

FREE TRADE AGREEMENT:
IMPACT IN THAILAND

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FTA Watch, a coalition of activists from academic institutions, independent organizations under the constitution, NGOs, and various networks of people's organizations, was formed on October 11, 2003, in response to the policy of Prime Minister Thaksin Shinawatra's government of accelerating bilateral free trade agreement (FTA) negotiations with several countries. Of special concern were the negotiations with the US, which could infringe upon the nation's sovereign rights and engender vast adverse impacts on the population.

The coalition originally tasked itself with compilation of information on the content and impact of FTAs that have already been signed, research and analyses on potential impact of the liberalization of trade, investment and services on vulnerable sectors, particularly agriculture and public health, and dissemination of all findings to all sectors of society. In addition to countless press briefings, presentations in public seminars, newspaper articles, and newsletters, the coalition has published two books in Thai on the impact of FTAs on Thailand, in February 2004 and November 2004.

This English language book contains the translated versions of selected articles by FTA Watch members that appeared in the two Thai books. This publication is aimed at disseminating information to international civil society for the purpose of sharing the analyses and experience of the FTA struggle in Thailand.

Our experience in Thailand has confirmed that information is key to the generation of public opinion and participation. The FTA Watch coalition itself has since become more action-oriented as more information came into light. This book, then, is our contribution towards increasing public international scrutiny of FTA negotiations that have a tendency to be carried out in secret.

In solidarity,

FTA Watch

<http://www.ftawatch.org>

June 2005

FOREWORD



Free and fair trade can create new opportunities and wealth for nations and their people. It can help unleash initiative and talent, create jobs and raise living standards. For consumers it can mean greater choice, better quality and lower prices.

Unfortunately, the move towards freer trade has not been fair for poorer nations and their people. The rich dominate the global trading system and they ever seek to exact as much as they can.

Developing countries have of recent become more adept at negotiating within the multilateral framework and Non-Governmental Organisations help monitor developments and campaign on their behalf. Bilateral Free Trade Agreements (FTAs), however, pose problems. Negotiations are often conducted secretly and without consultation with the relevant stakeholders.

Developing countries are making major concessions when bargaining for market access to the developed world. Developed countries are taking the opportunity to ratchet up the standards already agreed at the multilateral level. An example is the TRIPS Agreement. Developing countries are being pressured in the FTAs to sign on to TRIPS-plus conditions in areas such as copyrights, patents, and plant variety protection. Even the Least Developed Countries that do not have to implement TRIPS until 2006

(and the patents provision for pharmaceuticals till 2016) are being required to do so earlier.

FTAs, if not carefully negotiated, can result in countries being obligated to implement policies that erode national sovereignty and adversely impact their food security, human rights, environmental quality, bio-safety, bio-diversity, labour standards and access to education and health.

The US and Thailand began negotiations on a comprehensive bilateral free trade agreement in June 2004. Like other recent bilateral FTAs involving the US, the US-Thailand FTA is expected to cover investment, services, government procurement, intellectual property, as well as agriculture. The proposed FTA has attracted concern and even opposition from many Thai trade unions, farmers groups, civil society organisations and academics. They object to the veil of secrecy behind which the negotiations are being conducted and have demanded transparency and consultation with all relevant stakeholders.

Consumers International (CI) member in Thailand, Federation for Consumers (FFC), together with other civil society organisations and academics, has set up a FTA Watch group to monitor the negotiations. The group has appealed to the Government of Thailand to respect the democratic processes and consult with its people but to no avail.

The FTA Watch group has also petitioned the President of the United States of America and the United States Trade Representative requesting a halt to negotiations. Those petitions were signed by a wide cross-section of Thai society and supported by CI and its worldwide membership.

This joint publication by the FTA Watch group and Consumers International is meant to inform the discussion that has begun in Thailand as a result of the FTA Watch Group's efforts. We hope that it will help raise awareness and, in at least in a small way, influence the shape of the FTA to better serve the public interest.

CI acknowledges with gratitude the support from the Netherlands Ministry of Foreign Affairs (DGIS) and the International Development

Research Centre (IDRC) for its Trade and Economics Programme entitled "*Consumers in the Global Market - Promoting Consumer Rights and Social Equity in Trade and Economic Reform*". Our work will not be possible if not for their support.

Dr. S. Sothi Rachagan

Regional Director

Consumers International

Asia Pacific Office

May 2005

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Open Letter from Civil Society on the Free Trade Agreement Negotiations between Thailand and the United States of America

Like FTA Watch itself, this book is the result of the collaboration and cooperation of a broad coalition of activists.

In addition to our thanks to the authors of individual papers, two of whom, *Jakkrit Kuanpoth* and *Jiraporn Limpananont*, wrote in English, FTA Watch also wishes to acknowledge the assistance of the translators: (*Suntaree Kiatiprajak, Walaiporn Odompanich, Sasiwan Prinyart, Chanida Chanyapate Bamford*). The text was edited by *Chanida Chanyapate Bamford* and copying editing was by *Alec Bamford*. Cover picture illustration was done by *Orn-ouma Ninratana*.

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In solidarity,

FTA Watch
<http://www.ftawatch.org>

June 2005

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.

On behalf of groups of farmers, state enterprise trade unions, HIV/AIDS patients, consumers, NGOs, small business entrepreneurs, and academics in Thailand, whose names are attached, we declare that we will not accept any free trade agreement negotiations carried out by representatives of the government of Pol. Lt. Col. Thaksin Shinawatra.

The process employed by the government in establishing free trade agreements has been plagued with conflicts of interest and a lack in transparency. A large number of the people who bear the adverse impact of the agreements has not been involved in decision-making at all. The Parliamentary approval process has totally been ignored in violation of Article 224 of the Kingdom's Constitution.

The Free Trade Agreement with China has already had adverse effects on hundreds of thousands of farmers who grow temperate vegetables and fruits for a living and on the Royal Project which has been providing assistance to the highland people in the Northern Region.

This government has not recognized any mistakes and never heeded any words of caution and admonishment made by several parliamentary committees, academics, and peoples' organizations. It went ahead and signed a free trade agreement with Australia, which will spell more disaster for the Thai agricultural sector. 150,000 dairy farms and almost 1,000,000 cattle raising families are expected to lose their livelihoods in exchange for gains in the telecommunications, auto parts, and steel sectors, which are close to the government.

Any government that harms millions of farmers, that knowingly puts a seal on a deal that threatens royal-initiated development projects and occupations and thereby destroys the path of the sufficiency economy, cannot be considered a legitimate government to administer the country.

The people throughout the country must beware. The government is proceeding with negotiations with the United States of America, accepting the US agenda that includes intellectual property rights protection, investment liberalization, and agriculture market access.

If the negotiations proceed in the same manner as with the US-Chile and US-Singapore trade agreements, as seems likely at present, US transnational companies will take control of the agricultural sector and the country's genetic resource base. Patients who rely on foreign medicines will have to pay more because of extended periods of patent monopoly. The treatment of US short- and long-term investors under the same regulations as Thai investors will allow giant US companies to take over many businesses, including public services like water, electricity, and pharmaceuticals.

This will take the country on the path to becoming a US colony. The people of Thailand will lose their economic and legislative sovereignty as amendments to existing laws, enactment of new laws, and judicial authority, will be dictated by the free trade agreement.

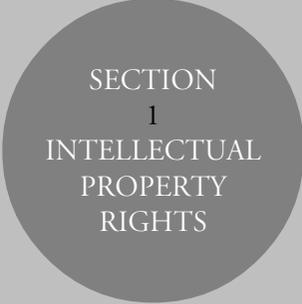
Generations of our ancestors have fought with their lives to defend the independence and sovereignty of the nation. We pledge in the same spirit to continue the struggle for the survival of the nation and the maintenance of freedom and independence.

We gather here at this sacred place to pay respect to our ancestors, who abolished slavery and all the treaties signed since 1855 in the name of free trade, which had practically turned the country into an economic and judicial colony of the big powers. In remembrance of the heroic deeds of the Seri Thai, we declare our rejection of all the free trade agreements and negotiations carried out by the government of Pol. Lieutenant Colonel Thaksin Shinawatra. All negotiation agenda and agreements that have been decided upon without the participation of the affected people are deemed illegitimate.

We will take every course of action available until the free trade agreement negotiations are made transparent, inclusive of the interests of all people,

and respectful of parliamentary processes. We will cooperate with all sectors of the Thai people to defend the country's sovereignty and the Thai way of life forever.

Statement made at the Khana Rat plaque, the Royal Plaza, Bangkok, 28 June 2004.



SECTION
1
INTELLECTUAL
PROPERTY
RIGHTS

CURRENT DEVELOPMENTS AND TRENDS
IN INTELLECTUAL PROPERTY RIGHTS:
HARMONISATION
THROUGH FREE TRADE AGREEMENTS*



JAKKRIT KUANOPOH**

INTRODUCTION

Recently, intellectual property rights (IPRs) have become one of the hottest, most significant issues in trade negotiations. Despite the continued claim that IPRs facilitate research activities and encourage technology transfer, the impact of IPRs on the socio-economic development of developing countries is clearly reflected in many areas, including health, agriculture and education. IPRs will no doubt continue to have a significant impact on developing countries for many years to come.

Developing countries have faced the challenge of how to implement the WTO TRIPS Agreement in such a way as to minimise socio-economic costs and maximise national benefits. Third world states are now facing increased pressure toward higher standards of IPR protection (*i.e. the so-called TRIPS-plus*). The attempts of developed countries to evolve the TRIPS-plus regime, which appears in the form of free trade agreements (FTA), provide opportunities for those countries to negotiate rules and commitments that go beyond what was not possible at the multilateral level.

By entering into FTAs with developed countries, developing countries see advantages in tariff reductions in agricultural, clothing and other products, but at the same time it closes down their opportunity to put forward their concerns through the WTO including the harmonisation of TRIPS and CBD, access to medicines, and protection of genetic resources, farmers' rights and traditional knowledge.

This note explores the controversial TRIPS-plus issues under the FTAs that pose many challenges to developing countries. Although the EU offers trade benefits under bilateralism to encourage some developing countries to provide higher level of IPRs protection (*for example, the FTAs between the EU and Bangladesh and the EU and Morocco*), the note will focus on FTAs signed by the US because of its leading role in this issue. The note will analyse the TRIPS-plus standard under the FTA between the US and Singapore, the bilateral trade agreement (BTA) between the US and Vietnam and the proposed US-Thailand FTA, which may be based on recent US FTAs with other developing countries. It explores major TRIPS-plus issues and considers the broad implications of such rules under various headings, including patents on living organisms, effects on access to medicines, and protection of test data, trademarks, and digital technologies. Arising from the analysis outlined in the note, the final part concludes with some final remarks and key policy recommendations.

I. TRIPS-plus rules through FTAs

The Bush Administration has launched FTA negotiations with a large number of countries, including Chile, Jordan, Morocco, Singapore, the Central American countries, the Andean countries, Thailand, Panama, Bahrain, the Southern African countries, and others. In South East Asia, the US up till now has signed bilateral treaties with two countries (*i.e. Singapore and Vietnam*), and is in negotiations with Thailand. While negotiations with Thailand are underway, the US is also looking at other three ASEAN countries (*i.e. Indonesia, the Philippines, and Malaysia*) as its next targets for bilateral FTAs.

The agreements that the US has signed with Singapore and Vietnam contain several IPR provisions that far exceed the obligations in the TRIPS Agreement. The countries concluding bilateral or regional treaties with the US are required to provide more stringent IPR regimes than other countries, in exchange for greater access for their exports to the US market.

Note that the US is conducting bilateral trade negotiations with other countries during the current round of multilateral trade negotiations. Since WTO multilateral talks have deadlocked, the rich nations have demanded further IPR commitments from the developing countries under bilateral and regional trade deals. This strategy no doubt would benefit the US and other industrialised countries as it helps to establish an acceptable standard for IPR protection. The successful conclusion of an FTA with one country (*e.g. Singapore*) serves as a model for other FTAs (*e.g. with Thailand and others*), and eventually for the multilateral trade negotiations.

The US unhidden agenda is reflected in the statement of objectives in the USTR's Letter of Notification for FTA negotiations with Thailand as thus:

“The United States has concerns about intellectual property protection in Thailand. The United States has worked with Thailand on intellectual property rights issues under the Trade and Investment Framework Agreement (TIFA). While some progress has been made, bringing Thailand's intellectual property regime up to the standards set in other recent FTAs that the United States has negotiated will be a high priority of these negotiations.”¹

The treaties concluded between the US and its trade partners are basically built on the provisions of the North American Free Trade Agreement (NAFTA), the World Intellectual Property Organisation (WIPO) treaties and the basic rules embodied in US legislation. Although FTAs are in principle open to negotiation, all FTAs signed by the US are quite similar to one another. While negotiation is possible on some issues, the US

trade negotiators are committed to the basic structure of the model treaty and will only accept minor changes. Major TRIPS-plus issues under US FTAs can be summarised as follows.

Greater patent protection for new subjects

Restricting the grounds for compulsory licensing, prohibiting revocation of patents, and restraining parallel importation

Extending patent terms

Accession to the Patent Co-operation Treaty

Set-term period of exclusivity for test data and relevant undisclosed information

Higher level of protection for trademarks

Legal protection for digital technologies

Key TRIPS-plus issues in bilateral agreements with the US

Issues	TRIPS	TRIPS-plus BTA US-Vietnam	TRIPS-plus FTA US-Singapore
Protection of Plants and plant varieties	Plants and plant varieties may be excluded from patentability. Plant varieties must be protected by patents, an effective sui generis system, or both.	Patent protection must be available for plants. Plant varieties may be excluded from patentability. However, the exclusion shall not apply to plant inventions that could encompass more than one variety. Plant varieties must be protected by the sui generis system of UPOV 1978 or 1991	Patent protection must be available for plants and plant varieties. Plant varieties must be protected by the sui generis system of UPOV 1991.
Protection of animals and animal varieties	Animal and animal varieties may be excluded from patentability.	Patent protection must be available for animals. Animal varieties may be excluded from patentability. However, the exclusion shall not apply to animal inventions that could encompass more than one variety.	Patent protection must be available for animals and animal varieties.
Compulsory licensing	Permissible subject to listed conditions. However those conditions can be flexibly interpreted as reaffirmed by the Doha Declaration.	Permissible subject to certain conditions	Forbidden except in three circumstances, plus know-how restrictions

Issues	TRIPS	TRIPS-plus BTA US-Vietnam	TRIPS-plus FTA US-Singapore
Forfeiture or revocation of patents	Permissible provided that an opportunity for judicial review of any decision to revoke or forfeit a patent is available	Permissible only on grounds that would have justified a refusal to grant the patent	Permissible on grounds that would have justified a refusal to grant the patent, or that pertain to the insufficiency of or unauthorised amendments to the patent specification, non-disclosure or misrepresentation of prescribed material particulars, fraud, and misrepresentation
Parallel imports	Permissible	Permissible	Permissible but the patentee is allowed to limit parallel import by imposing a restriction on resale of the patented article
Extension of patent term	20 years, no extension required	20 years, extension is optional in case of a delay caused by regulatory approval processes	20 years, extension is explicitly required in cases of (1) a delay in the issuance of the patent, (2) a delay caused by regulatory approval processes
Accede to the Patent Co-operation Treaty	None required	None required	Required
Protection of undisclosed test and other relevant data	Protect data relating to new chemical entities against unfair commercial use and disclosure of the data	Protect data against unfair commercial use and disclosure Provide data exclusivity to the originator company for not less than five years	Provide five-year exclusivity for test data Prohibit registration of generics during the entire patent term Notify the patent owner as to the identity of any third party requesting marketing approval

Issues	TRIPS	TRIPS-plus BTA US-Vietnam	TRIPS-plus FTA US-Singapore
Protection of non-visually perceptible trademarks and well-known marks	Protection of non-visually perceptible trademarks is not required. Refuse or cancel the registration of well-known marks, and prohibit the use of a mark conflicting with a well-known mark	Protection of non-visually perceptible trademarks is not required. Refuse or cancel the registration of well-known marks, and prohibit the use of a mark conflicting with a well-known mark	Give effect to the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks and the Trademark Law Treaty No condition for trademark registration that signs be visually perceptible Make best efforts to register scent marks
Protection for digital technologies	None required	Encrypted program-carrying satellite signals are included in IPR definition. Protection for encrypted program-carrying satellite signals	Prohibit temporary reproduction, including temporary storage in electronic form Provide term of copyright protection for not less than 70 years Provide protection against acts of circumventing technological protection measures Protection of rights management information Protection for encrypted program-carrying satellite signals Protection against use of public computers and networks for copyright infringement Provide for effective liability for internet service providers

II. Stricter patent rules

The review of bilateral agreements that the US concluded with Vietnam and Singapore has found a number of TRIPS-plus provisions. In the field of patents, the US generally focuses on the at least four key areas: patenting of life forms, limiting access-to-medicines options, extension of patent terms, and creating a world patent system.

1. Patenting of life forms

Bilateral agreements with the US maintain principally that effective and adequate protection must be given to inventions in all technological fields. The US-Singapore FTA, for example, provides that “*each party may exclude inventions from patentability only as defined in Articles 27.2 and 27.3(a) of the TRIPS Agreement*”.²

This provision is designed to allow for the patentability of all categories of life-forms, including plants, animals, biological processes, genes, and gene sequences. Note that patents on biological materials and methods still have various shortcomings and flaws and are still subject to different uncertain rules. Patent law of developed countries such as the European Patent Convention, still excludes some forms of biotechnological inventions (*e.g. plant and animal varieties*) from patent protection. Under FTAs, the developing countries are obligated to patent the by-products of genetic engineering and other biotechnological methods without linking the patentability issues to ethical, social, economic and environmental considerations.

The patenting of life when imposed through an FTA could have a considerable socio-economic impact on developing countries. Granting of patents on biological materials such as genes will cause a power shift in agriculture towards large biotechnology companies and will disrupt the access to essential products such as seeds or foodstuffs in the same way that patents are unfairly restricting access to vital medicines for people in poor countries. Stricter protection for IPRs would increase the monopoly powers of the holders of the right, generally multinational firms, allowing them to gain far greater control over the production

chain of crops and food.

Moreover, gene patenting will have detrimental effects on the research environment and generate negative effects on downstream innovation. As pointed out by Heller and Eisenberg, patenting of biological products and processes is regarded as “*anti-commons*”, in which “*individuals put fences around the peoples’ private property and destroyed the commons.*” This, according to the authors, could impede discovery and innovation in the fastest-growing field of technology.³

When a company is allowed to own patents on biotechnological inventions, the patents would act as a barrier to the transfer of technology to developing countries. Third world nations always view scientific and technological advancement as a vehicle for industrialisation and economic development. Patenting such products would override the technological and economic requirements of the country as it will increase the cost of modern technologies and provide innovative disincentives for local research agencies.

In regard to plant variety protection (PVP), Article 27.3 (b) of TRIPS gives signatory countries options to protect plant varieties by patents, an effective *sui generis* system, or both. The International Union for the Protection of New Varieties of Plants (UPOV) system is recognised to be one method, but not the definitive method, of establishing a *sui generis* system. The ambiguity of the term “effective *sui generis* system” under TRIPS allows developing countries to avoid having to develop full IPR laws covering plant varieties. Some developing countries, such as Thailand and India, have flexibly implemented the TRIPS provision by incorporating Farmers’ Rights⁴ and the access and benefit sharing (ABS) system under the Convention on Biological Diversity into national legislation.

Thailand has so far resisted ratifying UPOV or adopting it as the standard for its PVP law. This is because plants are vitally important for agriculture, which is still regarded as the backbone of the Thai economy. Its current law, the Plant Variety Protection Act B.E. 2542, is notable for not following the UPOV model. Unlike UPOV, the law aims at promoting not only

the creation of new varieties of plants but also the conservation and encouragement of agricultural practices in the country. The law protects breeders' rights and recognises the rights of farmers and local communities over plant genetic resources. It also adopts legal requirements such as prior informed consent and ABS that allow individuals and communities to claim compensation for their contribution to resources.

It seems that countries can adapt and change the PVP system to their local conditions, agriculture and farming sectors. US FTAs no doubt attempt to limit this flexibility by requiring the trade partners to join the UPOV 1991 Act. The UPOV system will leave Thailand and other FTA partners with no option regarding the scope of protection, as the 1991 Act provides the least discretion to the signatory states in choosing how to protect plant varieties.

According to Article 14 of the 1991 Act, protection must be extended to all plant varieties. The exclusive rights must cover vegetative or reproductive propagating material, and extend to essentially derived varieties and harvested material. The rights of farmers to save, use, exchange, or sell farm-saved seeds are constrained. This full-scale monopoly right will adversely affect the food and agricultural sectors, and cause adverse effects on the interests of poor farmers, in particular when their right to save seeds is removed. Moreover, accession to UPOV 1991 will prohibit the inclusion of any provision requiring applicants to prove that the plant variety is safe and does not cause any harmful effects to environment, as currently enshrined under the PVP law of Thailand.⁵

As already mentioned, the Thai economy has been dominated by agriculture and will continue to rely on this sector for important export earnings. By ratifying a TRIPS-plus bilateral treaty, Thailand will open the door for the US biotechnology industry, the largest biotechnology industry in the world, not only to dominate its farming sector but also to exploit its abundant biological resources. Although it is endowed with plentiful biological resources, Thailand will not be able to take advantage of these resources as a source of economic growth and poverty alleviation. The UPOV system will impose mandatory components of PVP and restrain the country's sovereign rights over its biological resources and its

ability to regulate access to its biodiversity. Under the TRIPS-plus and UPOV regimes, Thailand's attempts to balance IPRs protection and maintain an alternative rights system would be reduced.

Options

It is evident that developing countries will gain very little from providing patents on life and/or UPOV-type PVP. The high level of protection will not ensure a more stable framework for technology transfer and local plant breeding activities. The developing countries should take the following options into account when negotiating a TRIPS-plus treaty:

Issues	Options
Patenting of biotechnological inventions	<ul style="list-style-type: none"> • The protection of biotechnological inventions should be based on national objectives as referred to in Articles 7 and 8 of TRIPS. • Preserve the option to exclude from patentability plants, animals, parts of plants and animals including genes and gene sequences, and biological methods as these subjects are not inventions.
Protection of plant varieties	<ul style="list-style-type: none"> • Resist ratifying the UPOV Convention. • A <i>sui generis</i> system should be optionally available to protect plant varieties. • FTA parties should have freedom and flexibility to interpret the term "<i>sui generis</i> system" and formulate a <i>sui generis</i> system as they see fit.
Protection of genetic resources and traditional knowledge	<ul style="list-style-type: none"> • Protection should be consistent with the international obligations that the country has assumed under the CBD. • Seek the inclusion in US legislation of provisions for the protection of TK and mandatory disclosure of the source of genetic materials used in deriving a patented invention. • Require the US to create incentives for the recognition of the sovereign rights of states over genetic resources. • Set up a system of information exchange, protection of ownership of genetic resources, and revocation of patents on material obtained without prior informed consent. • Demand US accession to key multilateral agreements including CBD and ITPGR. • Demand GI protection for the names of native animals and plants such as Jasmine/Basmati rice.

