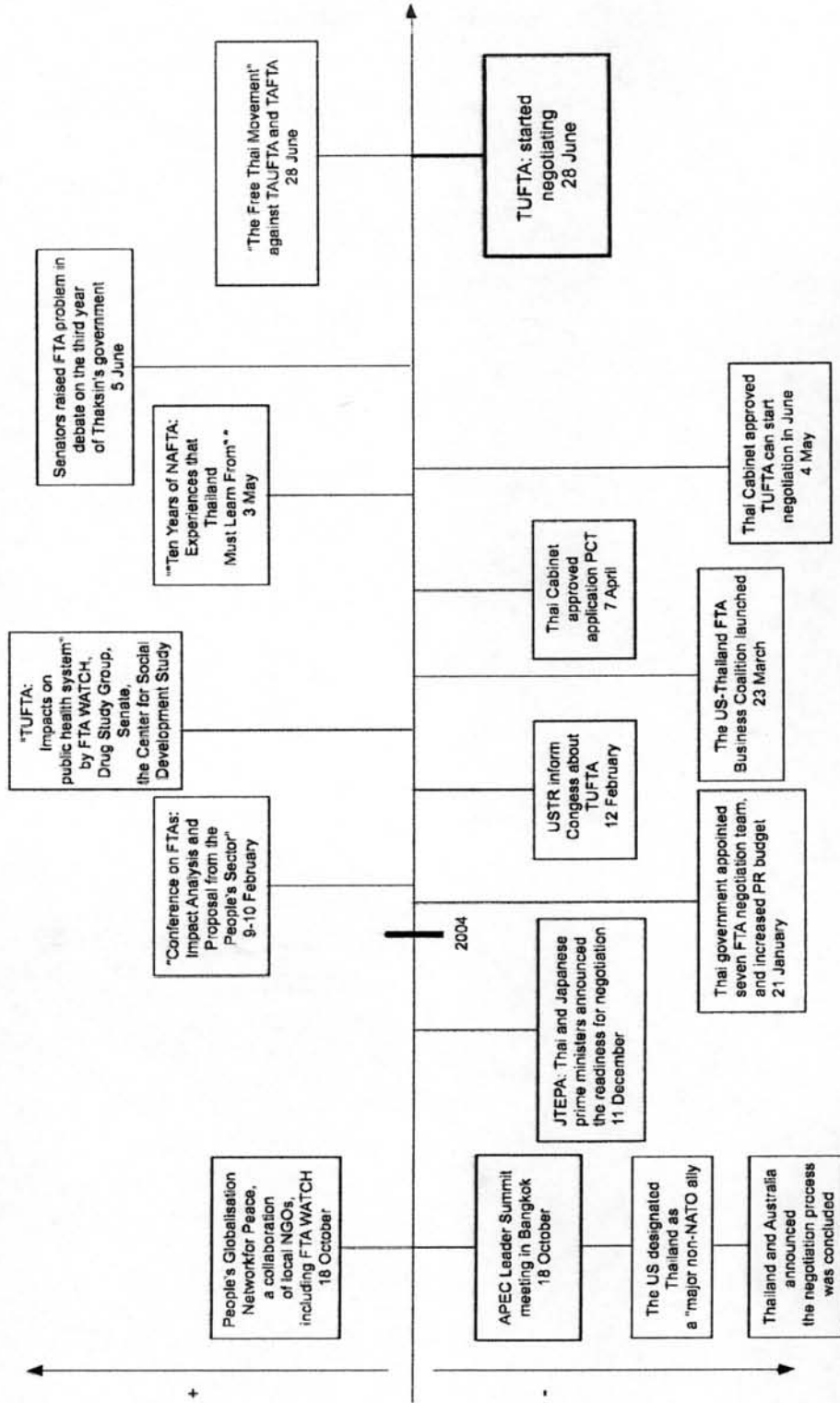


Figure 4.9 : TAFTA and TUFTA (July 2004 - April 2005)