2. Limiting access-to-medicines options

There has been a long debate on the balance between the costs and benefits to society from patents and other forms of IPRs. However, the view that upholds the significance of patents in generating social benefits has come under great challenge, especially when it is applied to the context of the developing countries.⁶ The contribution of patents to poor nations is believed to be minimal, compared to the costs that it generates to society.⁷ Due to the influence of this view, in recent years the question of how a developing nation can efficiently utilise the patent system seems to have been replaced by the question of how the profound impacts derived from patents could be effectively curtailed. Developing countries are well advised to maximise the use of all available measures (*i.e. compulsory licensing, revocation of patents, and parallel imports*) as a remedy for abuses of IPRs such as non-working, or for the maintenance of artificially high prices for patented articles.

A. Limiting right to issue compulsory licensing

Compulsory licensing refers to a non-voluntary license issued by the State to a third party to perform acts covered by exclusive patent rights (*e.g. manufacturing, selling or importing the patented product*), on the condition that the licensee pays reasonable remuneration to the patent holder in return. Multinational companies always oppose the use of this measure. They argued that the use of patents against the will of the patent holder is tantamount to free-riding, and will result in trade distortion.⁸

Nonetheless, compulsory licensing, which the multinationals regard as trade distortion, is the very cornerstone of the patent system. The experience of many countries, including the US, Canada and Brazil, has shown that compulsory licensing is an effective mechanism to limit abusive practices of the patent holder and helps to force prices down.

According to TRIPS, countries are free to use the compulsory licensing of patents, provided that certain conditions are fulfilled.⁹ In practice, countries intending to use compulsory licensing have always been under

considerable economic pressure. With the adoption of the Doha Declaration on TRIPS and Public Health, it now seems obvious that WTO member countries can legitimately employ this legal mechanism to improve access to medicines.

Limiting the right of a country to use compulsory licensing is probably the most significant of the constraints under US FTAs. The TRIPS-plus rule attempts to make compulsory licensing provisions difficult to apply, as it sets more stringent conditions than the TRIPS standards. The US-Singapore FTA, for example, confines circumstances under which compulsory licenses may be issued to three circumstances only, namely (1) to remedy anti-competitive practices, (2) in the case of public non-commercial use, and (3) in the case of national emergency or other circumstances of extreme urgency.¹⁰

The FTA provision prevents the country from issuing compulsory licenses in circumstances other than those mentioned above. Issuing a compulsory license on the grounds of non-working or insufficient working of patents is also prohibited, despite the fact that the use of compulsory licenses for local working of patents is the cornerstone of most countries' patent law and explicitly enshrined in the Paris Convention.¹¹

According to the US-Singapore FTA, a compulsory license may be issued to remedy an anti-competitive practice only after the patent holder has been adjudged by judicial or administrative process, under competition laws, as carrying out an anti-competitive practice.¹² This requirement would render the compulsory licensing practically unworkable against anti-competitive behaviours, as the patent holders can challenge directly sovereign conduct that injures them, through judicial or administrative channels. When a patentee who is alleged to have abused patent rights can bitterly contest proceedings and the granting of a license in court or before antitrust authorities, the compulsory license system will not provide much of an additional tool to safeguard consumer interests.

In the case of public non-commercial use, or national emergency or other circumstances of extreme urgency, a compulsory license can be granted only in accordance with these conditions:

- A compulsory license can be issued only to the public sector or third parties authorised by the government.
- The patent holder shall receive full compensation with reference to the TRIPS provision for the compulsory license.
- There must be no requirement for the transfer of undisclosed information or for the disclosure of know-how without the consent of the right holder.¹³

It can be seen from the foregoing discussion that the TRIPS-plus provisions attempt to introduce language that would limit essential measures such as compulsory licensing to specific situations and make procedures for issuing a compulsory license intricate and prolonged. These constraints threaten to restrict the measures developing countries can take to pursue affordable drugs, and will affect ability of many countries to promote access to medicines. Thailand's signing of an FTA with the US will result in limited access to medicines not only in Thailand itself but also in neighbouring countries like Vietnam, Myanmar, Cambodia and Laos, which have been relying on Thailand as an important source of drugs.¹⁴ Under its obligations to the US, Thailand will not be able to issue a compulsory license and export the compulsorily licensed drugs to countries that have no or insufficient capacity in drug production, denying their rights as reaffirmed by the Doha Declaration on TRIPS and Public Health.

B. Prohibiting revocation of patents

The Paris Convention sets certain conditions for the revocation of patents. By contrast, TRIPS does not set out any grounds or conditions for patent revocation. Any revocation will therefore be compatible with TRIPS.

The TRIPS-plus introduced by the US prohibits the trade partner from revoking patents on grounds other than those that would have justified a refusal to grant the patent (*e.g. lack of patentability, insufficiency of or unauthorised amendments to the patent specification, non-disclosure or misrepresentation of prescribed material particulars, fraud, or misrepresentation*).¹⁵ Revocation of patents is not possible in cases where

compulsory licenses were not sufficient to curb abuses of patent rights or non-working as provided by the Paris Convention.¹⁶ Limited compulsory licensing therefore becomes the only mechanism that the trade partner can use to curtail the abusive practices of the patent owners.

The TRIPS-plus treaties increase the monopolistic power of large companies by demanding criminal enforcement and harsh penalties for IPR violations, but at the same time imposing obstacles to the use of compulsory licensing.

C. Restraining parallel importation

FTAs proposed by the US allow patent holders to prevent the products that they have marketed in one country being exported to another. Under US FTAs, the party must provide the right of patent holders to restrict parallel importing in either of these ways:

1. it must adopt a system of national exhaustion only, thus prohibiting international exhaustion in which the first sale of an object embodying an IPR in a foreign country exhausts the right holder's exclusive rights, or
2. it must permit patent holders to take legal action against imports or exports of the patented product by a party who knows or has reason to know that such product is or has been distributed in breach of a contract between the patent holder and a licensee, regardless of whether such breach occurs in or outside its territory.

The former is found in the FTA that the US signed with Australia, as well as the proposed draft FTAA, while the latter is constituted under the US-Singapore FTA. No such provisions are constituted under the US-Vietnam BTA.

According to Article 6 of TRIPS, countries may implement the exhaustion principle differently. Some may apply the national exhaustion principle, but other countries (*notably the European Union*) allow no

restrictions on import when products are put on sale with the community, called regional exhaustion. Under the international exhaustion doctrine, the patent owner cannot use IPRs to prevent further distribution of the goods that have been placed into commerce anywhere by himself, or with his consent. Since the TRIPS-plus prohibits the applicability of international exhaustion, parallel importing is regarded as an IPR infringement and cannot be carried out without the authorisation of the patent holders.

The FTA between the US and Singapore does not explicitly prohibit the international exhaustion rule, but provides an opportunity for patent holders to restrain parallel importation through contractual arrangements. The FTA partners are barred from invalidating product distribution agreements that limit distributors' freedom to resell the supplied products.¹⁷ Thus, patent owners can impose restrictions on the resale of patented goods and thus limit the possibility of exporting the product from Singapore or importing the product to Singapore when it is sold in a foreign market. Although such restrictions have an anti-competitive character, Singapore is prohibited from voiding the restrictions on parallel importing.

Prohibiting parallel importation no doubt is an attempt to block trade partners from importing cheap medicines and other goods. This disregards the humanitarian and economic needs of the country. For a number of years, developing countries like Thailand has been progressively promoting parallel importation through court cases and national legislation.¹⁸ These attempts will turn out to be unsuccessful when it signs the TRIPS-plus trade treaty with the US. Recent experiences with respect to pharmaceutical patents and access to HIV/AIDS medicines should guide Thailand into being cautious against entering any new commitments.¹⁹

Options

The accessibility of essential medicines will be increasingly hindered after 2005 when most WTO members have to comply fully with TRIPS obligations. Prices of new medicines will inevitably shoot up, far beyond the reach of the poor population of developing countries.

Since TRIPS-plus commitments will further strengthen and prolong patent monopoly, and contain ineffective provisions on compulsory licensing, revocation of patents and parallel imports, developing nations will have little room to make adjustments in the law to suit their particular needs. The flexible interpretation as reaffirmed by the Doha Declaration would become meaningless, if countries cannot in practice take advantage of the legal procedures open to them. Poor countries must be aware that TRIPS-plus, not TRIPS, is now standing in the way of addressing HIV/AIDS and other public health crises, as it will limit the tools they need for flexibility. The following options are proposed for countries dealing with a TRIPS-plus FTA.

Issues	Options
General	<ul style="list-style-type: none"> • Express concern about the implications for public health and access to medicines of bilateral trade agreements and TRIPS-plus • Reaffirm the right of people to affordable healthcare and public rights should take precedence over trade and commercial benefits • Acknowledge flexibility of the TRIPS Agreement and demand from the US a political statement of support for the compulsory licensing and parallel import options • Stand firm to the spirit and letter of the Doha Declaration and 10 make it clear that any attempt to prevent countries from making use of TRIPS flexibility is against the nature and spirit of the multilateral trade system • Take full advantage of the flexibilities and policy measures allowed in TRIPS to ensure affordable medicines • Ensure collaboration between the health sector and other government sectors, such as trade and commerce, to ensure that national health objectives are taken into account in trade negotiations • Exchange experience with other developing countries in dealing with the TRIPS agreement and FTAs, especially with regard to securing public health
Compulsory licensing	<ul style="list-style-type: none"> • Be aware that compulsory licensing can play a significant role in improving access to medicines • Use compulsory licensing for local production and import of drugs to obtain access to pharmaceuticals • Use compulsory licensing for exporting drugs to countries that have no manufacturing capacity

Issues	Options
	<ul style="list-style-type: none"> • Issue compulsory licenses subject only to the requirements of Article 31 of TRIPS. No additional conditions shall be included • Demand that the US take measures to promote a genuine transfer of pharmaceutical technology with the aim of strengthening the use of compulsory licensing
Forfeiture or revocation of patents	<ul style="list-style-type: none"> • Avoid restrictions on the forfeiture and revocation of patents • Demand that the US establish a system of information sharing and collaboration with regard to the problem of invalid and illegal patents and revocation of patents
Parallel importation	<ul style="list-style-type: none"> • Be aware that parallel imports can play a significant role in improving access to medicines • Seek to use parallel imports to address public health needs • Adopt and adhere to the principle of international exhaustion of rights and support parallel imports • Seek to eliminate export prohibition arrangements in any form, particularly exclusive distributorship agreements • Support parallel exports of drugs out of the country

3. Extension of patent term

The twenty-year patent term under TRIPS is supposed to reward the inventor for his innovative efforts. Some products, such as pharmaceuticals and agrochemicals, require official authorisation before they can enter the market, and the approval process normally takes several years. The law of the US and some other developed countries now provides for the so-called patent term restoration, in order to provide compensation for the loss of patent term due to the approval process.²⁰ The rationale behind the patent term extension is to allow patent holders to capture economic benefits that could not be obtained while the regulatory agency (e.g. the FDA) reviews the safety and efficacy of the patented product.

Based on its law, the US demands that its FTA partners restore a portion of the patent term. Under the US-Vietnam BTA, the patent term extension is not mandatory but may be provided at the discretion of the trade partners.²¹ By contrast, the US-Singapore FTA requires patent term extension not only in cases of a delay caused by regulatory approval processes but also when there are unreasonable delays in the grant of patent.²²

Extension of the patent term will allow multinationals to monopolise the market longer than the conventional patent rule, despite the fact that those companies can utilise various marketing techniques, such as brand name advertisements and trademark protection, to secure their monopoly position even after the expiration of the patent term. Extending patent terms will delay the potential introduction of affordable generic medicines and defer the day when consumers can reap the benefit of generic competition. Developing countries, which have already experienced hardship from patents on pharmaceuticals, will find the extension of a period of protection in these essential products risky to the well-being of their people.

Options

To minimise the social cost, the developing countries should grant monopoly privileges for the shortest period as possible. Any demand for an extension should be rejected right away.

Issues	Options
Patent term extension	<ul style="list-style-type: none"> • Be aware that any extension in the patent term could delay the entry of generic substitutes and thus affect accessibility to medicines • Resist any changes to patent term regime that allows for an extension of patent protection

4. *Creating a world patent system*

Patent granting procedures in most countries are based on the “*examination system*” which requires prior search and examination as to the validity of the claimed invention before a patent is granted. However, due to the increasingly sophisticated nature of applicable inventions, full search and examination of the application have become more and more difficult and this has led to the overloading of many patent offices.

The Patent Co-operation Treaty (PCT) was signed in June 1970 in Washington and came into effect in June 1978. It was modified twice in 1984 and 2001. The Treaty provides for a system of international filing of patent applications in different countries. It allows inventors to secure protection in several countries through a single examination procedure, which significantly reduces the costs of patent application.

A functioning system of patent protection in the developing countries is still far short of the level in the developed countries. The PCT, it is claimed, can assist developing countries by increasing efficiency and reducing the costs of patent examination. However, the system provides a lot more benefit to multinational companies as they can seek patent protection for an invention simultaneously in a large number of countries by filing a single application. The US intends to use the opportunity of FTA negotiations to demand that all its trade partners participate in the single patent filing system of the PCT 1984.²³

Joining the PCT means that the developing nations must surrender their right to conduct and implement patent law and this will make them dependent on the patent offices of the developed countries. In fact, accession to the PCT is part of the developed countries’ patent agenda of seeking to further harmonise patent law and to create a global patent system with an aim of transforming the trilateral patent offices (USPTO, EPO and JPPTO) into a world patent office.²⁴ The patent examination carried out by those offices is most likely to serve the interests of the developed countries and their nationals. Nothing can guarantee that foreign offices will carry out prior search and examination of patent applications to the developing countries’ benefits.

Options

The international preliminary examination system under the PCT may serve the requirements of the rich countries and their multinationals to achieve worldwide protection, but will not fully accommodate and protect the interests of developing countries. The following options are recommended.

Issues	Options
Accession to the Patent Co-operation Treaty	<ul style="list-style-type: none">• Be aware that PCT accession will restrain freedom of the national patent office to assess the merits of patent applications• Oppose joining the PCT

III. TRIPS-plus on data exclusivity

The law of most nations requires pharmaceutical and agrochemical products to be registered before they can be put on the market. The company that seeks registration must submit data relating to the products' quality, safety and efficacy, the so-called test data, to the relevant regulatory authority. Since the production of this data involves considerable effort, international agreements demand protection for such data.

Article 39.3 of TRIPS stipulates that all member parties must protect the undisclosed data submitted for marketing approval. Legal protection must be available to protect new chemical entities against "*unfair commercial use*" and "*disclosure*" of the data. TRIPS does not require member parties to provide exclusivity protection to the first person who submits the marketing approval data with the drug regulatory authority.²⁵ This has left WTO members with considerable room to determine rules for the protection of undisclosed test data. For example, a WTO member's legislation may not prevent the third parties from using the test data, if that use does not constitute "*unfair commercial use*" or does not breach the "*non-disclosure*" obligation in the framework of unfair competition law. In addition, the regulatory authorities may rely on the data submitted by the originator company or on the evidence of a registration made in a foreign country to grant marketing approval for subsequent applications on a similar product.

Some developed countries, including the US, grant TRIPS-plus protection on the basis of data exclusivity in order to maintain the technological and economic superiority of their multinationals.²⁶ Multinational drug companies have long pushed hard for Article 39.3 of TRIPS to be interpreted as requiring data exclusivity. The US has responded to this demand by requiring all its FTA partners to enforce data exclusivity for at least five years. A review of the bilateral agreements that the US has signed with Singapore and Vietnam has found provisions relating to data exclusivity.

According to the US-Singapore FTA, the parties are required to provide

exclusivity for test data submitted to a government for the purpose of product approval, for a period of five years for pharmaceuticals and ten years in case of agricultural chemicals.²⁷ The BTA also obliges Vietnam to prohibit third parties (i.e. generic companies seeking to introduce generic versions) from relying on the test data previously submitted by the first company (i.e. an originator company) in support of an application for product approval, for at least five years.²⁸ The requirement is tantamount to granting exclusivity protection to the originator company.

Furthermore, while TRIPS requires protection only for new chemical entities, the FTA and the BTA do not contain such a limitation. Exclusivity protection must be provided for all kinds of data submitted for marketing approval, including data with respect to compositions, dosage forms and new uses of a known drug. This TRIPS-plus commitment will limit the country's ability in flexibly implementing Article 39.3 of TRIPS.

Granting data exclusivity will allow multinationals to dominate all markets, and at the same time create a barrier to generic entry as the generic manufacturers, most of which are small companies in developing countries, will have to enter a long and costly testing process and complete registration trials before a generic drug can obtain marketing approval. Moreover, since the relevant and essential data are not available due to the exclusivity protection, the possibility for the country to issue compulsory licenses is therefore diminished. Finally, the obligation to provide data exclusivity will prohibit regulatory authorities from relying on marketing approval in other countries, despite the fact that most developing countries lack the capacity to review data for the purposes of granting marketing approval.

Options

TRIPS-plus data exclusivity is a means of delaying generic competition and constitutes a barrier to the use of compulsory licensing. For countries considering entry into the TRIPS-plus world, the socio-economic implications of introducing data exclusivity will need careful consideration. The following options should be taken into account.

Issues	Options
Protection of undisclosed test and other relevant data	<ul style="list-style-type: none"> • Be aware that data exclusivity is not an obligation under TRIPS and that it will affect the ability of the country to promote access to medicines • Reaffirm the commitment to TRIPS by protecting test data against “<i>unfair commercial use</i>” and “<i>disclosure</i>” only • Review existing regulation to ensure that generic drugs do not face entry barriers from the registration process, as well as from the data exclusivity

IV. Higher level of protection for trademarks

According to Article 15 of TRIPS, a trademark is a sign used by any person in the course of business or trade to distinguish his goods or services from those of others. A trademark can be personal names, letters, numerals, figurative elements, colours and any combination of these. A registrable trademark must be distinctive (i.e. it is capable of distinguishing the goods or services of the owner from other goods or services).

Most US FTAs define trademarks in the broadest manner. According to the US-Singapore FTA, for example, the parties have to protect non-visually perceptible trademarks, including scent marks.²⁹ This obligates Singapore to change its existing law, which requires that a trademark must be a visually perceptible sign. The new trademark regime will allow anyone to register signs identifiable by their sound, texture and smell as trademarks. No doubt, this requirement is an attempt to bring other countries’ trademark law up to the level of US legislation.

US FTAs also requires trade partners to give effect to Articles 1 to 6 of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks (1999), which is an international standard adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO, and the WIPO Trademark Law Treaty.³⁰ This requirement offers unregistered well-known marks wider protection, as a framework for determination of well-known marks under the Joint Recommendation apparently discriminates local trademarks in favour of foreign well-know marks.

Strong trademark protection will benefit trademark owners, particularly those producing textile, perfumery and cosmetic products. Pharmaceutical companies will also benefit from the greater protection of trademarks because in this area there are many potentially conflicting trademarks. In addition, pharmaceuticals are one of the industries where trademarks are heavily employed. Pharmaceutical companies generally employ brand intensive advertisement using sophisticated techniques to build up a brand loyalty for their trademarks and brand names.

A common marketing technique widely used in the pharmaceutical industry is the launch of a product in different packaged forms and the use of more than one brand name for one therapeutic drug.³¹ Each drug has a single generic name, which is a generally accepted name of the drug and reflects the therapeutic class to which the drug belongs. No one can have a monopoly over the generic name. Unlike the generic name, the brand name is a proprietary name which belongs to one owner only. To the extent that a brand name is used to proclaim ownership, a drug company is able to have its brand name displace the generic name, and the drug will be known by the name that is the property of the firm.³² The brand name is then advertised to consumers, or in the case of prescription drugs to doctors, in order to build up brand loyalty. The multiplicity of brands causes confusion in consumers' minds. Consumers and doctors tend to believe that the branded drug is different from, and cannot be substituted by, another lower-priced generics. The proliferation of branded products, together with intense advertisement, enables large companies to create and sustain goodwill as well as leading market positions and can protect the market against small generic firms.

Unlike the time-limited patent rights, trademark rights will create indefinite commercial and marketing strength for the company through brand promotion. This is because the legal status of trademarks is different from other IPRs, as it can exist forever. As there is no term of protection for trademarks, the company will continue to monopolise the market, even though their products no longer enjoy patents or other IPR protection. A comprehensive study on drug prices carried out by Statman reveals that the prices of most patent drugs do not decline after patent expiry due to the brand loyalty built up by trademarks.³³

Options

Governments of developing countries should be aware that a high degree of trademark protection could also affect accessibility of medicines for their deprived populations. The following options should be taken into consideration.

Issues	Options
Protection of non-visually perceptible trademarks and well-known marks	<ul style="list-style-type: none"> • Resist TRIPS-plus obligation of protecting non-visually perceptible trademarks • Resist pressure to implement the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks and the Trademark Law Treaty • Vigorously implement legal controls and closely monitor drug advertisements

V. TRIPS-plus for strong protection of digital technologies

The TRIPS Agreement does not incorporate minimum standards on specific IPR issues in cyberspace. In 1996 the WIPO adopted two “*internet treaties*”: the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. These two treaties create an entirely new body of IPR law related to the Internet. They establish important international norms related to the rights to make a work available to the public through interactive media. They also provide for the protection of rights to management information and technological measures used to guard copyrighted and non-copyrighted works. Pressuring all trade partners to adopt the very dynamic digital agenda of the WIPO is one of the main objectives in current US trade policy.

The US digital agenda has focused on, inter alia, the following issues:

- The country entering into an FTA with the US must comply with the essential provisions of Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite (1974), the WIPO Copyright Treaty (1996) and the WIPO Performances and Phonograms Treaty (1996).³⁴
- The trade partner must provide longer term of protection than the TRIPS standard, i.e. the term of protection shall not be less than the life of the author and seventy years after the author’s death.³⁵
- The trade partner must provide adequate protection against the decoding of encrypted program-carrying satellite signals, as well as any reception or further distribution of decoded signals, without the owner’s authorisation. Again, this protection is not covered by TRIPS.³⁶
- While TRIPS is silent on obligations concerning technological protection measures (TPMs), all FTAs proposed by the US stipulate that parties must provide adequate legal protection and effective legal remedies against acts of circumventing TPMs and against devices which could be used for circumvention, regardless of the intended use of the device.³⁷ This means in effect that the US is now creating a new concept of copyright protection by extending the conventional economic rights of

the author to the right to use and distribute circumventing devices.

- The TRIPS-plus commitment of “rights management information” is also imposed on the contracting parties. All US FTAs demand the trade partner to impose criminal and civil liabilities on anyone who provides false information, or removing or altering copyright management information.³⁸
- US FTAs provide greater protection than TRIPS for works in digital form. For example, temporary reproduction such as temporary storage in electronic form is considered copyright infringement under the bilateral trade deal between US and Singapore³⁹ (*but not under the US-Vietnam BTA*). This provision clearly extends the author’s right over their works on the Internet.
- US FTAs have gone further than TRIPS by permitting the right holders to take legal action against an Internet service provider (ISP) for the copying of works by subscribers.⁴⁰ Further, the trade partner must ensure that the copyright owner can track every use made of digital copies and trace where each copy resides on the network and what is being done with it at any time. These two requirements will greatly affect the public right of fair use with respect to the digital works.

This new area of IPRs will no doubt allow content owners to enjoy greater protection than conventional copyright rules would afford. The provisions on prohibition of circumventing TPMs and devices, for example, will enable the owners to extend greater control over access to and distribution of works that copyright law expressly leaves unprotected in order to stimulate further creativity (*i.e. works which have fallen into the public domain*). The scope of fair use online will be narrowed down, as the owners can require payment for any use or excerpting of a digital work, regardless of the user’s purpose. The use of the Internet and digital works for educational or private non-commercial purposes, or the use by educational and library organisation will be increasingly hindered by this prohibition.¹

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1 Cohen, J.E. “Lochner in Cyberspace: The New Economic Orthodoxy of “Right Management”, 97 Mich. L. Rev. 462 (1998).

The worst situation arises when the temporary reproduction clause is incorporated into national law. Compared with conventional copyright rules that no control of reading is given to the right owner, the prohibition of temporary reproduction will allow the copyright owner to control the use of the Internet. This is because every use of an Internet browser, which requires few seconds' storage in RAM, will constitute copying. While the use of conventional copyright works, such as reading a book, is not considered infringement, the browsing or using of the Internet will be barred on the grounds of copyright violation.

Option

In view of the severe effects on societal, cultural and educational development, it is logical to suggest all trade partners with the US to reject this new regime of copyright law. The following possible options are also recommended.

Issues	Options
Protection for digital technologies	<ul style="list-style-type: none"> • Consider carefully the social and economic implications of digital technology protection, particularly in online uses, access to digital information, and education • Be aware that temporary copying is inherent to digital technology and must not be treated as copyright infringement. • Reject a total ban on circumventing devices, but allow such devices for legitimate non-infringing purposes such as research and study

CONCLUSION AND POLICY RECOMMENDATIONS

In light of the considerable and long term efforts by developing countries to minimise the impact of the TRIPS Agreement, one might conclude that most developing countries oppose the high degree of IPRs protection. That conclusion, however, is contradicted by the widespread and enthusiastic support of many developing countries for entering into FTAs that demand higher commitments on IPRs.

Given the fact that developing countries have often suffered from weakening prices of raw materials, foods and semi-manufactured products, which are their main foreign exchange earners, any single developing country would have a strong incentive to sign an FTA with the US, as it is believed that such a treaty will help that country to secure access to the world's most lucrative market. However, by signing an FTA, the developing country agrees, in a binding treaty under international law, to respect any obligations contained in the agreement. The treaty can be harmful because it leads to a world in which TRIPS-plus obligations are imposed. In making decisions with respect to bilateral or regional deals, policy-makers will have to weigh the economic benefits of FTAs against the importance of protecting the health and social interests of their populations.

Although some sectors of the economy may benefit from bilateral or regional trade deals, it should be recognised that the benefits are limited to particular sectors and certain interests. On the contrary, the long-term social and economic costs that result from IPRs commitments are significant, and should not be underestimated as they affect the majority of the population. Strengthening protection of IPRs, regardless of the specific needs and social priorities of each country, may sharply reduce developing countries' industrial and technological competitiveness and will give rise to stronger dependencies on more powerful countries. In conclusion, we believe that increased national protection of IPRs should be made only when it assists the promotion of national technological and economic development, rather than in exchange for uncertain benefits under the FTA.

In addition to the options suggested earlier, the following recommendations are made in order to reduce the impacts of the TRIPS-plus regime:

- Recognise the irreversible nature of FTA commitments and their long term implications on developing countries
- Call for a moratorium on FTA negotiations until reliable impact assessment studies have been carried out
- Any bilateral trade negotiations should be viewed as an opportunity to address a much broader range of concerns of developing countries, including abuse of intellectual property rights, technology transfer and capacity building, protection of traditional knowledge, and control and regulation of access to and use of genetic and biological resources

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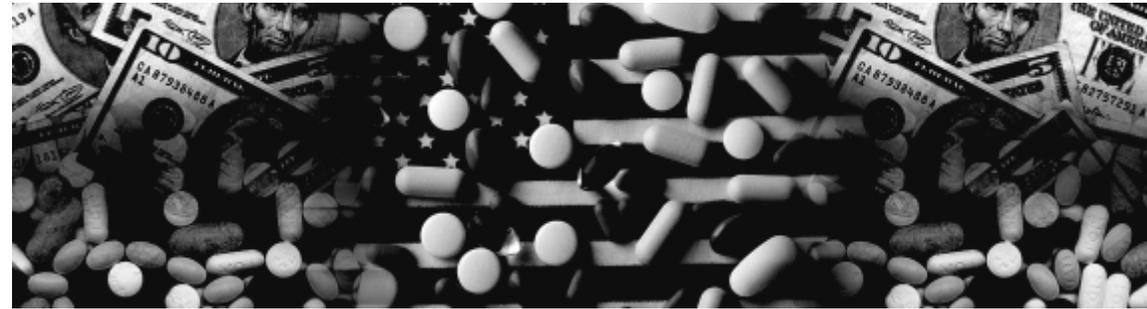
* The author is thankful for the support received from the UNCTAD/ICTSD Project on IPRs and Sustainable Development. The paper was presented at the Regional Dialogue on Intellectual Property Rights (IPRs), Innovation and Sustainable Development, University of Hong Kong, 8-10 November 2004, which was co-organised by ICTSD, Hong Kong University, the International Development Research Centre (IDRC), and UNCTAD.

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- 1 Letter of Notification of USTR to US Congress of Intent to Initiate Free Trade Agreement Negotiations with Thailand, 12 February 2004.
- 2 US-Singapore FTA, Art. 16.7 (1).
- 3 Heller, M. and R. Eisenberg “Can Patents Deter Innovation?: The Anticommons in Biomedical Research”, *Science*, 1998, pp. 698-701.
- 4 The concept of Farmers’ Rights adopted by the Food and Agriculture Organisation (FAO) has the aim of compensating farmers who have been conserving plant genetic resources for the past centuries and thereby have contributed to the development of plant varieties.
- 5 See Thailand’s Plant Variety Protection Act B.E. 2542, Section 13.
- 6 See Oddi, A.S., “The International Patent System and Third World Development: Reality or Myth?”, *Duke Law Journal*, 1987, p. 841; Anderfelt, U., *International Patent-legislation and Developing Countries*, Martinus Nijhoff, The Hague, 1971; and more recently CIPR, Report of the Commission on Intellectual Property Rights, UK Government’s Commission on Intellectual Property Rights, London, September 2002. <http://www.iprcommission.org>.
- 7 See CIPR, *Ibid.*

- 8 Singham, S.A. “Competition Policy and the Stimulation of Innovation: TRIPS and the Interface between Competition and Patent Protection in the Pharmaceutical Industry”, 26 *Brooklyn J. Int’l L.* 363 at 406 (2000).
- 9 TRIPS Agreement, Art. 31.
- 10 US-Singapore FTA, Art. 16.7 (6).
- 11 See the Paris Convention for the Protection of Industrial Property (1967), Art. 5(A). See also Penrose, E.T., *The Economics of the International Patent System*, John Hopkins Press, Baltimore, 1951; Vaitos, C., *Patents Revisited: Their Function in Developing Countries*, *Journal of Development Studies*, Vol.9 No.1, 1972, pp. 71-97.
- 12 US-Singapore FTA, Art. 16.7 (6)(a).
- 13 *Ibid.*, Art. 16.7 (6)(b).
- 14 Interviews with officials of Vietnam’s Drug Administration, Ministry of Health, Hanoi, March 18th, 2004; officials of Myanmar’s Department of Medical Sciences, the Ministry of Health, Yangon, October 16th, 2003; and officials of Cambodia’s Department of Drugs and Food, Ministry of Health, Phnom Penh, August 29th, 2003.
- 15 US-Singapore FTA, Art. 16.7 (4).
- 16 See the Paris Convention, Art.5 (A)(3).
- 17 US-Singapore FTA, Art. 16.7 (2).
- 18 See Supreme Court decision, Case No. 2817/2543. See also Patent Act B.E. 2522, Section 36 (7).
- 19 Thailand has had problems of accessibility to essential medicines, especially antiretroviral drugs. It jointly proposed a draft text for a ministerial declaration on the TRIPS Agreement and Public Health in 2001. See the Submission by the African Group, Barbados, Bolivia, Brazil, Cuba, Dominican Republic, Ecuador, Honduras, India, Indonesia, Jamaica, Pakistan, Paraguay, Philippines, Peru, Sri Lanka, Thailand and Venezuela (IP/C/W/296). See Kuanpoth, J. “Patent and Access to Medicines: the Case of ddI Patents in Thailand”, *International Review of Intellectual Property and Competition Law (IIC)* (forthcoming).
- 20 See the Drug Price Competition and Patent Term Restoration Act of 1984, generally known as the Hatch-Waxman Act.
- 21 US-Vietnam BTA, Art.7.10.
- 22 US-Singapore FTA, Arts.16.7 (7)(8) and 16.8 (4).
- 23 See for example US-Singapore FTA, Art. 16.1 (2)(a)(v).
- 24 GRAIN, WIPO Moves toward ‘World’ Patent System (<http://www.grain.org/briefings/?id=26>).
- 25 Correa, C., *Protection of Data Submitted for the Registration of Pharmaceuticals: Implementing the Standards of the TRIPS Agreement*, South Centre, Geneva, 2002.

- 26 US laws adopt an absolute exclusivity regime for pharmaceuticals and a limited-exclusivity regime for pesticides. See *Ibid.* at p.8.
- 27 US-Singapore FTA, Art. 16.8.
- 28 US-Vietnam BTA, Art. 9.6.
- 29 US-Singapore FTA, Art. 16.2 (1).
- 30 *Ibid.* Art. 16.1 (b).
- 31 British Medical Association, *The British National Formulary*, London, 1988.
- 32 Lang, R.W., *The Politics of Drugs*, Saxon House, Hants, 1974, p.31.
- 33 Statman, M. “The Effect of Patent Expiration on the Market Position of Drugs”, in Helms, R.B. (ed.), *Drugs and Health*, AEI, Washington, 1981, pp.140-150.
- 34 For example see US-Singapore FTA, Art. 16.1.
- 35 *Ibid.*, Art. 16.4 (4)(a).
- 36 *Ibid.*, Art. 16.6; US-Vietnam BTA, Art. 5.
- 37 US-Singapore FTA, Art. 16.4 (7).
- 38 *Ibid.*, Art. 16.4 (8).
- 39 *Ibid.*, Art. 16.4 (1).
- 40 *Ibid.*, Art. 16.9 (22). This provision is basically taken from US Digital Millennium Copyright Act of 1998. There are three newly introduced copyright rules under the Act: the liability of the ISP, protection against anti-circumvention devices and protection against satellite signal theft.

IMPACT OF U.S.-THAILAND FTA
IN ACCESS TO MEDICINES
IN THAILANDJIRAPORN LIMPANANONT¹

This article will describe the impact of strong intellectual property protection on access to medicines and the effects of the existing drug patent act in Thailand, especially on the patent registration process. The U.S.-Thailand FTA negotiations as a development based upon an economic perspective are strongly supported by the present Thai government. The bilateral negotiation may, in the near future, result in additional requests for long-term monopolies and will consequently affect the access to medicines, i.e. anti-retroviral drugs (ARVs). These measures will include but not be limited to the extension of patent terms, market monopoly by data exclusivity, and barriers to the use of compulsory licensing (CL). These measures will be described to demonstrate their negative influence on patient access to ARV medicines. In fact, the TRIPs agreement of 1994 allows alternative solutions such as CL, parallel imports and government use of patents. The Doha declaration on “*Trips and Public Health*” created opportunities for developing countries to establish their right to protect the public health of their populations. In addition, the story of the struggle of civil society to request implementation of government production of generic ARV drugs and the successful movement for the removal of trivial patents in Thailand, the case of ddI, will be outlined. This is evidence of the need to adopt policy recommendations to prevent negative consequences from bilateral

U.S.-Thailand Free Trade Agreement (FTA) negotiation, including but not limited to the need to exempt from the patent protection system ARVs and drugs for the treatment of Opportunistic Infection (OI). The Royal Thai Government (RTG) has to implement CL for needed ARVs. The U.S.-Thailand FTA must be based on the Doha Declaration, with no 'TRIPs Plus' features, i.e. no extension of patent terms, no data exclusivity, and no limits on the use of safeguard measures such as CL, government use and parallel imports.

IPR PROTECTION IN THAILAND AND ACCESS TO MEDICINES

IPR protection in Thailand

Since 1985 PhRMA (Pharmaceutical Research and Manufacturers of America) claims to have lost US\$ 165 million in export revenues to Thailand because of weak patent protection for pharmaceuticals, so the USTR put pressure on Thailand to introduce higher standards of patent protection. In 1992, in response to this pressure, Thailand amended the Patent Act allowing drug products to be patented and extending patent life from 15 to 20 years. This amendment preceded the conclusion of TRIPs in 1994 and even then developing countries were not obliged to enforce TRIPs until the end of 2000.

To comply with TRIPs Article 39.3 in data protection provision, in July 2002 the Thai Trade Secrets Act was enacted. When, as a condition of approving the marketing of pharmaceuticals or of agricultural chemical products which utilize new chemical entities, the authorized market approval agencies require the submission of undisclosed test or other data, such data shall be protected against disclosure and unfair commercial use, according to the Ministerial regulation. This regulation was drafted, distributed to all stakeholders for comment, and finally in December 2003 a meeting to inform all stakeholders was scheduled. It has not yet been officially announced. This will provide a mechanism for the FDA to protect undisclosed data, not data exclusivity.

The patent registration system and the drug patent situation

When the Thai Patent Act was urgently amended to include pharmaceutical products, the Department of Intellectual Property (DIP) did not have time to prepare well for this burden. The patent data base is about six months up to one year out of date. Personnel, especially expert examiners in this field, are not well prepared. Many patent applications are trivial and still in process and some have been challenged. This is the conclusion of the study of Jiraporn *et al.*² One of Thai patents issued, the dDI formulation patent, was challenged by consumers and NGOs.

The patent status of new drugs registered in Thailand after the amendment of Thai Patent Act in 1992 to include patent protection of pharmaceutical products was identified. All patent application documents with the International code of A61K³ from 1992 to 2002 were collected from the DIP and those for cosmetics, dental and toiletry purposes were excluded from the study. The list of new drugs up to October 2002 was supplied by the New Drug Section of the Thai Food and Drug Administration (FDA). The total number of patent application documents in the study is 2,444. Most applicants are foreign entities: 32.5% are American, 11.9% German, 10.4% Japanese and 8.3% Swiss. Thai applicants number only 1.31%. The percentage of patents first filed in Thailand is only 1.92. The registration process from filing to publishing took about 1.5 years, from publishing to examination took about 5 years, and the examination period took about 2 years. The total period of granting patent was about 7-9 years. Most claims (72.2%) were new formulations. Among the 966 new drug applications as of October 2002, 215 items (22.3%) were found in the patent application files. Among these applications, some claims are trivial. For example, one application's major claim, which was filed first in Thailand on 30th November 1998 with no information of the same application filed in other countries, was as follows: "*Pharmaceutical preparation for oral administration comprised of 10 to 1,000 mg Cerecoxib and Polyvinyl pyrrolidone*". Cerecoxib is out of patent and the use of polyvinyl pyrrolidone in drug formulation is very common to all pharmacists.

One interesting case is the lawsuit challenging the ddI formula patent (*Thai patent 7600*) on May 1, 2001. The plaintiffs were the AIDS Access Foundation and HIV patients. They alleged that Bristol-Myers Squibb (BMS), the patentee, intentionally deleted the dose restrictions of ddI in the claims after the application was publicized. Consequently, it broadened the scope of the claims to all drug strengths. Finally on October 1, 2002, the court noted that the removal of the dose range extended the patent protection beyond the scope of the initial application, and ruled that BMS and DIP must correct the claims in Thai patent 7600 by adding the range of ddI. This court case set the important precedent on the definition of “*plaintiff*” for the drug patent. Plaintiff is not defined only as competitors in the pharmaceutical industry but includes consumers too. The court considered this based on the concept of human rights and the right to health.

Then on October 28, 2002, the patent was challenged in a second court case by the Foundation for Consumers and AIDS patients. The petition was to revoke the BMS ddI patent on 3 grounds. Firstly, BMS applied for the product patent on July 7, 1991, before the newly amended Patent Act was officially enacted on October 1, 1992. Secondly, there was no novelty in the invention. The information of this drug was disclosed and it was already on the market before it was submitted for patenting in Thailand. Thirdly, the invention was trivial and not an inventive step. During the process of the court case, the BMS decided to end the case by dedicating the patent to the Thai people in December 2003.

Other examples were the objections to publicized patent applications, such as the objection filed by the Health and Development Foundation against Glaxo Smith Kline’s application for a Combid patent of the combined formula of Lamivudine and Zidovudine, where not all of the active ingredients are patented in Thailand. The GPO filed an objection to the patent applications for ddI pellets, and the use of nevirapine hemihydrate in liquid dosage form (*Table 1*).

Table 1: ARV patent applications which have been challenged

Drug	Claim	Filing date	Remaining patent life	Date objection filed
ddI pellet	Process and Product	17/05/99	15 years	14/02/2003
AZT+3TC	Formula AZT + 3TC + Glidants	27/10/97	13 years	11/05/2000
Nevirapine	Use of nevirapine hemihydrate in liquid dosage form	18/08/98	14 years	27/02/2001

No implementation of CL in Thailand

The impact of pharmaceutical product patents on access to medicines is well recognized, for instance, in the high price of patented drug⁴ and in the delay in the introduction into the market of generic drugs. The TRIPs and Public Health declaration also reflected the impact of TRIPs on high prices in article 3. One of the obvious health problems in Thailand is HIV/AIDS and the prices of ARVs are high. The daily cost of ARVs is about 2-10 times the daily wage. Most people living with HIV/AIDS (PLWA) who need ARVs cannot afford the medication. So on 22–23 December 1999, on the lawn in front of the Ministry of Public Health, several camps of about 100 PLWA and NGOs were set up. They requested the government authorities to apply Compulsory Licensing to ddI tablets through the production of cheap generic drugs. Since the argument of the government in refusing the use of CL was fear of U.S. trade sanctions, they sent a letter to the U.S. President asking about this. Even though the reply from the White House confirmed a country’s right under TRIPs to implement CL, the Minister still refused to authorize CL on patented ddI. Difficulties in using CL to solve health problems are found in most developing and least developed countries.

“The Royal Thai Government should now implement CL for one necessary ARV to learn about the process”

Senior staff of the Ministry of Public Health

“We are conducting research and development of patented drugs such as Effavirenz, Lopinavir, and ddI pellet. But to produce these drugs, it requires the decision of the Royal Thai Government to authorize compulsory licensing.”

Deputy director of R&D Institute, GPO.

IPR protection and access to medicines

The impact of drug patents on the affordability of drugs is analysed using data of the patent status of the ARV drugs in Thailand and a comparison of the price of branded drugs, generic drugs, and the minimum daily wage. The patent status of the ARVs marketed in Thailand is shown in Table 2. The NRTI type is categorized according to patent status into 2 groups: (1) those with no patent such as ddC, d4T, 3TC, and ddI tablet; and (2) those in the process of being granted patents such as AZT, ddI pellet, AZT + 3TC, and Abacavir. Because the patent life starts from the filing date, even if the ARVs have not yet been patented, none of the generic producers will take the risk of starting research and development for generic production. The NNRTI group that was patented is Efavirenz. Nevirapine is not patented but Nevirapine in liquid dosage form is in the patent granting process. Most PIs are patented or in the process of being granted patents, except for Nefinavir and Ritonavir.

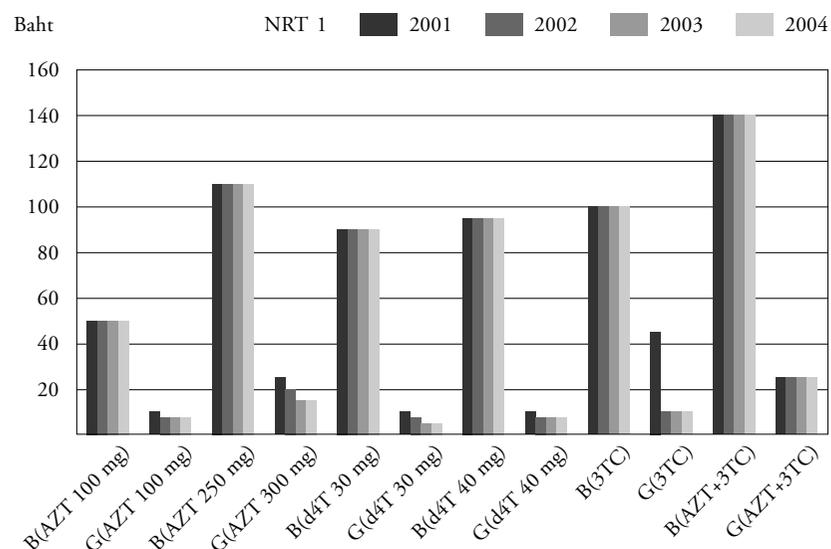
Table 2: Patent status of ARV drugs in Thailand (May 2004)

Type of ARV	Drug	Claim	Filing date	Remaining Patent Life (years)	Patent status in Thailand
NRTI	ddI pellet	Process and Product	17/05/99	15	Published*
	Abacavir	New combination abacavir + NNRTI	13/05/98	14	Published
	AZT + 3TC	Formula of AZT + 3TC + Glidants	27/10/97	13	Published*
	Zidovudine (AZT)	Process of formulation	14/03/86	2	Pending
NNRTI	Nevirapine	Use of nevirapine hemihydrate in liquid dosage form	18/08/98	14	Published*
	Efavirenz	Structure	30/07/93	9	Patented
PI	Lopinavir (+Ritonavir)	Structure	04/12/96	12	Published
	Indinavir	New combination of Indinavir + efavirenz	30/03/94	10	Patented
	Indinavir	Structure	03/05/94	10	Abandoned
	Saquinavir	Process	19/11/90	6	Publicized

* See Table 1

In order to compare the price of branded drugs and generic drugs, the NRTI group is chosen on the criterion that there are both off-patent (branded and generic drugs) and on-patent drug (ddI pellet) available in the market. The results in Figure 1 show that the price of branded drugs (B) is about 5.6-25.8 times higher than the generic drugs (G). The price of the only patented drug, ddI pellet 400 mg, was 194 Baht/capsule in 2004.