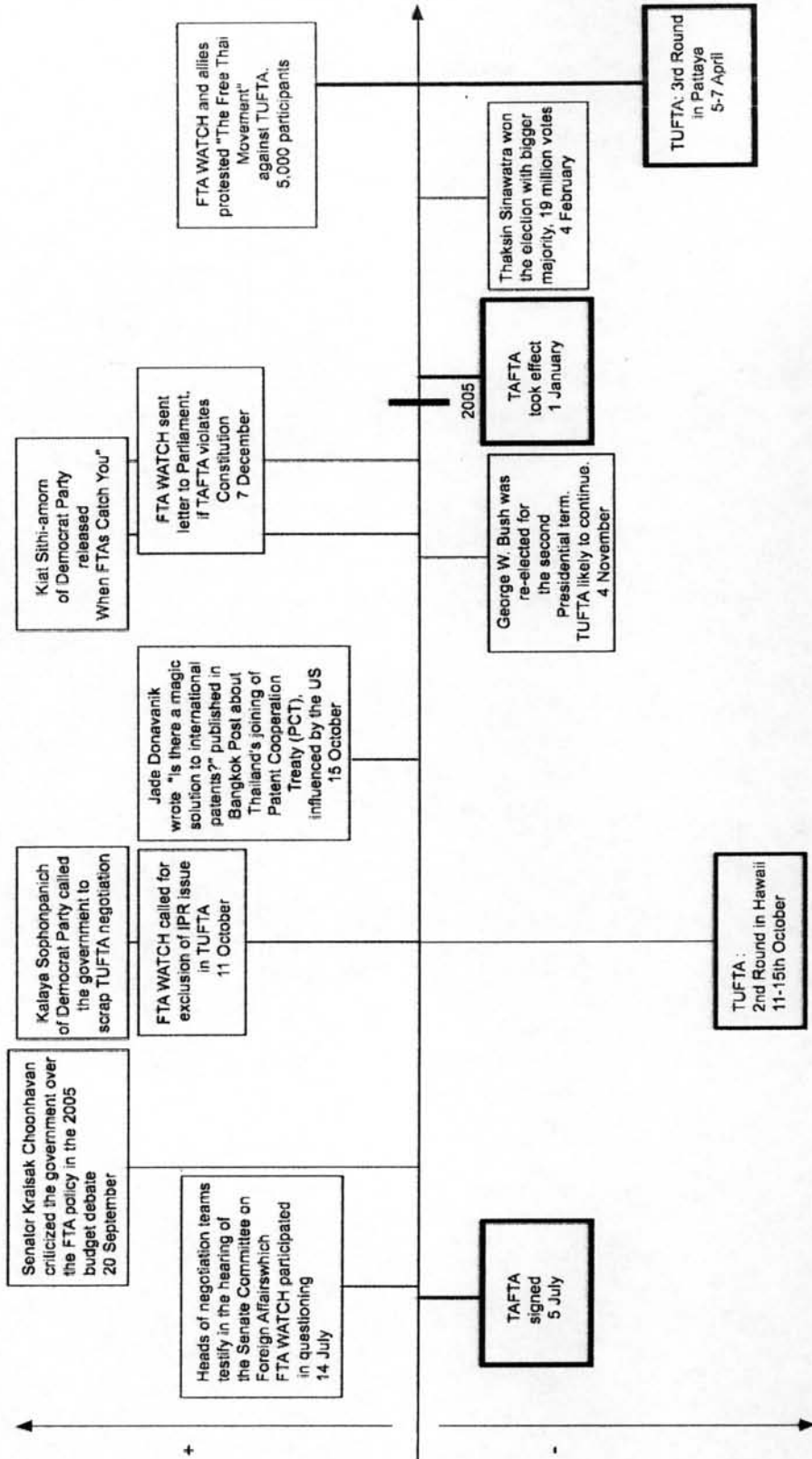


Figure 4.10 : TAFTA and TUFTA (April 2005 - September 2006)