Figure 1: Comparison of ARV priced in Thailand (*unit price*)



The accessibility of ARVs can be considered by comparing their daily cost with the minimum daily wage. The costs of a daily drug regimen containing all brand drugs (B), and a regimen containing available generics (G) are presented in Table 3. Based on standard treatment guidelines, regimens may contain 2 drugs from NRTI and 1 drug from either NNRTI or PI. The regimen may also contain 2-3 PIs. Since 2002, the cheapest and most effective ARV is GPO-vir (d4T+3TC+Nevirapine) It costs only 40 Baht daily. Patient compliance of GPO-vir is high since these 3 off-patent drugs are in one tablet. The results in Table 3 show that even

though most regimens comprised only one on-patent drug, drug costs in the branded drug group (B) are about 1.8-7.7 times higher than regimens containing generic drugs (G). In 2004, the range of daily costs of branded ARVs (B) is 252-791 Baht, while that of generic drugs (G) is only 40-448 Baht. The daily cost of a regimen that contains only patented drugs with no generic drugs is around 200 Baht greater than the minimum daily wage of 170 Baht.

Table 3: The daily cost of ARV therapy in Thailand 2001-2004

YEAR REGIMEN	2001			2002			2003			2004		
	B	G	B/G	B	G	B/G	B	G	B/G	B	G	B/G
GPO-vir30				436	40	10.90	438	40	10.95	438	40	10.95
d4T+3TC+NVP	465	156	2.98	436	57	7.65	438	57	7.68	438	57	7.68
AZT+3TC+NVP	470	176	2.67	441	78	5.65	443	74	5.99	443	74	5.99
d4T+3TC+EFV	489	212.7	2.30	489	126.7	3.86	493	138	3.57	493	138	3.57
AZT+3TC+EFV	494	232.7	2.12	494	154.7	3.19	498	155	3.21	498	155	3.21
AZT+3TC+RTV+IDV	546	284.5	1.92	546	206.5	2.64	535	192	2.79	535	192	2.79
d4T+3TC+RTV+IDV	541	264.5	2.05	541	185.5	2.92	530	175	3.03	530	175	3.03
Combid+NVP	361	136	2.65	332	50	6.64	333	50	6.66	333	50	6.66
d4T+ddI+NVP	375	128	2.93	345	85	4.06	347	85	4.08	347	85	4.08
Combid+IDV	273	157.4	1.73	273	91.42	2.99	252	70	3.60	252	70	3.60
AZT+ddI+RTV+IDV	455	256.5	1.77	455	234.5	1.94	444	220	2.02	444	220	2.02
AZT+3TC+RTV+SQV	781	519.5	1.50	781	441.5	1.77	791	448	1.77	791	448	1.77

U.S.-THAILAND FTA

The United States of America trade agenda involves working to open markets globally (WTO negotiation), regionally (Enterprise for ASEAN Initiative, EAI), and bilaterally (Free Trade Agreements). The fact sheet released from the White House in October, 2002⁵ lays out the roadmap to FTAs between the U.S. and individual ASEAN countries. They will be based on the high standards set in the U.S.–Singapore FTA. The USTR notified Congress of its intent to initiate FTA negotiations with Thailand on February 12, 2004⁶. The U.S.-Thailand FTA will start negotiations in Hawaii on June, 28, 2004. The negotiating text was kept secret even when Thai civil society requested it. A Thai NGO coalition working on this area was formed as “*FTA Watch*”. This coalition published a study of the impact of U.S.-Thailand FTA in several areas: such as agriculture, investment, and intellectual property rights under the name of “*Sovereignty not for Sale*”⁷.

A high level of Intellectual Property Rights (IPR) Protection is the aim of the U.S.-Singapore FTA. A comprehensive text in this agreement on Patents & Trade Secrets appears as follows:

- Patent terms can be extended to compensate for up-front administrative or regulatory delays in granting the original patent, consistent with U.S. practice.
- Grounds for revoking a patent are limited to the same grounds required to originally refuse a patent, thus protecting against arbitrary revocation.
- Protection is provided for patents covering biotech plants and animals.
- Imports of pharmaceutical products without patent-holder’s consent are prevented by allowing lawsuits when contracts are breached.
- Test data and trade secrets submitted to a government for the purposes of product approval will be protected against disclosure for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals. Potential loopholes to these provisions are closed.

- It is ensured that government marketing-approval agencies will not grant approval to patent violating products.
- Criminal penalties for companies that make pirated copies from legitimate products.

“Our standing point is that the US-Thailand FTA should not include the IPR related to public health consequences.”

Director of AIDS Access Foundation

Based on an analysis of the US-Singapore FTA, the following requests should be carefully considered in order to protect the negative consequence on the public health of the Thai populace.

The extension of patent terms must not be accepted

The patent term under the Thai Patent Act is 20 years from date of filing, therefore delays in the process of patent granting do not affect the right of the patentee. There is no obligation in the drug registration to wait for the granting of a patent and the patentee has the full right for the invention even though the application is still in the granting process. On the contrary, there is no regulation in the Thai drug registration process to enforce the patentee to elaborate the patent status of registered drugs. In fact, since the database on the drug patent status of the DIP is six months to one year out of date and it is very hard to search with Thai key words, the introduction of generic products into the market is delayed by about 3-4 years after the patent expiry date of those drugs. The data in Figure 1 and Table 3 illustrate the impact of patent status on drug price and the non-affordability of patented drugs. So Thailand must request the U.S. to shorten the patent term for the essential drugs to 5 years or no patentability of essential drugs, since it is a burden for Thailand to solve her health problems.

“I do not agree with extending patent life from 20 to 25 years since it creates a barrier to the accessibility to medicines”

Director of R&D unit, Thai generic manufacturer

“I would like to ask the FDA to set up regulations forcing the drug corporations to submit the patent status on the drug registration process. Criminal penalties should be applied for intention to submit wrong information or neglect in doing so.”

A researcher, Research and Development Unit, GPO.

Test data and trade secrets must not be used for market monopoly

The request of data exclusivity on test data came from a statement of the U.S. Pharmaceutical Research Manufacture Association (PhRMA) in their report to USTR.

“While Thailand is required to implement all provisions of the World Trade Organization’s Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), it has not yet enacted legislation to implement the obligations contained in TRIPS Article 39.3 relating to data exclusivity.”

PhRMA “Special 301” Submission Priority Watch List Countries

PhRMA claims that Article 39.3 requires the introduction of “data exclusivity”, even though Article 39.3 obliges WTO member countries to protect undisclosed test data of a new chemical entity made for registration purposes against disclosure and unfair commercial use. Clearly, no parts of Article 39.3, create a “market exclusivity” in information. Consequently, Article 39.3 cannot prevent a regulatory authority from using/relying on the data of a registered product in order to assess and register other “similar” products so long as this information is not disclosed. The PhRMA-proposed interpretation is therefore beyond TRIPs and would, if applied, have a major negative impact on access to medicines and the development of local generic pharmaceuticals.

“Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.”

TRIPs Article 39.3

“Once data on a new drug have been submitted, their use by a national health authority to study and approve a subsequent application on the basis of similarity, does not entail a violation of the confidentiality”

*Professor Carlos Correa*⁸

The WTO’s Dispute Resolution Board resolution⁹ on the dispute between the U.S. and Argentina on patent protection for pharmaceuticals and test data protection for agricultural chemicals (wt/ds171) 20 June 2002 contains the final conclusion that TRIPs 39.3 does not clearly stipulate data exclusivity, as claimed by the U.S. As long as there is no clear ruling on TRIPs 39.3, any member country can interpret and comply with it based on that country’s conditions.

“The Governments of the United States and Argentina have expressed their respective points of view on the provisions of Article 39.3 of the TRIPS Agreement, and have agreed that differences in interpretations shall be solved under the DSU rules.”

***WT/DS171/3, WT/DS196/4, IP/D/18/Add.1, IP/D/22/Add.1,
WTO 20 June 2002***

In conclusion, Thailand must not interpret TRIPs 39.3 and the Thai Trade Secrets act as allowing data exclusivity, since it will create a new measure for drug market exclusivity. Data exclusivity will also limit the use of safeguard measures such as compulsory licensing, parallel imports and government use. This will result in health problems, especially accessibility to essential medicines and the collapse of the national health insurance system.

The patent rights should not threaten the protection of public health

The Thai Patent Act protects against imports of pharmaceutical products without the patent-holder's consent, and also includes measures like CL, government use and parallel imports to protect public health. These provisions comply with TRIPs. In addition the TRIPs and Public Health Declaration, paragraphs 4, 5, and 6 allow the country to protect public health and should be interpreted and implemented in a manner supportive of WTO Members' rights to protect public health and, in particular, to promote access to medicines for all.

Legal obligation to submit patent status is warranted

The request of the U.S. to ensure that the FDA will not grant approval to patent violating products should not be accepted. It does not mean that RTG allows the violation of patent protection but the guilt of violation lies with the drug company, not the FDA. According to the Drug Act, the FDA has no right to prevent any product from being registered if it is safe and effective. This request is beyond the duty of the FDA. It is a measure to bind the drug registration approval agency to the patent system. The concept that FDA is the agency to control the availability of safe and effective drugs in the country is a distortion.

If the request from the U.S. to ensure that the FDA will not grant approval to patent violating products is accepted, a big problem in implementation will occur. The FDA does not get information on patent status from

the patentee, so it is important to introduce the legal obligation to submit patent status with all other documents for drug market approval. Criminal penalties for abuse of this system by submission of incorrect patent status or negligence in submission have to be initiated.

RECOMMENDATIONS:

- The US-Thailand FTA must be written in two languages, since Thailand uses her own language as the official language. The U.S. must not take linguistic advantage over the negotiating parties and must respect the negotiating parties' sovereignty.
- The US-Thailand FTA should be limited to trade issues and the Royal Thai Government should let all stake holders have an opportunity to share their concerns and decisions when the negotiations could affect people's health.
- On the issue of Intellectual Property, since Thailand's legislation comply with the international standards of TRIPs, any TRIPs Plus measures in the FTA must not be accepted.
- The extension of patent life to compensate for up-front administrative or regulatory delays in granting the original patent must not be accepted at all. Since the patent life of 20 years in Thai patent law starts from the application filing date, so delays in granting the original patent do not shorten this patent life and do not affect the rights of patentee.
- TRIPs Article 39.3 does not provide for market exclusivity in the protection of the undisclosed information. The Thai Trade Secrets Act provides data protection from disclosure and unfair commercial use. The WTO's dispute settlement board decided, in the complaint raised by the U.S. against Argentina, that differences in interpretations shall be solved under the DSU rules. So the U.S.-Thailand FTA should not bring data exclusivity into trade negotiations unless an unequivocal interpretation of this article is determined in WTO.
- HIV/AIDS is not a health problem only in Thailand but is spreading rapidly all over the world. Control of this disease should be considered world wide, and any obstacle to access

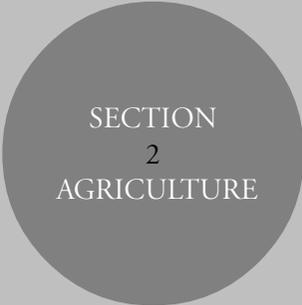
to medication must be eliminated. One large obstacle is pharmaceutical product patents, so essential drugs, especially ARVs and OI drugs must be exempted from the patent protection system.

- The Royal Thai Government has to start to implement CL for necessary ARVs in order to solve the crisis in the scarce health care resources.
- Legal obligations to submit the patent status on the drug registration process are warranted.

Jan 24, 2005

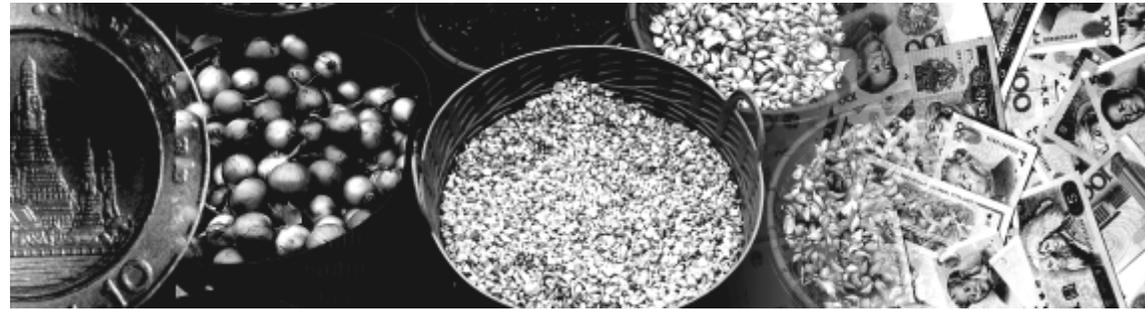
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- 1 Associate Professor, Social Pharmacy Research Unit.
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SECTION
2
AGRICULTURE

THAI-CHINA FREE TRADE AGREEMENT: WHO BENEFITS ?



KINGKORN NARINTARAKUL,¹ BENJA SILARAK²

ASEAN-CHINA FREE TRADE AREA : THE ROAD TO AN ASIAN SINGLE MARKET ?

Thailand established formal diplomatic relations with China on 1 July 1975 and opened formal trade relations the following year. According to trade statistics from the Chinese Customs Department, Thailand was China's 16th largest trading partner from 1999 to 2001 while China was Thailand's 11th largest export market. In 2003, the trading relationship between Thailand and China intensified significantly. Trade statistics from the Thai Department of Trade Negotiations³ showed that China had become Thailand's third largest source of imported goods and fourth largest export market.

ASEAN countries, having formed the ASEAN Free Trade Area⁴ in 1993, have long been trying to persuade China to open an ASEAN-China Free Trade Area⁵. The efforts of the ASEAN countries bore fruit on 6 May 2001 at Bandar Seri Begawan, Brunei, at the ASEAN-China Summit, where leaders approved an economic cooperation framework that would lead to an ASEAN-China Free Trade Area within ten years.

Negotiations between ASEAN and China began in 2003 and were expected to finish in 2004, with tariff reductions planned to begin in 2005. According to the Summit Agreement of 2001, the original six ASEAN members and China are expecting to complete their tariff reductions by 2010, while new members, Cambodia, Laos, Burma and Vietnam, have been given an extra 5 years to complete the task, with all tariffs eliminated by 2015.

The Summit also extended the privilege of forming early bilateral trade agreements (*“Early Harvest Agreement”*) for member countries ready to do so in five key areas, which in order of priority are:

1. Agriculture
2. Information Technology
3. Human Resources Development
4. Investment
5. Mekong Watershed Development

Under the *“Early Harvest”* clause of the free trade agreement, any two parties may list groups of products for immediate tariff reductions. Products for which free trade can proceed ahead of schedule are agricultural products coded 01 to 08, comprising of live animals (01), meat (02), fish (03), milk products (04), other animal products (05), trees (06), fresh vegetables (07), and fresh fruits (08). Thailand is the only country which decided to take up the *“Early Harvest”* with China. Under the terms of the 2001 Summit Agreement, reductions were due to begin on 1 January 2004 with tariffs reduced to 0% by the end of 2006.

According to the present Thai government, led by Police Lieutenant Colonel Thaksin Shinawatra as Prime Minister, the opening of markets under the ASEAN-China Free Trade Framework has not proceeded quickly enough. Thai-Chinese bilateral trade negotiations officially began when Prime Minister Thaksin Shinawatra travelled to China on 18-19 February 2003 to meet Chinese Prime Minister Zhu Rongji, at which time an agreement was signed to reduce tariffs on fruits (08) and vegetables (07). This agreement stipulated that tariffs would have to be reduced to 0%, starting 1 October 2003, preceding by three months the early harvest clause of the ASEAN-China Free Trade Framework.

So far, the early free trade agreement with China has lowered the tariffs on 116 types of fruits and vegetables, including garlic, onions, tomatoes, temperate vegetables, longan, mangosteen, and durian. Thailand formerly collected tariffs on these goods at an average rate of 60% while the tariffs in China varied from 28.7 to 63.8%. Under the agreement, these tariffs must be eliminated completely. This article will examine some of the negative effects of this early free trade agreement.

A LARGE POPULATION DOESN'T LEAD TO A BIG MARKET

At the moment of signing the agreement with China to create the Thai-China Free Trade Area, the Thaksin government revealed its motivation for doing so, saying that free trade with China would be to Thailand's economic advantage. The reasoning behind this is that China's population of 1.3 billion is largely over Thailand's population of 60 million people, which makes China a huge market for exporting Thai goods.

This coarse reasoning made by the government was never submitted to public consultation. It laid mainly on the assumption that among the large Chinese population there will be a great number of consumers buying Thai products. However, this logic may not be as straight forward, as pointed out by the Attach' of the agricultural branch of the Thai Embassy in Beijing, Sumalee Voraprateeb, who warned the Thai government of a number of points to consider before opening a free trade area with China, which includes:

1. The People's Republic of China is governed in a very different manner than Thailand, with different administrative systems in each province.
2. Thailand is not the unique source of agricultural imports for China. Thailand competes with a number of other countries, including Vietnam, the Philippines, Indonesia, Taiwan, Australia and the United States.
3. China is currently a net exporter of agricultural goods. There are only a few agricultural commodities that China imports from other countries, the most important of which are soybeans and wood.

4. China has put priority on increasing its production potential for tropical fruits. In future, imports of tropical fruits such as durian, mangosteen and longan from places like Thailand will probably be reduced, since China has already increased its domestic production of these fruits.

In addition to these points raised by Sumalee Voraprateeb, Thai Farmers Bank Research Centre mentioned that the government's confidence of Thailand success in exporting fruits and vegetables to China may have been based on a narrow analysis. In fact, China is currently the world's largest producer of fruits and vegetables, producing seven times the amount of vegetables and twice the amount of fruits produced in the United States. Although China currently exports less than 1% of its total fruit and vegetable produce, private sector investments from both domestic and international sources could transform China's fresh produce sector into an export-driven sector.

Thai Farmers Bank Research Centre has predicted that over the next five years, China's production of fruits and vegetables will exceed its own domestic demand. As a member of World Trade Organisation, China will greatly benefit from the opening of domestic markets by acquiring new export markets. In fact, China's fruits and vegetables are at a very competitive price in the world market due to lower production costs mainly attributed to low labour costs. For example, wholesale prices for fresh produce in Beijing are one-tenth to one-third the costs of fresh produce in many Western countries. These low production costs have attracted many investors and brought the level of exports in 2003 to 1.3 million tonnes of fresh vegetables, amount that has been increasing at an average rate of 10% annually.

On the world market, China's fresh produce sector still shows weaknesses, among others, its packaging system and the absence of formal market standards; however, China is presently trying to resolve these problems. Since 1999, the Chinese government allowed foreign investors and companies to invest in its fresh produce sector, offering special privileges and corporate tax breaks for two years. This initiative quickly turned China into an important global exporter of fruits and vegetables. For

example, Fuji apples from China have already successfully broken into the Hong Kong imported apple market, stealing market share mainly from the United States.

As China's potential for fruit and vegetable production increases, Thai fresh produce exporters are worried that Chinese produce will compete on the Thai market. This would have direct negative effects on temperate fruit and vegetable farmers since Thai consumers are likely to favour imported produce sold at lower prices.

EXPORTING FRUITS AND VEGETABLES TO CHINA ISN'T AS EASY AS YOU MAY THINK

Besides China's own production potential, exporting fresh produce to China still faces a great number of obstacles. Produce may only be traded to China by Chinese importers, because China still does not allow foreign import-export interests to operate in China. For almost a year, exporters have been commenting that many difficulties they have encountered clearly resulted from China's non-tariff barriers to trade. For example, any products imported in China must have standard product certification from the Thai government and must come from a farm registered with and inspected by the Department of Agriculture. But, obtaining this government certification causes exporters to waste time and increases their expenses.

In addition, China collects an additional value-added tax on fruits and vegetables despite that there is no longer any duty levied on imported produce. For processed fruit for instance, this can be as high as high as 13-17%. Each Chinese province collects this value-added tax at varying rates making Thai produce considerably more expensive than Chinese produce.

Transporting produce to China is relatively slow, which affects the quality of Thai produce by the time it reaches the hands of the buyer. Whether the produce is shipped through Hong Kong or up the Mekong River, the trade relies almost exclusively on Chinese boats. Two import markets for

Thai produce are the Jiengmen central wholesale market for Guangzhou and Guandong and the Shianghai wholesale market. It takes approximately four to five days to transport produce to Guangzhou via Hong Kong, and 12 days to Shanghai.

Wipapan Kohkietkhajorn of Thai Action on Globalisation has summarised a number of obstacles that Thai fresh produce exporters will have to overcome, both in Thailand and in China.

Obstacles in Thailand

Exporters need to have obtain product certification, export permits from related government departments and have their produce inspected for chemical residues. These procedures are complicated, expensive and time consuming. As a result, by the time the exporter has completed all the necessary steps, the produce waiting to be exported has already begun to spoil.

Obstacles in China

1. According to Chinese regulations, the importer must obtain an import permit in advance and each required permit can take up to a week to obtain, during which time the produce may spoil. An import permit from the Product Standards Inspection Unit can take up to 30 days to obtain. The permit is good for six months, costs 20 yuan⁶ (about 100 Baht), and can be used for one lot of imported goods. If the imported goods require a hygiene certificate, the cost is another 20 yuan.
2. China requires that any company importing fresh produce from Thailand must receive permission directly from the Chinese government and must be a Chinese company (*or a company with all shares held by Chinese nationals*). Thus, imports must pass through a Chinese agent, which increases exporters' expenses. In addition, most of the import-export companies in Beijing, Shanghai, Kunming and Guangzhou have close ties to the Chinese government and are able to keep import costs high.

3. There is only one cargo ship per day leaving Thailand for Guangzhou. Five ships per day go to China via Hong Kong; however, exporting via Hong Kong is more expensive and takes longer.
4. China uses hygiene standards as a mean to control imports. Produce is often left at the inspection stations until it is spoiled. For example, in Guangzhou, Guandong province, there are strict food safety control standards. As a result, some shipments of longan and durian have been rejected. Producers who fail to meet the standards are blacklisted to prohibit them buying or importing of produce. This list is put on-line to inform all other districts.
5. Goods that enter China via Hong Kong are always held in quarantine as soon as they leave the Port of Hong Kong, whether or not a certificate from the Chinese Ministry of Disease Inspection and Quarantine is required for import.
6. Each Chinese province collects its own value-added tax at a rate of 13-17%.
7. China requires that each farm or orchard producing for export must be registered and must have a certificate from the Thai government. In the case of durian for example, there are at this moment only five Thai durian orchards certified for export.
8. Transporting goods within China is slow and difficult due to few accessible roads. Therefore, the distribution of Thai fresh fruits is limited to four large cities: Beijing, Shanghai, Guangzhou and Kunming. Chinese fruits may be imported into Thailand via the ports of Laemchabang and Bangkok, or the Chiang Saen inspection point. From any of these entry points, Chinese fruits can be distributed throughout the entire country within 1-2 days.
9. Chinese importers have been known to use the free trade agreement to import longan and mangoes from Vietnam without paying import duties by using packaging that specifies the country of origin as Thailand.