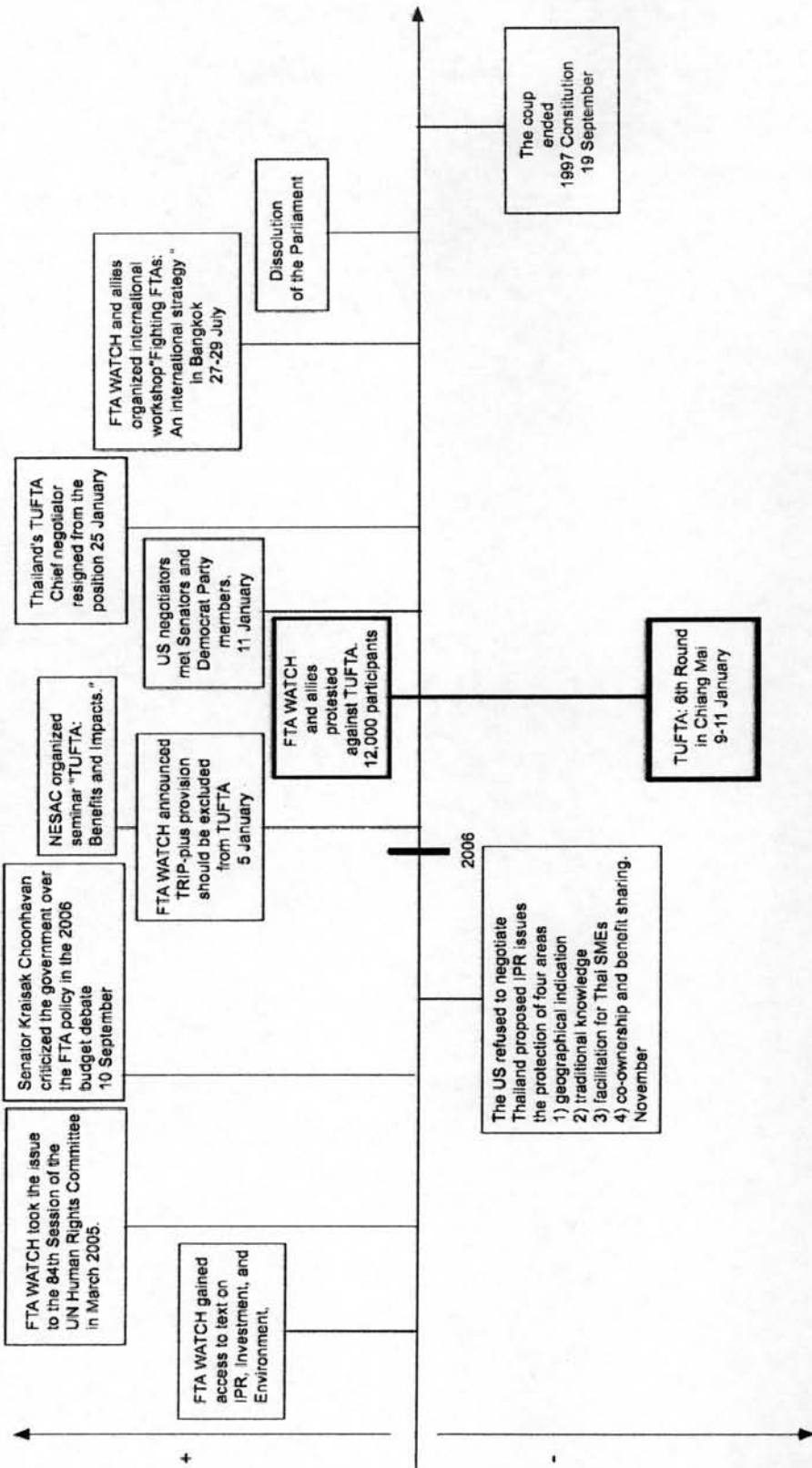


Figure 4.11 : JTEPA (October 2006 - October 2007)