CHINESE PRODUCE FLOODS THE THAI MARKET

In August 2004, the Office of Agricultural Economics (OAE) released its quantitative analysis of the effects of free trade with China. They collected nine months data prior to the FTA (October 2002 to June 2003) and nine months after the elimination of tariffs (October 2003 to June 2004). The Table below compares the import and export values of Thai vegetables and fruits for these two periods.

Table 1: Changes in the values of imports and exports before and after the elimination of tariffs with China (*million Baht*)

Category of Goods	Exports	Imports	Balance of Trade
Vegetables (07)			
Pre-FTA (Oct.-Jun. 03)	3,829	346	+ 3,483
Post-FTA (Oct.-Jun. 04)	5,553	970	+ 4,583
Change	+ 45%	+ 180%	+ 1,100
Fruits (08)			
Pre-FTA (Oct.-Jun. 03)	1,370	1,059	+ 321
Post-FTA (Oct.-Jun. 04)	2,441	2,565	- 125
Change	+ 78%	+ 142%	+ 196

Source: Office of Agricultural Economics / Customs Department

Janthida Meedet, Director of the International Economics Division of the OAE, pointed out that despite trade of Thai vegetables led to a total gain of 1,100 million Baht, there was also a 180% increase in imported vegetables compared to a 45% increase of exports. Significant imported commodities include garlic, onions, carrot, and potatoes, which entered the country at a much higher ratio than they were exported. While Thai vegetable exports have increased, 90 percent of the exports is attributed to one crop: cassava. This shows that the Thai vegetable industry

as a whole is already experiencing large negative impacts from free trade. In fact, less diversity in the exported crops would put Thai farmers at greater risks in case of market or climate change.

Regarding fruits trade, it can be seen that fruits surplus is on the decline as showed by the negative trading balance in Table 1. The value of imports increased by 142% and includes mainly apples, pears, grapes, and oranges. In comparison, the value of Thai exports increased by only 78% over the same period, with significant export commodities including dried longan, fresh longan, durian and pomelo.

These figures show that in less than a year, China has been able to compete with Thailand. Where Thailand formerly had the balance of trade advantage, the difference has started to shrink. Although Thailand still maintains a positive balance of trade with China, it cannot be denied that imports of Chinese fruits and vegetables have more than doubled. It would also probably not be exaggerated to say that in the future, Chinese fresh produce could take over Thai domestic market.

Mr. Atth Phisalwanich, Director of the International Trade Studies Centre at the Thai Chamber of Commerce University, confirms that although Thailand is currently maintaining its positive trade balance, increased imports from China have greatly exceeded the increase in Thai exports. If the government allows the current trend to continue without speeding up negotiations on import regulations with the various Chinese provinces and does not improve product quality, Chinese fresh produce will certainly dominate Thai market, because Chinese produce prices are a great deal cheaper than Thai produce prices.

In the meantime, the National Economic and Social Development Board (NESDB) - Northern Office, has begun to send out warning signals after seeing how much trade advantage Thailand has already lost. The Council has studied the situation of border trade at the Port of Chiang Saen in Chiang Rai province, where it found that Thailand's balance of trade of fresh produce has significantly decreased since the establishment of the FTA. In January 2004, Thailand has a positive trade balance of only 1.3 billion Baht in comparison to 3.8 billion Baht for the year 2002-2003.

In addition, the Council has pointed out that while China has increased the variety of fruits and vegetables being sold to Thailand, Thailand's exports to China are still clustered around a few traditional export commodities, essentially longan (*dried and fresh*), durian and cassava. The NESDB Northern Office consequently began sending out warning signals to related organisations to start looking for solutions.

It is interesting to note that while China is obstructing Thai imports through value-added taxes and strict chemical residue inspections, Thailand, on the other hand, has thrown open its border to the free flow of Chinese fresh produce. This has resulted in such a surplus of produce on the market that many new wholesalers who bought cheap Chinese vegetables have since gone out of business.

TEMPERATE PRODUCE AND CONSUMERS

Shortly after the opening of the Thai-China FTA, China's CCT news service reported that since the dismantling of tariffs, Yunnan District, which is located in southern China and has a similar climate to Northern Thailand, was exporting fresh produce such as celery, carrots, lettuce, apples, pears and broccoli to Thailand in increased quantities. These commodities were originally very cheaply priced at not more than ten Baht (*two Yuan*) per kilogram, but now that these fruits and vegetables have become popular, the price has increased to 25-30 Baht per kilogram. This news report is consistent with statistics from the Department of Import/Export Goods Inspection for Yunnan Province, which reported that the value of fresh produce exported from Yunnan to Thailand in just one month (*October 2003*) exceeded the value of produce exports from the previous nine months combined.

As a result of a higher market demand, the village of Siowsineu for instance, in Cheungkung province (*Yunnan Province*), has extended its vegetable planting area, particularly the area of broccoli intended for export to Thailand. Furthermore, the provincial government is planning to promote vegetable production as one of its five main agricultural priorities.

This rush of temperate produce exports from China has inevitably had an impact on the various Royal Projects⁷ that also produce temperate produce. The Vegetable Research Division of the Royal Project Foundation therefore commissioned a research study on the negative impacts of free trade by Nipon Chaimongkol from the Horticultural Crops Department of Mae Jo University in Chiang Mai Province.

This study showed that Kunming, Yunnan Province, in southern China, is more competitive than Thailand for the production of temperate vegetables mainly because the land and climate are better suited. Additionally, watersheds are healthy and production costs are kept low where 69% of the population are farmers. Furthermore, transporting vegetables to Thailand is convenient via the Port of Chiang Rung. Vegetables transported by river along this route reach the Port of Chiang Saen in only eight or nine hours, which keep transaction costs minimal. In terms of production expertise, Chinese farmers have the advantage over Thai farmers because they have been producing these kinds of vegetables for a longer period of time.

The quantitative study examined the import figures for various types of vegetables both before and after free trade with China and found that imports for many vegetables increased greatly after the FTA was established. Vegetables, such as snow peas, carrots and celery, were imported in much greater quantities in the first three months following the FTA than they had been in the preceding nine months (*see Table 2 for details*).

Table 2. Comparison of the amount of imported vegetables from China after and before FTA October 2003 (Kg)

Vegetable	Pre-FTA Jan.-Sept. 2003 (9 Months)	Post-FTA Oct.-Dec. 2003 (3 Months)
Broccoli	466,063	304,000
Snow peas	86,754	96,000
Cauliflower	72,992	32,997
Hong Kong kale	53,996	42,000
Sweet beans	49,331	4,000
Celery	37,036	46,000
Lettuce	33,144	31,000
Thin-stemmed celery	30,425	17,000
Tomatoes	19,199	4,000
Carrot	3,815	12,000

Source: "A Study on the Situation of the Thai-Chinese Free Trade Agreement" Vegetable Research Division, Royal Project Foundation

The main reason for China taking on the market share of the Royal Projects is that Chinese vegetables are a great deal cheaper as shown in Table 3. For example, Chinese's broccoli costs almost 12 Baht per kg, while Royal Project's broccoli is sold for as much as 41 Baht. Chinese's snow peas are sold for around 12 Baht per kg while the cost of the Royal Project's snow peas reaches 53 Baht⁸. The much lower price of Chinese vegetables has enabled them to swiftly capture a significant share of the market.

Table 3. Comparing average price of vegetables from China and from the Royal Project (Baht/kg)

Vegetable	Chinese Imports	Royal Project
Hong Kong kale	12.26	60.00
Snow peas	11.85	53.45
Broccoli	11.67	40.95
Sweet beans	10.82	7.02
Celery	10.51	25.13
Lettuce	9.07	16.22
Spinach	8.63	34.77
Cabbage	4.38	4.83

Source: "A Study on the Situation of the Thai-Chinese Free Trade Agreement" Vegetable Research Division, Royal Project Foundation

Nipon Chaimongkol stated in an interview that over the course of only one year, there was a large increase in vegetable imports from China. For example, according to data collected from January to June 2004, 655 tonnes of broccoli were imported in Thailand comparatively to only 64 tonnes in the previous year over the same period taking into account that broccoli has a different growing season in China.

Vegetables produced over the same months in both countries, such as snow peas or lettuce, were also studied. Despite the common growing season, an increased amount of snow peas and lettuce was imported from China. Total imports of snow peas reached 496 tonnes, compared to only 15 tonnes in the previous year, while 63 tonnes of lettuce were imported in comparison with only 2 tonnes over the same period in the previous year.

The Royal Project group admits that if Chinese vegetables continue to be as competitive on the Thai market, a change in the kind of vegetables would thus be promoted as a solution to some cheap Chinese vegetables imports. However, the negative consequences for Thai consumers are even greater than the set back of the Royal Project products. Mr. Nipon has commented that while imported vegetables are tested for chemical residues, tests done in Thailand are quick and less detailed than the tests done in China. China conducts their tests very strictly using modern testing equipment, with tests taking up to three hours to complete. Thailand uses simpler test kits that take only 30 minutes to give results without detecting certain chemical residues that can damage kidneys and liver.

Considering that China is still probably using dangerous pesticides that have already been banned in Thailand, serious health hazards subsist. For example, Alamol, a trade name for the insecticide heptachlor, which persists in the environment for up to 20-30 years, is in use in China but has been banned in Thailand since September 1988.

Furthermore, Kannika Kijtiwetchakul of the Peoples' News Network⁹ highlighted the fact that at the beginning of July 2004, Department of Agriculture tests detected residues of banned pesticides on imported Chinese produce. Residues of monocrotophos and mevinphos were found on Brassica vegetables, apples, and pears. These two pesticides are highly acute poisons and place users at severe risk of poisoning. They have been banned in Thailand since May 2000. As a consequence, the Department of Agriculture has drafted Ministerial regulations that would place apples and pears on the list of imported fruits that are prohibited from import without testing for residues of insects, diseases, pesticides and heavy metals.

These health issues illustrate that there are more than economic considerations in Free Trade Agreements regarding agriculture products. Regarding health issue, Thai Senate Committee on Agriculture and Cooperatives has made three suggestions: first, the renewal of the testing equipments; second, that initial tests and more detailed tests take place in a laboratory, and thirdly, the establishment of standard criteria to

allow tests on more imported and exported produce, especially those receiving large amount of pesticides such as white onions, red onions, garlic and apples.

No future for garlic, red onion and white onion growers

Shortly after 1 October 2003, when free trade on vegetables and fruits was allowed, the Ministry of Agriculture and Cooperatives announced that planting areas of garlic, red onions and white onions must be reduced. This announcement resulted from the importation of these three commodities in large quantities and at a very low price. Data from the Office of Agricultural Economics show how much prices have plummeted since the application of the FTA of October 2003 as presented in Table 4.

Table 4. Comparison of exported prices between garlic, red onion and white onion for the period of Pre-andPost-FTA (*Baht/kg*)

	Pre-FTA 2002/3	Post-FTA 2003/4	% Change
dried garlic	25.64	18.37	-28.3
dried red onions	18.33	9.00	-50.9
white onions	8.20	1.59	-80.6

Source: Ministry of Agriculture and Cooperatives (Customs Department)

Garlic, white onions and red onions are listed among the first 23 agricultural products scheduled for trade liberalisation in the WTO's 1994 Agreement on Agriculture. According to the Agreement, governments must reduce tariffs on all imports of these commodities, as well as reduce all production and export subsidies. This regulation has already forced garlic and onion planters to deal with price fluctuations¹⁰.

In the past, when Thai farmers faced low prices, the government was unable to provide help despite the existence of the Farmers' Aid Committee. Farmers have had to organise several protests in order to

obtain assistance from the government. Prices generally fluctuate from year to year; in some years, farmers can earn a great deal of money while in other years, they earn very little from the same commodity. However, even in the years of low prices, farmers were still able to earn a living. Since the undertaking of the Thai-China FTA, the situation of onion and garlic producers has changed significantly. The position of the government agencies involved is that these commodities have clearly no future. Meanwhile, farmers are uncertain about which commodity they could plant in the future.

GARLIC GROWERS AND SMALL TRADERS LOSE THEIR LIVELIHOODS

The Ministry of Agriculture and Cooperatives announced that the area of garlic planted must be reduced to 52,000 *rai*¹¹ from an original planting area of 97,629 *rai*. Farmers who entered the Ministry's programme to switch from garlic to ornamental trees were to receive as compensation 2,500 Baht per *rai*. Those who changed to perennial trees were to receive 2,000 Baht per *rai* and those who converted to another type of annual crop were to receive approximately 1,500 Baht per *rai*.

Garlic has been grown as a cash crop in Thailand for more than 30 years. Out of a total planting area of 97,629 *rai* throughout the whole country, 93.8% is grown in the North, 5.8% in Isaan, and 0.4% in the Central Region. It can be seen that the vast majority of garlic is grown in the Northern Region, particularly in Chiang Mai, Lamphun and Mae Hong Son provinces. The harvest of garlic takes place between December and June, with a peak in March. The export value of garlic has been 40,000 million Baht per year on average.

Over the years, garlic growers have seen their production costs increase, mainly due to greater use of inputs as soil quality deteriorates and yields go down. Farmers have been forced to borrow money from the Bank of Agriculture and Agricultural Cooperatives (BAAC) in order to finance their garlic crops. One study found that nearly every garlic planting household in Chaiprakarn District, Chiang Mai Province, was in debt,

at an average rate of more than 100,000 Baht per household. The average annual investment in garlic production ranges from approximately 20,000 to 30,000 Baht per *rai*.

Since free trade with China began, Chinese garlic has flooded the Thai market. A study by the Senate Committee on Foreign Affairs indicates that the import price of Chinese garlic of 5.79 Baht, is roughly equivalent to the cost of production for Thai garlic. This is another nail in the coffin of garlic producers and traders. Chinese garlic has definite competitive advantages over Thai garlic because of the extremely low costs of production in China, while Thai producers are forced to purchase inputs very expensively. The price of Chinese garlic at the market in Chiang Khong, Chiang Rai Province in December 2003 was only 35 Baht per kg, while Thai garlic was selling for as much as 50 Baht per kg. This has caused a large number of Thai consumers, especially restaurants that also want to lower their operating costs, to switch to Chinese garlic for cooking despite that in terms of taste Chinese garlic cannot compete with Thai garlic.

A study by Dr. Aree Wiboonpong, researcher at Chiang Mai University's Multiple Cropping Centre (MCC), clearly points out that Thai-China FTA has caused the Chinese garlic to inundate the Thai market. In the first three months after the FTA came into effect, October–December 2003, imports of garlic from China increased by 87% causing the price to drop by 69%. The MCC has proposed that the Thai government uses WTO standards to intervene in the market flooding that poses a threat to Thai garlic. The government should also look for some other methods of diverting Chinese garlic away from the Thai market. Furthermore, Dr. Aree is unconvinced that the government's plan to reduce garlic planting area will be successful in changing the choice of crops of Thai farmers.

After monitoring the effects of the FTA in Fang, Mae Ai and Chaiprakarn Districts of Chiang Mai Province, which comprise major garlic planting areas, Dr. Aree found that most garlic planters have not switched to other crops as it is regarded as very difficult for farmers to adjust their planting techniques and crop expertise to other crops.

For example, farmers from Chaiprakarn District, which is considered to be the most suitable area for planting garlic due to cool climate and abundant water resources, admitted that if they cannot plant garlic, they have no idea what to do to make a living. Planting garlic has been such an important part of their lives that changing to another crop would mean starting over. Farmers were used to fluctuated price of garlic but even in the years of low income, it was still enough to prevent them from looking for additional work outside their community.

Farmers have insisted that the government's compensation for reducing garlic planting being only 1,500-2,500 Baht (37.50-62.5 USD) per *rai* will not enable them to fix their troubles. In addition, they suspect that there will be corruption by government officials. Some farmers that have already reduced their growing area, have not yet received any compensation money while others have received only 500 Baht per *rai*.

Moreover, farmers keep repeating that the way government tries to solve agricultural problems with money does not really address the essential issues. On 20 July 2004, a Cabinet Resolution allocated approximately 10,000 million Baht over ten years to reduce the negative impacts of free trade, beginning in 2004-5. This fund aims to develop the agricultural structure, to strengthen production efficiency, to increase yield per production unit, and establish product quality to standard levels. However, garlic planters don't see their problem as one of product quality, since Thai garlic is already considered to be of better quality than Chinese garlic. Besides, consumers are not looking at quality but are mainly interested in low prices. On the contrary, the right way to work through this impasse solve this problem is to keep Chinese garlic from flooding the market.

The traders and cooperatives that used to buy garlic from people in their own communities are experiencing the same kinds of struggles with the fall of prices. There are great piles of garlic now waiting in warehouses for a proper time to be sold, a time with less Chinese garlic on the market and higher prices. However, long periods of storage increase the cost of the garlic. In fact, tying and hanging fresh garlic to let it dry adds 1.50 Baht to the original price of 6.50 to 7 Baht per kilo. Three kilograms of

fresh garlic comes out to one kilogram of dried garlic. Dried garlic therefore costs about 25 Baht per kg to produce while the selling price of dried garlic at the time of the survey was 18 Baht. Traders in Chaiprakarn district have said that if the price does not increase by October 2004, they will have to sell at a loss. These warehouses have been buying garlic from villagers for decades, and have a good relationship with the garlic planters making it hard for them to refuse to buy the villagers garlic.

One major consideration is that a large number of Thai consumers have switched to buying Chinese garlic, despite the fact that they are confident that Thai garlic tastes better. Should it have been predicted that Thai consumers would change their eating habits so drastically? The community traders aren't able to change their livelihood or switch to buying Chinese garlic, as this would entail changing their entire way of life. They would have to travel out of their villages more often, learn the importation system, and know about Chinese tax systems.

THE FATE OF RED ONION PRODUCERS IN SRISAKET

Red onion planters are not much better off than garlic planters are. Despite that red onion is an export crop with a value estimated to hundreds of millions of Baht, planters have faced falling prices in the recent past due to surplus production with no outlet, just like the garlic growers. Red onions are grown in large quantities in the Northern Region and in Isaan. In 2003, planting area of red onion totalised 112,896 *rai*. Of this, 78% was in the North mainly in Chiang Mai, Lamphun, Phayao and Chiang Rai provinces while most of the remaining surface was in Isaan mainly in Srisaket province and a small amount was also planted in the Central Region. In 2004, the planting area in the North suffered the sharpest reduction with only 68% remaining, 77,127 *rai*, so a 32% reduction.

Srisaket province comes first for its production of red onions, which is the second largest source of income for the province after rice. Within the province, red onions are planted in Yang Chum Noi, Rasisalai, Kantrarom, Kantralak, Muang, Wanghin, and Uthumpornphisai districts and branch district Phayuha (*Provincial Commerce Office 2001: 12*).

The planting area has increased steadily since 1969 from 2,000 rai to about 20,000. The average yield per rai reached about 1.3 tonnes in the 70's and stabilised to 2,3 tonnes since 1982.

Red onion production in Srisaket is economically significant at both local and national level. In 2004, around 9,475 families depended on red onion production for their livelihoods. They were all small-scale farmers who had developed a great deal of expertise by practising this livelihood over a long period of time.

Generally, red onion farmers in Srisaket have their first harvest around October or November and at this time, the selling price of red onions is high. December–January, red onions are hitting the market until February–March, when the quantity of red onions being sold decreases as the harvest season comes to a close. One of the challenges with producing red onions is that prices fluctuate a great deal from year to year. Furthermore, the price of red onions posted by the Office of Agricultural Economics is the market price rather than the farm gate price; the farm gate price is always lower. According to farmers, farm gate price for bunched red onions in 2004 was only 5-6 Baht per kilogram and for unsorted it was 3-4 Baht. In the previous year, the price had been more than 10 Baht. Red onion buyers told the farmers that price was low because they were having difficulty selling the crop. The large wholesalers in the province weren't able to find enough outside buyers. Therefore, the middlemen were forced to lower the price they gave to the farmers. Meanwhile, based on farmers' current production costs, they need a price of not less than 10 Baht per kg to recover their investment. If the price is less than 10 Baht, it is not worthwhile for them to grow red onions.

Chinese red onions began competing on the market as soon as free trade agreement allowed it to enter the market. Presently, Chinese red onions, which villagers call "*hom kaek*" as opposed to "*hom daeng*", are being sold at markets alongside Thai red onions but for 2-3 Baht less per kilo. Even though the Chinese red onions aren't yet popular with villagers, food processors are buying them in order to reduce their production costs.

Farmers indicated that government agencies did not specifically warn them on the effects of the upcoming competition with Chinese red onions. They were only told that if they plant a great deal the price would fall and therefore they should reduce their planting area. There has been no real and concrete reaction to low prices situation. The export market is only one part of the problem, since it represents only 35% of the total red onion market. Most red onions are produced for the domestic market.

For farmers, falling prices of red onions is a direct result of free trade with China. Since the provincial wholesalers and the local buyers, who facilitate the sale of red onions outside of Srisaket province, are not able to sell them, the backlog of red onions is causing low prices.

Red onion planters have yet to find a way to cope with this situation. The fluctuation of prices from year to year means that every year, they hope that the price will improve. They will probably continue in their present livelihood, despite problems with the long-term market monopoly and the negative impacts of free trade.

WHEN COMMODITY PRICES FALL, HOW DOES FARMERS' AID COMMITTEE HELP ?

At the end of July 2004, the big news in the local papers in the North was that white onions held by the Fang Onion Producers Cooperative in Chiang Mai province had been emitting a foul smell for some time. Villagers who lived near the Cooperative could not stand the smell any longer and protested to the Cooperative. The Peoples' News Network further reported that the Fang Onion Producers Cooperative tried to solve the problem by contacting the Fang District Chief and asking if they could dispose of the rotten onions in the forest and if the District Chief could find a suitable site. In the end, however, the dump location chosen was inside a community forest belonging to the Fang Conservation Group.

Disposal of spoiled goods is one of the many problems continuously arising from the Thai-China FTA. Troubles keep spreading and these situations will continue to arise as long as free trade is allowed to continue along its present course.

White onions are an economically important crop cultivated for over 30 years on a large surface area in the North, similarly to garlic and red onions. Data from the Office of Agricultural Economics shows that in 2002/3, there was a total planting area of 17,841 rai and an average annual export value for the last 8 years of not less than 100 million Baht. The price of white onions dropped by 80%, from 8.20 Baht to only 1.59 Baht per kilogram since Thai-Chinese FTA came into effect.

When faced with the problem of low commodity prices, farmers turn to the government agencies to intervene on the market. In the past, the Farmers' Aid Committee (FAC) has given financial aid to farmers on certain occasions. The problem with FAC's financial aid is that it passes through the Ministry of the Interior and then to provincial officials who further allot this aid money to project participants, which at the end, enables middlemen to buy more produce. FAC is more confident in lending money to middlemen because of the high return rate due to their greater marketing skills than government agencies that might help

farmers instead. Supanee Taneewut of the Rural Reconstruction Alumni and Friends Association (RRAFA) has analysed this method in an article entitled "*The FAC's Formula for Solving the Problem of Low Commodity Prices*", where she observes that the FAC's aid doesn't effectively help farmers since project approval comes slowly and often gets stuck by governmental bureaucracy. There is still no policy to implement a system of direct subsidies, that is, a system of aid in which farmers do not have to pay back.

In addition to the conflicting transfer of assistance money, FAC sets its target price that is the price at which it will buy produce from farmers, based on the average price of the past three years. This calculation uses data from government agencies such as the Provincial Commerce Office or the Department of Agriculture that are unrelated to farmers' actual costs of production, which may be higher than their selling price. For example, red onion planters in Mae Chaem district estimated their production cost for 2001 to 9.59 Baht per kilogram, while the figure from the Department of Agriculture and OAE officials' was 5-5.60 Baht per kilogram. The target price used by FAC was thus 40% lower than the farmers' actual production cost.

Time after time, farmers are forced to sell their crop for less than the cost of production and receive nothing for their own labour because they have no other option.

Because of the government's defective support mechanism, even without free trade with China, farmers were already barely able to survive. It is not exaggerated to say that free trade with China has put the final nail in the coffin for garlic, red onion and white planters.

LONGAN: WHO BENEFITS ?

Due to the great popularity of longan fruit in China, it was thought, particularly by the Thai government, that longan producers would benefit from free trade with China. However, the health virtue attributed to longan has not yet brought the expected benefits to producers. This is mainly due to a distorted mechanism in the domestic market itself, especially the market tool that assists middlemen and private companies that have a tight relationship with the government. These commercial relationships were built long before free trade with China was established.

In fact, the price of longan on the domestic market had been falling continually over a number of years, even before free trade with China, ever since Thailand began promoting longan production for export. From data collected by Supanee Taneewut of RRAFA, Thailand began promoting longan production for export market in 1976. At that time however, longan varieties and yields did not meet export standards and market requirements. In addition, there was a lack of formal research and development on good and effective production practices and problems with sulphur dioxide residue and drying system. All these limitations maintained longan market mainly domestic.

From 1976 to 1986, the income generated from longan made worth while its production. For ungraded longan, farmers would lose money if they sell less than 6 Baht per kilogram, but felt that they received a decent return with 6 to 12 Baht per kilogram.

THE GOLDEN AGE OF LONGAN

After 1986, improvements made to longan cropping production caused the demand and hence the price to rise steadily up to a peak reached in 1994. Farmers call this period *“the Golden Age”*, which benefited mainly villagers in the North, thus becoming the longan production centre of the country. Villagers, especially in Lamphun province, converted en masse their rice fields into longan orchards. At this stage, 51% of the crop was sold domestically while approximately 42% was exported.

Fresh longan was the most popular form of longan for export. The main markets were in the narrow circle of Hong Kong, Singapore and Malaysia. At that point, there was no trade with China due to trade limitations and political obstacles neither with the European, American and Middle Eastern markets being all quite recent trade partners.

The period of *“Golden Age”* of longan was one of profit for farmers and they could support themselves without incurring additional debts. Many households were even able to buy new pick-up trucks and send their children to study in the city.

WTO: STARTING POINT FOR THE LONGAN PRICE PLUMMET

The Golden Age of longan ended abruptly when Thailand became a member of the World Trade Organisation in 1995 and consequently complied with rules and conditions of the agreement on free trade in agriculture. New policies to adjust the structure of the agricultural sector caused longan to be managed as a *“high potential”* commodity meaning that longan will be promoted as substitute cash crop for less productive or profitable crops such as rice, coffee, white pepper and cassava. As a result, the production area of longan expanded rapidly, not just in the North but also in other regions of the country intended for off-season longan production. The main production areas were Lamphun and Chiang Mai provinces, which together represent 60% of the longan orchards in the country. Chiang Rai province housed 13% of them and 27% left is spread in the Northern region.

The production increased yearly along with increased production area. Data from the OAE shows that in 1997, the total yield was 250,359 tonnes rising to 358,400 tonnes by 2000. Department of Agriculture data shows that 45% of the total crop was processed as dried longan, 33% was exported fresh, 15% was factory canned and only 7% was sold fresh domestically.

The main export markets for fresh longan were Hong Kong, Malaysia, Indonesia, Canada and China. The main market for dried longan was China, taking 90% of the total amount of dried longan produced in Thailand, with less important markets in Singapore, South Korea, Malaysia and Canada. Tinned longan mainly went to Malaysia and Singapore, with some going as far away as the United States and Europe.

Table 5 shows that the value of longan exports, especially dried longan, tends to increase despite of yearly fluctuations. In 2000, the total export value reaches more than 4 billion Baht while farm gate price fell heavily to only 14.33 Baht per kilogram. Statistics from the Department of Agricultural Economics estimated the cost of production of longan for the year 1999 to be of 17.69 Baht per kilogram. This high production cost may easily be higher for farmers who invest in their longan production and use a greater amount of inputs in order to harvest a high ratio of grade “AA” longan. Thus, drops in the selling prices seriously hurt these farmers.

Table 5. Longan exports values and farm gate prices (1998-2003)

Year	Longan (million Baht)	Fresh Longan (million Baht)	Dried Longan (million Baht)	Farm Gate Price (Baht/kg)
1998	258	169	85	60.00
1999	1,629	1,192	437	24.32
2000	4,575	2,161	2,415	14.33
2001	3,285	1,975	1,310	27.87
2002	3,313	1,987	1,326	12.06
2003	1,970	1,718	2,512	15.73

Source: Office of Agricultural Economics

As longan production became oriented to the export market, the farm gate price of longan grew uncertain while farmers’ production costs continued to increase due to additional use of fertiliser and pesticide to keep up with the demanding market. For example, they had to use potassium chlorate in order to induce an early harvest since the price is the highest in June at the beginning of the harvest season.

The longan harvest season extends from June to August. There are two main sale outlets, the fresh market and drying factories. Fresh longan is sold for both the domestic and export markets. There are three officially accepted grades of longan, Double Gold (*jumbo*), Gold (*large*) and Silver (*medium*). The prices for these grades cover the costs of hiring people to sort them by grade into baskets. The remaining two grades, Red (*small*) and Green (*drops*) are sold as low grade or longan drops.

Selling longan to the drying factories, or the “*sucking ovens*” as the farmers call them, is done by middlemen who are either prominent farmers, transient middlemen or small-scale middlemen who set up buying sites with grading machines to sort the fruit. Price and quality specifications are determined by the warehouses that collect longan from the various middlemen giving farmers very little bargaining power. The development of the longan export market has created a large network of middlemen, both small-scale and large-scale, whom villagers call “*long*”. The small-scale “*long*” are associated with large drying warehouses. The large exporters at the national level and the warehouse owners are investors from Taiwan, Hong Kong, and China, and are the ones who set the price of longan and monopolise the longan market.

GOVERNMENT ASSISTANCE MECHANISMS BEFORE FREE TRADE WITH CHINA

Even before the free trade agreement was signed with China in 2003, the price of longan had already dropped heavily. As shown in Table 5, the price in 2000 fell to only 14.33 Baht per kg from the price of 24.32 Baht in 1999. There was already a great quantity of longan on the market and trading partners were barring trade with Thailand due to concerns about chemical residues. In 2002, the price fell even further to only 12.06 Baht per kg. Low prices forced farmers to get together to demand intervention of the government to regulate the price of longan. However, the method of price intervention provided little assistance to villagers. Instead, it assisted middlemen, plantation growers and agro-industrial companies more than small-scale producers.

Supanee points out in her study that the support and price interventions of the government are centrally managed by the Farmers' Aid Committee (FAC), which comprises government and large-scale farmers' representatives. Small-scale farmers are only called on to provide information.

In the past, the FAC has failed to provide help to small-scale farmers directly or in a timely manner. A study on support mechanisms and regulation of low longan prices highlighted the following problems:

1. The use of revolving funds or loans by exporters and middlemen to transport produce out of the production area does not guarantee fair prices to farmers because middlemen already control the market.
2. Financial support for longan production, managed by the Department of Agriculture, the responsible government agency, is accessible only to approved middlemen, exporters, and large-scale producers who have adequate collateral. Small-scale producers cannot access this support fund.
3. The revolving funds, established by the Department of Agricultural Extension, Ministry of Agriculture and Cooperatives, set up to support farmers who have longan drying ovens is limited to members of legally registered farmer

institutions. Small-scale farmers cannot access these funds. At this point, only farmer groups founded by leaders with a close relationship to local and national level politicians had access to these funds.

4. The price intervention mechanism for dried longan, Longan Pledging Programme, run by the Public Warehouse Organisation, the Marketing Organisation for Farmers, and the Bank of Agriculture and Agricultural Cooperatives, sets the price of pledged longan using the resolution of the FAC as its standard. However, neither the Public Warehouse Organisation nor the Marketing Organisation for Farmers have storage facilities, and have insufficient tools for inspecting longan quality. Therefore, private companies and drying factories in local areas are hired to receive, store and inspect longan negotiated under the price intervention scheme.

Participating to this pledge scheme involve many complicated procedures that lead to high costs for farmers. First of all, farmers must register with the District Agriculture Officer and be approved by the Marketing Organisation for Farmers. Then they have to pay a fee of 1.5 Baht per kg for grading longan¹² and 100 Baht per standardised box to store dry longan. Even more, farmers often have to offer bribes to brokers in order to get to the head of the queue.

This regime has offered opportunities for traders, major national and international investors as well as government officers for using a technique called "*breezy stock*" (stock lom). "*Breezy stock*" refers to the practice of keeping warehouses empty in order to save the space for dry longan bought by investors from farmers at a cheap price and sell at the government guaranteed price which is a lot higher. Through this government scheme the quota of small-scale farmers is filled and large-scale investors are able to make a huge profit. Some have even said that these people earn more from this scheme than from the drugs trade. In addition to this, farmers registered to this scheme are entitled to trade longan up to a value of 250,000 Baht. However, due to difficulties, some of them end up to sell their rights for about 3,000 to 5,000 Baht to big investors who are then able to register and sell their produce at the guaranteed price.

According to Thai Rat newspaper¹³, “it is clear that the Longan Pledging Programme has made the government lose about 3.2 million Baht as a result of great corruption within this plan. The Taiwanese group is suspected to be behind this corrupted business.”

The Taiwanese business group has been involved in the longan trade for more than 10 years. At the beginning, in the mid-90’s, the Taiwanese bought fresh longan from Thailand and dried them. Later on, they decided to buy and export dry longan to China under Burma’s and Vietnam’s brand names in order to take advantage of the China’s special customs tariffs of neighbouring countries rated at 7%. Using this strategy, the Taiwanese group avoided the 35% tax applied on Thai produce and thus made it very hard for Thai farmers and traders to compete on the dried longan market in China.

THE STATE POST-FTA MEASURES BENEFIT DRIED LONGAN COMPANIES

In 2004, both the Ministry of Commerce and Ministry of Agriculture and Cooperatives promised farmers that longan trading would benefit from the elimination of tariff because Chinese people like to consume longan. However, they did not mention who would really benefit from this increasing export. In spite of many export privileges, small-scale longan farmers and traders will have minimal gains from this liberalised economy as long as the efforts to tackle corruptive practices in longan export are not concretely realised.

In addition, the price intervention measures has changed from last year and farmers are now in charge of the purchase of the produce at the guaranteed prices instead of the Warehouse Organisation and the Farmer Marketing Organisation. The Farmers’ Aid Committee (FAC) passed a resolution on April 16, 2004, allowing the Ministry of Agriculture and Cooperatives to take comprehensive measures to monitor and address problems of longan farmers. The Ministry manages a budget of 4,323 million Baht from a no-interest revolving fund to finance the following tentative actions:

1. To purchase fresh longan directly from the farms with a 158 million Baht no-interest revolving fund, and the Provincial Authority will authorise each agricultural unit to undertake this task.
2. To promote the preservation and canning of longan with a budget of 200 million Baht and the Provincial Authority will authorise each agricultural unit to undertake this task.
3. To encourage consumption of longan inside and outside the country for which 20 million Baht is allotted.
4. To enhance the preservation of dried longan. This plan benefits of the largest part of the budget with 3,945 million Baht. According to this plan, the Warehouse Organisation will take a loan from state banks to purchase fallen fresh longan at the guaranteed prices and to preserve and dry them. Adding to this, the Warehouse Organisation has to market the products keeping in mind that the guaranteed selling prices of longan, fixed by the Ministry of Agriculture, vary from 15 Baht per kg for grade “AA”, 10 Baht per kg for grade “A” and 5 Baht for grade “B”.

After the approval of the Farmers’ Aid Committee, the Warehouse Organisation calls for submissions from private companies to manufacture and market the dried longan. The company selected will buy the produce and supply it to the Warehouse Organisation, which has abundant capacity for longan drying. The company has to purchase at least 30% of the dried longan and is required to provide and operate retail outlets with paved road access, provide size screening machines, weighing equipment, drying kilns, and trucks for taking fresh longan to factory.

Through this subcontracting process, corruption could occur from the very beginning at the recruitment of the longan drying company and managerial staff. The company that ended up winning the bidding is Poheng Intertrade Co., which is a subsidiary of CP¹⁴. According to the article “*Bidding of Dried Longan in 2004: Conflicts of Interests*”¹⁵, Poheng is reported to be an old hand private company in longan trading between Thailand and China.

The plan of giving entire control over the purchase of dried longan to a private company did not benefit agricultural units and small-scale traders despite that they own drying kilns. All longan farmers in Chiang Mai and Lamphun unanimously complained that the state intervention measures brought prices down. *“This year, the state intervention could not be called ‘help’ because any assistance at all trickled down to farmers. The guaranteed price of 15 Baht per kg for grade ‘AA’ prevents the market price from going up but the officials had never consulted us before fixing this guaranteed price. If the government wanted to really help us, they should have pegged the price at 17-18 Baht per kg so that when the agents put it down when buying longan from us, the price would then end up to be of 15 Baht per kg.”* said Mr. Peng, a longan farmer in Wiang Nonglong District, Lamphun province.

Apart from the cheap price, the number of purchasing outlets is limited and does not satisfy the needs of farmers. There are only 247 purchasing outlets in all eight provinces in the North (*as of August 2004*). Participating farmers are required to register with the Agriculture Promotion Department¹⁶, but only 42% of them have registered with the office representing 74,073 farmers and 431,888 tonnes of produce. At the beginning of the harvest season, each farmer was allowed to sell 1,800 kg of their produce per *rai*, which was later on reduced to 1,300 kg per *rai*.

At the purchasing outlet, each registered farmer will collect a queuing ticket, put their through the grading machine, weigh each graded produce, collect the invoice, and set up a date for picking up the cheque (*usually about 15 days due*). From the beginning through the middle of the season, when there are lots of produce, each farmer is allowed to sell only 300 to 500 kg of longan per *rai*, even though their total amount of produce per *rai* can reach 1,000 to 6,000 kg. Knowing that several farmers pay cash harvesting wages, it makes it difficult for them to have to queue up from dusk to dawn in order to sell their produce at the few governmental purchasing outlets.

As farmers have to rush to sell their fallen longan before they spoil, they have often no other options, but to sell to small-scale merchants, who buy at prices lower than the state-guaranteed prices, i.e., “AA” grade fetches

12 Baht per kg instead of 15 Bath, “A” grade, 7 Baht per kg so 3 Baht lower and “B” grade, 3 instead of 5 Baht. At the time of produce glut, some purchasing outlets are closed, and farmers are forced to sell their produce at mixed-graded price for as low as 4-5 Baht per kg.

In addition, farmers who own drying kilns can no longer keep their produce to dry and sell it to government, as the government does not buy dried longan directly from them this year. Thus, they earn their living by drying produce for the Warehouse Organisation, and get paid only 3 Baht per kg.

Worse, small-scale merchants pushed down the price and took advantage of the state intervention program by disguising themselves as farmers in order to sell the produce they had purchased from farmers for less than the state price.

From the state plans launched in 2004 for supporting longan farmers, apparently 80% of the state subsidies have gone into the pocket of big private companies and did not concretely support longan market in Thailand. Overall, less than 50% of longan producers joined the state-assisted programs without being able yet to notice any substantial improvements. The group who benefited the most from these programs is the Poheng Co., which has been in the business of longan drying for many years.

Part of the benefits made through the measure of purchasing both fresh and dry longan from farmers did trickle down to small-scale farmers and merchants, and permitted farmers to choose to sell either fresh or dried longan.

Mr. Wattana Muangsuk, the Minister of Commerce, was responsible to overlook the planning and design of this 2004 assistance program. He was quoted to say that previous measures caused great losses to the government. He also claimed that the former purchasing price of 72 Baht per kg for dried longan graded “AA” was not realistic since the price for fresh longan stood only at 15 Baht. According to Mr. Wattana, three kilos of fresh longan could make one kilo of dried longan, so that

the price of dried longan should be 24 Baht. Thus, in the year 2003, an increasing number of farmers kept their produce, dried and sold it to the government causing the government to lose their expected profits.

In light of the systematic collusion among officers and private companies, it does not matter how much the government touts export increases, the actual revenues of farmers and small-scale merchants shall not increase. The increasing collusion among big companies simply reiterates the fact that free, unfair trade, will not benefit farmers.

According to the Chinese Agricultural Economics Office, the longan business in China has become more competitive as well despite the immense profits derived from the collusion of Taiwanese and Chinese companies. In Yunnan province for instance, the plantation area has increased of more than 100,000 rai to meet the internal demand and limit importation. It is expected that in the next couple of years, longan production in China will reduce by 20-30% the import of Thai longan.

Therefore, claiming that longan has the potential to become an important cash crop for exporting to China reflects an imprudent and erroneous judgement.

WHO ARE FIRST TO REAP THE PROFITS ?

Thai government has claimed that we would obtain immense benefits by rushing to conclude the “*Early harvest*” free trade deal with China, three months ahead of schedule. This, however, happened at growing scepticism of various sectors. For example, we rushed to reduce tariffs for fruits and vegetables (items 07 and 08), even though the framework of ASEAN-Chinese Free Trade Agreement requires that both Thailand and China reduce tariffs on agricultural produce coded 01 to 08 starting on 1 January 2004, to bring them to 0% before 2006.

Many observers saw the rush for liberalising the market of fruits and vegetables with China as an attempt to show Thai pro-active trade policy despite that we were not yet ready. In contrast to China, we have not yet developed non-tariff measures to protect our domestic market.

The most revealing sign of the unreadiness of Thailand is the presence of glitches in the exporting trade of longan to China. For example, the Chinese claimed that they found chemical residue on our produce, stopping the importers from buying Thai longan claiming that Thai farmers failed to produce certificates from the Ministry of Agriculture. Officers in Jejujiang Prefecture and Shanghai burned down almost 10 tonnes of longan imported from Thailand claiming that they have found sulfur dioxide beyond the standard level. It did reflect that China employed quite stringent non-tariff measures to protect their market while it was not easy for us to take advantage of their market.

Aksornsri Panichsan, economist from the Faculty of Economics and member of the Chinese Studies Project at Thammasart University, gave alarming information about Chinese businessmen who do not just wait to reap profits at home, but have as well succeeded in exploiting farmers in Thailand. In other words, these Chinese importers started to make contracts to purchase the produce directly from farmers in Thailand, even before it was harvested.

Aksornsri pointed out that by rushing to settle the deal three months ahead of time, when the longan harvest season here was over while in

China it has just begun, the agreement only favoured the Chinese. As a result, after October 1, 2003, there was huge influx in Thailand of fruits and vegetables from China including apple, pear, and garlic. This unbalance of trade does reflect how much more experienced the Chinese traders are compared to their Thai counterparts.

The Senate Standing Committee on Foreign Affairs commented on the rush to liberalise our market by affirming that we still lack readiness in many respects. For example, Thai farmers got aware of the FTA with the Chinese few months after it has been implemented thus making them unable to adjust their production plans to the market changes. Also, measures devised to mitigate the impacts have been made in haste and did not address the real issues, such as the measure to reduce area of garlic plantation and substitute it with vegetables that are being imported from China, such as potato.

The Senate Committee observed that China was more prepared than Thailand in terms of their economic potentials, technology, political bargaining power, and therefore, it was hard to expect a fair deal between the two partners.

Trade liberalisation with China in the past year is just a prelude to the full-scale trade liberalisation in the next ten years. The shortcomings seen over the brief period of liberalisation suggest the rough road ahead and it is doubtful who will gain the most from this path.

We have to delve between the lines of these glamorous rhetoric uttered by leaders of the two countries to come to term with the reality that those who gain the most from trade liberalisation are not small-scale farmers and merchants, or even Thai or Chinese consumers, but the big companies.

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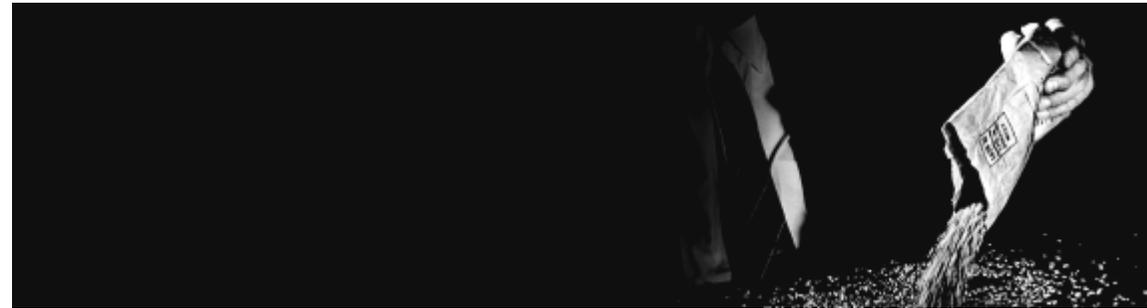
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- 1 Thai Action on globalisation.
 - 2 Local Talk.
 - 3 Part of the Ministry of Commerce.
 - 4 ASEAN Free Trade Area has currently ten member countries: Singapore, Malaysia, Thailand, the Philippines, Indonesia, Laos P.D.R., Vietnam, Cambodia, Burma and Brunei.
 - 5 On 11 December 2001, China became a member of the World Trade Organisation (WTO).
 - 6 20 yuan = 2.5 USD (1 USD = approx 8 yuan).
 - 7 Projects initiated by the Royal Family to stimulate agricultural production and to provide marketing support in marginalised areas of Thailand in order to substitute opium cops.
 - 8 Some other examples include Chinese lettuce which sells for 9 Baht per kg compared with Royal Project lettuce which sells for 16 Baht per kg. Hong Kong kale imported from China sells for 12 Baht per kg while the same vegetable produced by the Royal Project sells for 60 Baht per kg.
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 - 10 Between 1997-2004, the price of dried garlic peaked at 28.36 Baht per kilogram in 1998 and dropped to its lowest point after the opening of free trade with China at 18.37 Baht per kilogram. The price of fresh garlic peaked in 2002 at 8.54 Baht per kilogram and bottomed after free trade with China at 6 Baht. Similarly, white onions reached their highest price in 2002 at 8.20 Baht per kilogram and fell to 1.59 Baht per kilogram after the Thai-China FTA came into effect. The price of dried red onions peaked in 2002 at 18.30 Baht per kilogram and now, post-FTA, sell for 9 Baht.
 - 11 Equivalent to 8,320 ha (6.25 rai = 1 ha ; 1 rai = 0.16 ha).
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 - 13 “Watch out for Corruption, Taiwanese Mafia League,” Thai Rat, 10 September, 2004.
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COMMON FATE ON THE ROAD TO FREE TRADE:
THE CASE OF MAIZE AND SOYBEANS



SUPANEE TANEEWUTH¹

Agriculture is the foundation of Thailand's economic growth. Since the first National Social and Economic Development plan was implemented in 1961, the government has tried to modernize Thailand's agriculture, changing it from subsistence to modern agriculture. Agriculture has become a commodity for generating income for the country. The agricultural sector is partly responsible for the 40 percent expansion of the Thai economy.

At present, Thailand calls itself an agricultural country and is trying to develop a Kitchen of the World campaign but in reality the agricultural sector is less than 10 percent of GDP with lower growth rates than other sectors such as industry or services which generate much more income. The growth of cities and the industrial sector has resulted in the decline of agriculture. Agriculture has become a tool in negotiations, a bargaining chip to be exchanged for other benefits.

- A reduction in agricultural area and the population employed in agriculture was targeted from 65 percent (*6th National Social and Economic Development Plan*) to only 40 percent (*by the end of the 7th National Social and Economic Development Plan*). The policy of reducing the population in agriculture has continued until the present national plan, partly because the government

has planned support for the growth of the cities and industrial sector.

- Free trade in agriculture was exchanged for GSP on textile and garment exports.

However, although agriculture's role as a key factor in economic expansion has decreased, we can not deny that 50 percent of the population remain in the sector. Therefore, problems occur as a result of the development imbalance between cities and rural areas. Also the risks of tying agriculture to trade and capitalism have led to structural problems. These problems require solution, as a way of ending poverty.

Farmers have been identified as one of the poorest groups since the 5th National Social and Economic Development Plan, and when we talk today about poverty, the target group is still farmers. The question is how the government will achieve its declared target of in eliminating poverty within 6 years. Will farmers be no longer poor after implementation of free trade policies ?

INCREASE IMPORTS; REDUCE FARMING POPULATION

In the process of animal feed production, there are 4 major ingredients: rice bran, maize, soybean residue and fishmeal. Thus, the expansion of the animal feed industry is important to the production of its raw materials. This study will discuss two major crops, maize and soybeans, and indicate how big agri-businesses benefit from free trade in agriculture. The future of Thai farmers under free trade will be predicted.

In the past, maize and soybean production was enough for domestic demand and it was not necessary to import either product. The Thai government supported a policy of increasing efficiency in agricultural production. This is because the government has targeted maize as an export cash crop while soybean is promoted for national food security. But the situation changed rapidly when domestic demand for maize and soybean increased rapidly during 1990-1992. At that time, the animal feed industries were growing fast while income from the export of

chicken, frozen shrimp and food products increased. As a result, the government changed policy to promoting production in response to the increased demand for raw materials for animal feed.

The government implemented intensive agricultural production programmes to increase yield per rai. They developed high yielding varieties and hybrids with no concern for the impact on long-term sustainability. Farmers lost control of managing their own seed. Farmers have to buy seed, which was added to chemical fertilizer and pesticides as part of the input burden on farmers. At the same time, the government has allowed imports in response to domestic demand. However, before the free trade policies were implemented, the government was able to put some regulations in place to protect producers, such as price guarantees on soybeans, import surcharges, quota restrictions and import controls.

But all these regulations were abolished as a result of Thailand signing the Agreement on Agriculture of the World Trade Organization (WTO) in 1995.

Maize, soybean and soybean residue are among the 23 items where Thailand promised tariffication. This means Thailand had to abolish its policies import and export quantity controls on agricultural products. Under its WTO commitments, the following changes occurred in maize and soybean imports.

- Imports of maize within the quota attract a tariff of 20%, while those outside the quota are charged 80.2%
- Imports of soybeans within the quota attract a tariff of 20%, while those outside the quota are charged 80.9%
- Imports of soybean cake within the quota attract a tariff of 20%, while those outside the quota are charged 134.5%

As a result, huge quantities of maize, soybean and soybean cake were imported, especially from the US data from the Office of Agriculture Economics show that imports of maize increased by 2.84% per year during 1990 to 1999 the import trend is continuing. Over the past 10 years, free trade policies have resulted in a decrease in the domestic price of maize of 10.6 percent in average. Although the government

implemented domestic support programmes such as market intervention to solve the problem of low prices of agricultural products. Programmes to mortgage maize from farmers or fix domestic prices for soybeans were found to be ineffective. These programs did not create any incentives but instead low prices have led many farmers to stop producing maize and soybeans. Statistics of the Office of Agricultural Economics indicate that the area of soybean production decreased from 2.6 million rai in 1994 to 1.13 million rai in 2003, while maize production decreased from 11.16 million rai in 1994 to 9 million rai in 2003.

Furthermore, free trade has destroyed the production efficiency and market competitiveness of farmers. This has resulted in a fall in national production. Under the WTO, Thailand has to increase maize imports by about 2.84 percent while maize exports have decreased by about 28.75 percent. This means money will flow out of the country, while income from exports and tariff charges will decrease. Thailand has thus been changed from a maize exporter to become maize importer.

FACTS ABOUT FREE TRADE

The domestic markets for maize and soybeans are closely linked to prices at the Chicago market in the US. An increase or decrease in the price of maize in Chicago affects Thai domestic prices. This is because the US is the biggest maize and soybean producer with a world market share of 74 percent. In terms of production, the US is 54 times bigger than Thailand, while land area under maize is 24.46 times bigger. The output of soybeans is 285.73 times bigger than Thailand while land area is 166 times bigger. This huge difference in production and acreage is one of the reasons for the better competitiveness of the US.

Thailand is not able to compete with the US in many areas as result of the US domestic support program, the so-called Farm Act, which has been used for more than 30 years. The US government approves the law every five years. According to the present law, the Farm Act of 2002, government budget for domestic and export subsidies are about US\$ 18,000 million or about 700,000 million baht per year.

The US export subsidy can be said to be the main weapon that destroys the domestic market of importing countries. US agricultural product prices are lower, even lower than costs. In the case of maize, US maize exporters each year receive a subsidy of about 20-30 percent of their cost of production. There is no doubt about why the prices of maize and soybeans are lower than the real price.

In 2000, the US cost of maize production is 3.97 baht per kilogram but the export price is only 2.96 baht. This means an export subsidy of about 32 percent. When the domestic price of maize in Thailand is 3.44 baht per kilogram, we can clearly see that imported maize from the US is cheaper. This has resulted in an increase in imports (*higher than the quota set in the WTO agreement*). Although the domestic supply of maize is enough for the country, the animal feed companies want to import maize from the US rather than buy it in country. As a result, maize growers in Chiang Rai province rallied and demanded that the Thai government launch a program to solve the maize price problem.

Free trade supporters will explain this by saying that domestic production has no comparative advantage whereas in reality all the advantages come from how much power one can exercise in bargaining.

We cannot deny that multilateral trade negotiations are a forum for bargaining and balancing power among countries involved. When each group tries to protect its own benefits, it is difficult to make an agreement. In some cases, even when the participating countries have come to an agreement, in practice, it is still unfair. For example, it was agreed that the developed countries have to reduce their support to 20 percent, but some countries did not comply. In 2002, the US government increased domestic support for agriculture by 15,000-20,000 million baht. The US claims that this domestic support is a structural adjustment programme to maintain income equality among US citizens. In practice, it is trade distortion.

Multilateral trade agreements have more balance in bargaining power compared to bilateral trade negotiations. The bargaining power of Thailand

and the developed countries is clearly totally different. It has become a trap and creates a trade pattern of benefit exchanges in the form of win-lose exchanges, where one country will have to sacrifice one product (*with lower comparative advantage*) for another product where it has higher comparative advantage.

In conclusion, free trade and free investment have created different levels of production based on benefit sharing and bargaining power. There are two main players; one with high ability and advantage and the other with lower ability and advantage. Many schools of economic thought come to the same conclusion that those with lower comparative advantage will collapse and have to go out of the business.

Therefore, the chances of survival of maize and soybean growers in Thailand are clearly very small, especially when they have to compete with those who are stronger, and control all the rules.

BEWARE AGREEMENTS WITH THE US

Beware the introduction of monopolistic technology.

Genetically Modified Organisms (GMOs) constitute that technology. It is well known that the US controls knowledge on GMOs. In the past, world society did not accept the push to expand GMOs especially on the issues of food safety, the impact on biodiversity, and monopoly control over this technology by TNCs. Though TNCs have developed the technology for years, they still have not been able to cover their research, development and advertisement costs.

The US government has been under pressure from TNCs to export GMO products to foreign markets. They failed because the European Union played an important role in the campaign against GMOs at the WTO. Failing to push GMOs in multilateral negotiations, the US government has shifted to bilateral agreements. The US government has looked for markets for GMO products in third world countries, who have less bargaining power.

When Thailand started negotiations with the US government, it found out that the push to allow GMO products to be traded in Thailand was one of the first priorities on the proposed agenda for the meeting. If the agreement succeeds, and Thailand accepts the technology, concern regarding GMOs will increase, since GMOs might create huge changes in Thailand's patterns of agricultural production and consumption.

WATCH OUT !!! THAILAND IS BEING EXPLOITED FOR THE BENEFIT OF AGRI-BUSINESS

The animal feed industry has controlled the domestic markets for maize and soybeans in under a system called vertically integrated marketing. In the case of maize, big agri-businesses have developed joint ventures with transnational corporations, such as the joint venture between Charoen Phokphan and Monsanto, which increased their market share of seed to over 70 percent. Hybrid seeds have to be bought every year. Farmers also have other farm inputs such as chemical fertilizers and pesticides. As a result, the cost of seed, fertilizer and pesticides is more than half of the total production costs. When we look at the market chain, we see out that the company who controls the seeds also controls the maize market. These big agri-businesses buy maize from farmers and transport it to the animal feed factories. At the end of the chain, these agri-businesses also control the meat factories which have been supplied by the animal feed business. This means a few agri-businesses control all crucial points in food chain at both domestic and international levels.

In a case of soybeans, although control over the market chain is not as clear as in the case of maize, because it involves other businesses such as soybean oil factories and the food canning industry. But there is control by big agri-businesses, which imports huge amounts of soybean and soybean cake at zero tariff rates since they claim that the country does not have enough raw materials; in this way they can reduce the cost of animal feed production.

On the whole, we can say that these businesses are secure from all risk and use free trade policy for their benefit.

- (1) They can reduce the production costs of animal feed by imports of cheap soybean and maize from the US without tariff as part of the trade agreement.
- (2) They are able to expand the volume of trade of poultry, frozen shrimp and processed meat in big markets like the US, which mean huge profit for big agri-businesses.

The GMO issue may produce a change in the development and promotion of maize. Under free trade policies and the readiness of domestic seed companies, it is possible that GMO maize will be promoted, which will reinforce monopoly control over agricultural production and marketing.

CONCLUSION

Although the free trade in the past did not suddenly destroy Thai agriculture, it has changed the structure of Thai agriculture production and marketing, as seen in the previous cases. This also raises the problem of national food security, when we move towards the monopoly control over food production manipulated by agri-businesses under the so-called free trade as a mechanism of food distribution.

The exchange of benefits under bilateral trade agreements is not a creative alternative for the poor to raise their quality of life and escape poverty. On the contrary, it will create structurally more complex problems in Thai society. Under free trade, poverty still exists in Thai society while the gap between the rich and the poor continues to widen.

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1 Rural Reconstruction Alumni and Friends Association

AS THE TNCs CATCH YOU: AN ANALYSIS OF
THE LIBERALIZATION OF BIOTECHNOLOGICAL
PRODUCTS IN THE THAI-US FTA



WITON LIANCHAMROON

One of the books the Thai Prime Minister suggested his cabinet members read was *“As the Future Catches You”* by Juan Enriquez, a Mexican writer. The book’s contents relate to the fact that countries need to catch up with the development of biotechnology. Otherwise they will be alienated and left behind.

Juan Enriquez captivates the reader with fascinating data and a presentation that underlines the development of biotechnology. But for developing countries, the development of biotechnology does not mean liberalizing GM products, or recognizing and promoting patent rights on biotechnology, or liberalizing foreign investment on biotechnology, as certain decision-makers of this country believe. By giving in to such propaganda, this country may see itself caught in the claws of transnational corporations (TNCs) instead of being freed from the catch of the future, as warned by Enriquez.

THE US ROLE IN MULTILATERAL NEGOTIATIONS

As the United States is now the world’s biggest producer of genetically modified (GM) products, it has made every attempt to push countries to

accept GM crops and products. The TNCs that control almost the entire market for GM seeds are also located in the US.

GM crops planted between 1996 and 2002 (Unit: Million hectares)

Country	1996	1997	1998	1999	2000	2001	2002
US	1.5	8.1	20.5	28.7	30.3	35.7	39.0
Argentina	0.1	1.4	4.3	6.7	10.0	11.8	13.5
Canada	0.1	1.3	2.8	4.0	3.0	3.2	3.5
China	1.1	1.8	*	0.3	0.5	1.5	2.1
Others	< 0.1	< 0.1	0.1	0.1	< 0.5	< 0.5	< 0.5

Source: Adapted from James Clive, ISAAA (1996-2002)

In May 2003, the US government officially submitted a protest letter to the World Trade Organization opposing the European Union's measures on the suspension of GM crop planting, as well as its new measures on GM labeling and traceability. This was not only meant to put pressure on the EU, but also gave a hint to developing countries that any strict regulations in relation to GM products might lead to US economic sanctions. It should be noted that imports of GM products can be suspended according to the Cartagena Protocol on Biosafety, which came into effect on 13 June 2003 when 50 member countries of the Convention on Biodiversity ratified it.

In the initial stages, the US and some developing countries such as Argentina, which got involved by opening up several million hectares of land to GM crops, voiced strong opposition to the protocol in vain. Most of the signatories used the "Precautionary Principle" to reject GM crop imports as a necessary means of protecting biological diversity and safety. In this regard, US efforts to retaliate by challenging strict measures on GM materials as violations of the WTO's Agreement on Technical Barriers to Trade, Sanitary & Phytosanitary Measures and Agreement on Agriculture has not been supported by most member nations of the WTO.

Since the Third Ministerial of the WTO in Seattle in July 1999, the US has urged the establishment of a Working Party on Biotechnology and pushed for a Ministerial Declaration to accept the safety of GM products and recognize the future viability of GMOs¹. The proposal, however, was strongly opposed particularly by Peru, India, Indonesia, the Philippines, Malaysia, the Dominican Republic, Hong Kong, Pakistan, Egypt, Haiti, Uganda, Sri Lanka, Kenya, Honduras, Cuba, Bolivia, Nigeria, and Senegal. These countries argued that the GMO issue advocated by the US should be negotiated according to the biosafety protocol. In the end, the Working Party could not be established².

Despite its failure to push the WTO into accepting the liberalization of biotech products, the US succeeded in citing the Agreement on Agriculture to press Bolivia and Sri Lanka to cancel plans to ban GMO imports in 2001³. In February 2001, Thailand's Food and Drug Administration was also warned that the Ministry of Public Health's extremely strict regulations on GMO labeling might bring about retaliation on Thai exports to the US⁴. This was why the proposed threshold for labeling products as GM if they contained 1% or more of GM material, as urged by consumer organizations in Thailand, was increased to 5%.

At the meeting of the senior officials of the Asia-Pacific Economic Cooperation (APEC) in Khon Kaen in June 2003, the US tried so hard to press this case that the trade representative of Japan had to declare that apart from Japan, most countries in Asia could not accede to the US proposals⁵. When its push to liberalize biotech products and adopt other policies, such as patents on life form, failed to materialize in multilateral negotiations, the US focused more on bilateral and regional free trade negotiations. In a statement at the International Economic Institute on 8 May 2003, US Trade Representative Robert Zoellick said "special product sensitivities" will be part of every FTA the US will make with other countries⁶.

Therefore, these issues were included in the Trade and Investment Framework Agreement (TIFA) co-signed by Thailand's Minister of Commerce Adisai Bhotaramik and Robert Zoellick at Los Cabos in 2001.

TIFA includes the following topics:⁷

1. Trade and investment facilitation and liberalization;
2. Intellectual property rights (IPRs);
3. Regulations affecting policies on trade and investment;
4. Information and communication technology as well as biotech policy;
5. Trade and capacity building;
6. Issues connected to WTO/APEC; and
7. Other economic issues agreed upon by both parties

BEHIND THE US GOVERNMENT ARE THE BIOTECH TNCs

No sooner did President George W Bush announce his agreement to the Thai-US Free Trade Agreement on 20 October 2003⁸ during the APEC Summit in Bangkok, than the lobbying by GMO interests was actively renewed. Several years ago, they had very little success in pushing Thailand into accepting the commercial planting of GM crops⁹.

On 9 January 2004, Christopher “Kit” Bond, a Republican Senator from Missouri, met with Prime Minister Thaksin Shinawatra¹⁰. One day before his meeting with the Thai Prime Minister, the Senator also met with Environment Minister Suwit Khunkitti. Bond’s meeting with the prime minister was a result from a letter dated 17 October 2004, which he co-signed with six other Senators¹¹ - Max Baucus, Gordon Smith, Patty Murray, John Breaux, Conrad Burns and Craig Thomas - to support the US’s FTA negotiations with Thailand. This shows that behind the FTA deal between these two countries were interest groups in the US that benefited from the deal, especially Monsanto - a biotech TNC affiliated with Pharmacia - whose headquarters is in Missouri.

Monsanto provided financial support to Bond’s election campaign. It gave him the biggest election donation any US senators had ever got. The financial support he received from agribusinesses was also bigger than that provided to other senators¹².

An analysis on the Corruption of American Agriculture by Tad Williams also found that besides being a US senator, Christopher “Kit” Bond was on the Monsanto executive board too!¹³

It should be noted that apart from Monsanto, the life science industry has paid a huge amount of money through political and policy activities to solicit support for their interests. Between 1989 and 2003, biotech corporations spent over US\$12 million supporting election campaigns. Seventy-seven percent of this election funding was earmarked for the Republican Party. Also, between 1998 and 2002, US\$143 million was spent by these firms to lobby the US government and concerned agencies to protect and promote their benefits¹⁴.

With such massive funding, US government policies and operations have been geared towards protecting the benefits of biotech corporations and agribusiness more than serving the interests of small-scale farmers and consumers in general. According to the report on the Corruption of American Agriculture, of the 10 members of the House Agriculture Committee in 1994, seven of them were financially supported by biotech firms. Not surprisingly, a country that takes pride in its democracy and tries to push other nations to follow its economic and political model has paid no attention to most American consumers’ demand for GMO labeling. Moreover, it employs aggressive measures against other countries which adopt policies to protect the interests of their farmers and consumers.

American Consumers' Attitude toward GM Foods during 1997-2001¹⁵

Pollster	Duration	GMO rejection (%)	GMO labeling (%)
ABC News	June 2001	52	93
Pew Charitable Trust	March 2001	*	75
Angus Reid Group Co. Ltd.	June 2000	51	*
USA WEEKEND Online	March 2000	*	79
The Economist	January 2000	57	*
MSNBC Live Vote Results	January 2000	*	81
BSMG Worldwide	September 1999	*	92
Edelman Public Relations Worldwide	September 1999	*	70
Time Magazine	January 1999	58	81
Angus Reid Group Co. Ltd.	1998	48	*
Novartis	February 1997	*	93
Vance Publishing	February 1995	*	92

*No inquiry made about this topic

The abovementioned analysis was made to alert the Thai government that behind the US negotiations, at bilateral and multilateral levels, are the TNCs. Also the Thai public should always bear in mind that behind the Thai negotiating team may be agribusiness interests too.

IMPACTS OF THE LIBERALIZATION OF GENETICALLY MODIFIED PRODUCTS

There are two major types of GM products exported by the US to Thailand: GE food and GE crops. This article will focus more on the latter type, which the Thai government allows and which has had a tremendous effect on the country's agricultural production.

Generally, plant varieties used by Thai farmers are developed by conventional breeding, whereby at least two plant varieties are crossbred. Quantitatively, most of the seeds used by farmers in every planting season are those saved from their own farms as well as those developed and bred by government agencies (*see table below*). Meanwhile, almost all of the seeds trade is in the hands of TNCs and the joint venture enterprise between Charoen Pokphand and its foreign counterparts.

Thailand's major seeds market

Seed variety	Volume (Tons)	Value (Babt/kilogram)	Estimated value (Million babt)
F1 hybrid corn seeds ¹⁶	19,767	100	2,000
Individuals' vegetable seeds ¹⁷	2,000	*	390 - 520
Open pollinated hybrid seeds from the government			
- Rice ¹⁸	50,000	15	750
- Soybean ¹⁹	20,000	15 - 18	355
Rice seeds saved by farmers ²⁰	900,000	*	*

* No accurate figures

Eyeing enormous profits in Thailand, the American TNCs aim to control the seeds market, where the producer is the government, as well as the seeds that farmers have saved for further planting. Apart from corn, soybean and rice shown in the table, the TNCs are also interested in many other plant varieties grown in Thailand, including cotton and papaya. For example, in 1997 Monsanto executives planned to open a

cotton seeds market in Thailand, aiming to make sales of 1,800 million baht. If Monsanto succeeds in pressing the Thai government to agree to GM crop planting under the FTA, it will make a huge profit of 32,000 million baht during the first 5-10 years of operations. The profits could probably rise to over 75,000 million baht in the next couple of decades.

Projection of profits to be gained by biotech firms if commercial GM crop planting is allowed

Seed variety	Minimum estimated value (Million baht)	Maximum estimated value (Million baht)	Prospective beneficiary
Foreign seed varieties dominating the domestic market in the short term (5-10 years) - Cotton ²¹ - Corn ²² - Soybean ²³	1,800 2,000 1,200	1,800 4,000 2,400	Monsanto Monsanto-CP Monsanto
Foreign seed varieties dominating the domestic market within 10-20 years - Rice ²⁴	27,000	67,500	Monsanto Syngenta CP
Total	32,000	75,700	

Yet the overall impacts on Thailand cannot be evaluated by taking into account only the seeds market. If the multinational corporations can take monopoly control of the seeds used by the farmers, it will mean that national agricultural and food production is entirely at the mercy of foreigners. An obvious case in point is the fact that two-thirds of the world's GM seeds require farmers to use herbicides specified by the seed owners. A minister in the current Thai administration recently said that if the US could plant GM crops, Thailand should be able to do so with no fear. Such a statement, either made out of the speaker's misguided vision of being part of the "new ideas, new actions" government or as resulting of his being consumption of the TNCs' "information", clearly shows how biotech industry propaganda had made the government

willing to welcome GMOs from the US. These people are "ignorant" or "pretend to be ignorant" of the fact that the GE cotton covers two-thirds of the total US areas planted to cotton. And this vast coverage is the result of the Republican government's subsidies to cotton production and exports. For every acre of cotton an American farmer grew, they got US\$230 in subsidy support because transgenic cotton planted by American farmers cost three times more than that grown in an African country like Burkina Faso²⁵.

Thailand's not too distant neighbour India allowed Monsanto's "bollguard" GE cotton to be planted in the country in 2002. Just in the first season, over 70% of the farmers in Andra Pradesh—India's second biggest cotton-growing state—suffered devastating losses. Apart from dependence on chemicals, the yields and quality of GE cotton fiber were also lower than those of the Indian native cotton.

PROPOSALS TO THE GOVERNMENT AND PEOPLE OF THAILAND

The Thai government should by no means allow the US to press for the GE crops for commercial purposes. Before commercial planting of GE crops in the country is permitted, other issues such as the environment, health and Thailand's future should be considered in addition to commercial objectives. Even limited planting of GE crops could bring about genetic contamination and the destruction of biological diversity, on which our lives and economy are based. The decision on the GMOs should be made only by the farmers, consumers and citizens of Thailand. It must not result from the pressure by the American biotech multinationals.

The successful push for the patent rights to life forms or the pressure put on Thailand to become a member of the International Union for the Protection of New Varieties of Plants (UPOV) in order to accept the UPOV 1991²⁶ meant that the government agreed to change domestic laws so that farmers were prohibited from farm save seed and exchange seeds among themselves. Such acceptance violates the basic

rights of the farmers and their communities, which are provided by the Constitution. Moreover, it is destructive to the country's cultural basis on which biological diversity is created. It also allows foreigners to take possession of nation biological resources through the enforcement of patent laws on life forms.

It is more likely that the national agribusiness giant will collaborate with the US transnationals and interest groups to support Thailand's acceptance of biotech products and the IPR regime recognized by the industrialized countries. Thailand's agribusiness giants have increasingly cultivated closer business relations with the transnationals. If these business giants can conclude successful business deals, Thai farmers and people will simply lose in this negotiating battle. We need to monitor closely the moves of the Thai agribusiness giants and the transnationals, which are behind the promotion of biotech policies.

So far, the farmers and people of Thailand have been excluded from decision-making on biotech policies. If the Thai government facilitated the meeting of an American senator who represents the American transnational interests with the Prime Minister and Deputy Prime Minister at Government House on 8-9 January 2004, it should provide similar rights to Thai farmers and people.

To decide an FTA with the US, based on reading the book *"As the Future Catches You"* and the one-sided information provided by agribusiness and bio-industrial corporations, will definitely lead Thai farmers and the agricultural sector to ruin.

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16. 2001 figures from the Pacific Seeds Company.
17. Source: Private Investment in Agricultural Research and International Technology Transfer in Asia, Agricultural Economic Report No. 805, USDA, 1996.
18. Data from the Agricultural Extension Department, 2003.
19. Data from the Pacific Seeds Company, 2003.

20. An estimate based on the data gained from the Ministry of Agriculture and Charoen Pokphand in 2003.
21. An estimate based on an interview given by a Monsanto executive in 1997.
22. Today, 90% of corn varieties are in the hands of CP, DeKalb and Cargil, of which the latter two firms have been taken over by Monsanto. The estimated increase in the value of seeds is based on the assumption that future use of GM corn seeds will be two times higher than that of hybrid corn seeds.
23. The value of GM soybean seeds is estimated to be five times higher than that of open hybrids. In the future, the GM soybean seed value might rise two times higher, as the market is completely monopolized.
24. The price of GM rice seeds is estimated to be two times higher than that of normal rice, and the price will be five times higher in the long term.
25. Cultivating Poverty: The Impact of US Cotton Subsidies on Africa. Oxfam Briefing Paper no. 30.
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(ว่าง)



SECTION
3
TRADE,
INVESTMENT
AND SERVICES

POTENTIAL IMPACT OF THAILAND-US FTA
ON TRADE, SERVICES AND INVESTMENT



JACQUES-CHAI CHOMTHONGDI ¹

The United States of America is one of the biggest markets. More importantly, the US has long been the biggest export market for Thailand, absorbing about 20 per cent of Thailand's total annual exports. At the same time, the value of imports from the US, at about 10 percent of total imports in 2002, is second only to that of Japan. Consequently, we can be assured that whether the outcomes of the Free Trade Agreement between Thailand and the US are positive or negative, they will have a tremendous influence on the livelihoods of the Thai people.

THE INDUSTRIAL SECTOR

The top 5 export goods from Thailand are computers and parts, garments, canned and processed sea food, televisions and parts, and electrical circuits, while the top 5 imported goods are electrical circuit boards, chemicals, industrial machines, electrical machines and parts, and computers and parts.

In the last 15 years, Thailand has enjoyed a favourable balance of trade with the US continuously since 1988, and the general trend is for this to

improve further. The interesting part, however, is that Thailand's share of the US market has been declining at the same time. One reason is that other US trading partners, such as China and Mexico, have strengthened their position in the US market. Analysts have pointed out that this trend of Thai goods losing out to competitors in the US market, if not addressed, will worsen with adverse impact on the work force in the related industries. For instance, the estimated 1 million workers in the textile sector would be severely affected.

It seems that the current FTA negotiations with the US are undertaken by the Thai government to address this situation by bringing the prices of Thai goods down to levels that are lower than their competitors'. Compared to improving production efficiency, raising standards, or graduating to higher-technology products, this line of action will not produce a sustainable solution to the problem. On the contrary, it may lead to a "race to the bottom", where each developing country tries to make their goods the cheapest in order to maintain export volume. In many cases, lowering prices is not only a result of reductions in tariffs but also in production costs through wage suppression, lower labour standards, lack of appropriate environmental safeguards, and so on, all of which are factors that in themselves hinder development.

An FTA will, without doubt, increase the volume of trade between the two countries. Equally without doubt, the greatest beneficiaries will be exporters of the two countries. While the government has insisted that Thai exports will receive a big boost from the FTA, a study by the Thailand Research and Development Institute (TDRI) predicted that the resulting economic growth would be less than 2 percent and would be attained only 3 years after the FTA came into effect. The short term growth-accelerating function of the FTA is, therefore, not as great as it is claimed to be. Thus the need to conclude the negotiations quickly cannot be substantiated.

The Federation of Thai Industries predicted that the opening of markets under the FTA would have positive effects on labour-intensive industries, such as textiles and garments, auto assembly and parts, gems and jewelry, shoes and leather products. Others that would be negatively affected

include machinery, electronics and telecommunications, finance and banking, and services.

These forecasts correspond with TDRI's findings that Thailand will be able to export more basic goods while the US would be able to export more high technology goods. Such an exchange of goods between developing and developed countries, however, would only make it more difficult for Thailand to develop its domestic industries further through the use of higher technology, which add more value to products, simply because the domestic industries would not be able to compete with US products during the initial period of market opening. As such, trade liberalization is not a process that contributes toward industrial development, but can instead be an obstacle, with the effect of trapping a developing country like Thailand in a perpetual state of under-development.

Two of the reasons for trade liberalization are in contradiction with one another. The first is the claim that free competition will force domestic producers to improve their productivity and lower their costs of production in order to remain in business. The second is that bilateral free trade agreements between countries that produce different and complementary products will guarantee benefits for both parties. A study has shown that Thai and US products are complementary in some sectors. Thus, it was proclaimed an FTA with the US would not have a large negative impact, while Thai producers in sectors with complementary products would benefit from access to cheaper raw materials. The benefit in this case is derived from lack of competition. In reality, we know that some industries will be competing, while some will be complementary. There is no doubt that some industries will be ready to compete, while some will still require protection. Until now, there has been no study that is accessible to the public that shows what competition and/or complementarity would take place and whether this would be appropriate to the conditions of the industries involved.

THE AGRICULTURE SECTOR

Some of the issues in the agriculture sector are raised here to illustrate the international trade mechanisms at play, especially between Thailand and the US.

In general, the focus of an FTA is the reduction of customs tariffs on goods as they cross the borders of the two countries involved (*market access*). In the case of the US and Thailand, there is cause to include non-tariff measures (NTMs) in the negotiation as well. The fact is that the average tariffs on imports into the US are already on the low side, about 7 percent, except for certain fruits and vegetables. In all, US tariffs on agricultural goods fall between 0-10 percent while Thailand's are 24 percent on average. Reductions would, therefore, result in bigger cuts for Thailand, with benefits accruing only on the US side.

The US, on the other hand, has been applying non-tariff measures on imports, Sanitary and Phytosanitary Standards (SPS) being the one most applied to agricultural goods and commodities. In 1999, 260 products from Thailand were subjected to NTMs by the US; 35 percent of the products failed to meet SPS. In 2001, 1,340 products from Thailand were quarantined at the port of entry in the US, of which about 60 percent were agricultural goods.

Also important are the large subsidies the US government has been providing to its agricultural producers. Of special concern are the subsidies granted to rice producers. Thai rice exporters have continuously pressured the Thai government to keep demands for the reduction of such subsidies on the trade negotiations agenda. The government cites this reduction as one of the benefits of the FTA with the US.

The study by TDRI predicted that the FTA should yield an increase of between 5-22 percent in agricultural exports from Thailand to the US, and the products most likely to benefit from the increase were rice, prawns, frozen seafood, rubber, fruits and vegetables, sugar, and canned fish. It was not made clear whether the bases for the calculation included other factors, especially NTMs and subsidies reduction, or

tariff reductions alone.

In reality, it is unlikely that NTMs will feature in the negotiations because they come in many various forms. In many cases, it is at the discretion of the US authorities whether a ban or quarantine is imposed on any product. Agricultural subsidies, on the other hand, are politically sensitive issues. Moreover, on the practical side, the likelihood of Thailand being able to extract concessions on US subsidies is remote since the subsidies are not conditioned on country of destination. The US would not be able to reduce subsidies on certain agricultural products in order to benefit Thailand alone, which is different from the cases of tariff and NTM reductions. The effect of subsidies reduction would be more like a general market opening for all countries that trade with the US in those particular products.

In any case, the same study by the TDRI also predicted that imports from the US into Thailand will also rise by 4-67 percent.

SERVICE SECTOR

The service sector at the national and international level becomes increasingly important and shows the highest growth. Many people agree that the US has an advantage in services while Thailand would be put into a difficult position regarding this issue. For example, Thai banking and financial institutions can hardly compete with those from the US because of a lack of specialisation and the huge burden of non-performing loans on Thai banks. The decision to liberalise services needs to take into account the Treaty of Amity signed in 1966 between the US and Thailand. This treaty allows US citizens and legal entities the same rights as Thais in investment and business, excluding 6 sectors: 1) communications 2) transportation 3) fiduciary functions 4) banking involving depository functions 5) domestic trade in indigenous agricultural products 6) exploitation of land and other natural resources.

A study on the FTA between the US and Singapore reveals that many issues outside the Treaty of Amity were covered under the agreement

such as domestic legislation and regulation including public services. This means that any privatised or corporatized state-owned enterprise will automatically fall under the FTA conditions. Moreover, US private service providers in agreed sectors will be accorded National Treatment, to enjoy the same rights as Thai service providers in competing against and buying stocks of state-owned enterprises, regardless of their privatisation status.

Another highly important issue is that the Thai government will be completely unable to control the transfer of funds relating to US service companies. This condition is beyond the substance of the current treaty.

Furthermore, while the General Agreement on Trade in Services (GATS) of the WTO requires each member country to comply only when a particular service sector is committed, the FTA in contrast asks for an automatic commitment. Additionally, under GATS, a country is allowed to control capital transfers of transnational companies if facing a problem of balance of payment. But in the FTA, this is not possible.

Another concern is that the FTA could lead to a monopoly in some service sectors where domestic companies are not competitive and alternative service providers from other countries are absent from the market.

The service sectors in the FTA cover not only transportation, communications, tourism, electricity, water services, and health care, which are all essential to people's lives, but also other sectors tied to ethics and cultural identity such as education and training courses, libraries and museums. These services should not be commercialised for business to pursue maximum profits. Service liberalisation under the FTA threatens the security of poor people in their daily lives and is likely to ruin the values system and culture of the country.

INVESTMENT

As with services, the Treaty of Amity is significant for the investment negotiations because under the treaty, Thailand give investment privileges to individuals and legal entities of the US outside 6 reserved sectors. Over 1,200 US-based companies are now benefiting from this. However as a member of the WTO, Thailand has to apply Most Favoured Nation treatment (MFN). This requires the Thai government to treat individuals and legal entities of all WTO members in an equal manner, although Thailand was allowed to delay implementation for 10 years, ending in 2005.

This could prove to be one factor driving the FTA negotiations between Thailand and the US, because the Thai government would not want to extend this right to the remaining 146 WTO members, and the US does not want to give up the right.

There is a high possibility that the FTA will be more comprehensive in scope and deeper in level than the Treaty of Amity. The FTA aims to provide protection to investors. For example, the host country cannot restrict the transfer of profits or earnings of multinational corporations; set requirements on technology transfer, export performance or local content; give preference to domestic service providers and producers; control capital inflows, etc. Furthermore, the term 'investment' includes investment in securities and other types of ownership. Investment liberalisation is a highly controversial issue between developed and developing countries at the multilateral level. The agreement is seen to favour developed countries, where most investment comes from, while poor countries, normally capital recipients, will lose their capacity to select and control foreign investors and investment.

Several studies on foreign direct investment (*long-term investments, which are perceived to be more beneficial than short-term investments*) conducted by the United Nations reinforce the idea that the degree to which a host country benefits from foreign investment depends on that country's ability to establish investment conditions that will support developmental goals. The collapse of the WTO Ministerial Meeting of

10-14 September 2003 in Cancun, Mexico, was partly due to conflicts over the investment issue. While investment liberalisation was rejected at the global level, it is very likely that Thailand will agree to liberalise investment under the FTA with the US. Such an agreement will directly hinder and even nullify attempts to attract quality investment, a current objective of the Board of Investment (BOI).

Small and Medium Enterprises (SMEs) will be the most severely impacted because the entry of multinational companies with enormous capital will make competition highly asymmetric.

The most contentious issue is that under the FTA, investment covers not only long-term investment, but also short term, most of which are unstable speculation funds. Short-term investment was indeed the key reason leading to Thailand's 1997 economic crisis. Therefore, it is highly risky for Thailand to accept what the US is pushing forward.

Under the FTA, the US private investment is protected from state dispossession or other measures which may cause income loss for the companies. These unspecified *"other measures"* create difficulties for the Thai government and concerned authorities in implementing domestic investment policies for fear of negatively affecting US investment. In any US companies see their income decline or profits lower than expected, they can sue the Thai government, with disputes to be settled by a mechanism set up under the FTA.

THE NEGOTIATION PROCESS

It is surprising that the negotiations the US has made with different countries—whether bilateral agreements with Singapore and Chile, Central American Free Trade Agreement (CAFTA), or the Free Trade Agreement of the Americas (FTAA) currently being negotiated—are of similar pattern. The similarity is so obvious that it has been said the agreements are a blueprint designed by the US rather than the outcome of negotiations by two trade partners with equal bargaining power.

Mostly, the US will use its agricultural market as an incentive to get the desired intellectual property rights protection, investment rights and service market access in the countries of its trading partners. Even with Australia, the US, urged by the drug companies, used its sugar market as a Trojan horse for sabotaging Australia's health security system. In the end, the US did not provide Australia with any increased access to its sugar market.

In the past, the US would start with its extreme self-seeking proposals. Then during the negotiations, it will withdraw its demands depending on how much bargaining power its trading partners have. In Thailand's case, concerned government agencies clearly admitted to being on the defensive. Likewise, the US officials had pointed out that whether the negotiations would be concluded quickly or slowly depended on the degree of Thailand's resistance. Therefore, it is not true that fast negotiations will bring about the so-called *"economy of speed"*. The faster the negotiations can be concluded, the more Thailand will stand to lose. Thailand's disadvantage will become greater by its lack of caution in negotiations. A case in point is Thailand's trade in vegetables and fruits with China. Thailand was so negligent in paying attention to the non-tariff measures (NTMs) that it is now having trouble exporting these products to China.

With countries with strong resistance, the US would propose to *"keep the main agreement proposed by the US, but exceptions will be given to the trading partner to apply for when necessary."* But from the Chile case study, it was found that the exceptions were almost meaningless in practice because of many constraints. Among them was the fact that the exceptions cannot contravene the main agreement. This means that the focus of the negotiations was on the main agreement.

After all, the US does not overlook the WTO and resort to initiating FTAs alone. The US carries out its trade policy of winning market access and monopolizing productive factors in various countries at the same time at all levels: multi-lateral, bilateral and regional. Thus, we must not ignore any part of it. Thailand needs to be extremely careful. An attempt to conclude the negotiations in a short time to bring about a short-term

psychological gain may result in long-term damage, as evidenced in many countries.

CONCLUSION

While it is expected that Thailand will see an increase in its exports to the US due to the FTA, it is likely that imports from the US will also rise even more than exports.

The increase in exports is anticipated mostly in low-tech goods such as agricultural and other basic commodities, while high-tech goods from the US will pour into the Thai market. A concern is that under this situation, the process to shift production to higher value will become even more difficult since the market will be controlled by an industrial country like the US. Nevertheless, if trade liberalisation is postponed, we must recognize that the Thai government must have a domestic industrial development strategy with a clear timeframe.

Regarding agricultural commodities, which are highly important to Thailand, it is apparent that the scene was already set, in the form of subsidies and other non-tariff barriers. The chance of real benefits to Thailand from this sector is near zero.

It is widely known that access to the service market is what the US and other rich countries want because of their better competitiveness. Thailand signed the Treaty of Amity with the US in 1966. Nevertheless, the agreement under the FTA extends beyond the contents of the treaty. Proposed sectors included in the FTA are wider in scope than GATS in the WTO, while rights given to the US investors under the FTA are greater and in many cases remain so unclear that the Thai government may be barred from using certain regulatory measures due to the possibility of legal challenge from the US private sector.

The government needs to handle negotiations in a transparent manner. Appropriate measures must be put in place to include public participation. It is inadequate to argue that no legal provisions exist. If this concerns

the majority's interest and the public is informed of the facts and details of the negotiations, the government will get more support. Its standpoint in the negotiations will gain more momentum. This matter will after all affect all sectors of society. It is therefore too important to give the absolute right to decide to a certain group of people.

ALTERNATIVES

International trade can create enormous benefits to the country; but it has to be carefully managed. Rushed entry into the FTA with developed countries like the US may negatively affect developmental goals because of the incompatibility in competitive advantage, be it measured from capital or technology.

If Thailand wants to build its competitiveness, it should ensure gradual liberalisation in sectors which have achieved competitiveness. Free trade areas with countries at the same level of development, particularly within this region, should be seriously considered. An ASEAN free trade agreement should aim to strengthen and create self-reliance within the Southeast Asian region rather than to attract investment from rich countries.

Regarding services, the government should maintain a role in providing basic public utilities necessary to livelihood. However, this should not mean that improvement in state-owned enterprises is not important because many are still inefficient and operating at the expense of their actual owners, that is people.

Agricultural commodities must be considered separately from other commodities and competitiveness should not be the sole principle applied to their trade. This is because market mechanisms are unable to guarantee food security, especially in developed countries where competitive advantage in agriculture is built on subsidies and similar measures.

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THE IMPACT OF BILATERAL FREE TRADE AGREEMENTS
ON THE NATIONAL HEALTH SECURITY SYSTEM



SAREE AONGSOMWANG¹

INTRODUCTION

This report aims at assessing the impact of the government's dual policy on Thai healthcare system. The government is promoting its national health security policy known to the public as the "30 baht Scheme". And at the same time, as part of free trade agreements, it is trying to promote Thailand as a medical hub where foreign customers can enjoy health tourism with services ranging from healthcare for the elderly, dental care, spa treatment and traditional Thai massage.

These two policies have to be carried out by the same group of health workers whose number is now very limited, especially in rural areas.

On the one hand, the national health scheme which was put in place under the National Health Security Act in November 2002 still needs many adjustments and modifications both in terms of standards and quality of healthcare services and customer satisfaction. Public expectations must also be met since 50,000 people had proposed this law before the Thai Rak Thai Party took the idea and made it their policy.² This easier access to the medical services has resulted in increased workload among limited number of medical personnel.

On the other hand, medical services are viewed as a major source of income for the country. To illustrate, if there are 850,000 customers seeking dental services and medical check-ups, the expected income will be as high as 19,635 million baht while spa, traditional massages and health tourism may generate an income of 16,989 million baht as projected in 2008.

These two policies require a large number of personnel prompting health service providers to use every measure to attract new staff. During the economical crisis in 1999, almost 13% of doctors left private hospitals for state-run hospitals. However, later when the economy improved, doctors serving in rural areas started seeking employment in private hospitals instead. In 2002 around 32% of 900 new medical graduates joined the private sector.³

At the moment there are only 1,400 doctors working in the rural areas. We are far from reaching the ideal 1:1500 doctor per patient ratio and it will take at least 10 years before we will have enough doctors. According to a study conducted in 2004 by Faculty of Economics, Thammasat University, the problem might deteriorate since future medical graduates may serve foreign customers rather than Thais because around 200 to 400 doctors are needed for every 100,000 foreign patients.⁴ Questions also arise about the fair distribution of income from health-related businesses. Will the income be circulated in the country? Is it total foreign investment? Do the benefits lie only with the main stakeholders involved in national politics?

THAI NATIONAL HEALTH CARE SYSTEMS BEFORE THE THAI NATIONAL HEALTH SECURITY SYSTEM IN 2001⁵

Article 52 of the Thai Constitution states, *“every person has an equal right in getting standard healthcare service. The impoverished are entitled to free medical care from state hospitals”*. The government must provide universal health coverage for its people, as it is their basic rights. Before the major health reform in 2001, healthcare coverage schemes available were:

1. Civil Service Medical benefit Scheme (CSMBS) for government and state enterprises officials and their families

2. Compulsory Social Security System (SSS) for employees in private companies under the Social Security Act
3. Welfare for people with less income and people in need, such as Health Welfare Plan or Health Card scheme
4. Specific health insurance such as the protection under the Motor Vehicle Accident Victims Act
5. Private health insurance

The variety of health care schemes resulted in great discrepancies in beneficiary claims among Thai people. More importantly, more than 32% of Thais were not under any of these schemes.

PROBLEMS BEFORE THE REFORM IN 2001

1. Some groups of people such as farmers, freelancers and people who work from home were not covered by any of the schemes or insurance plans. They could not afford to pay for the treatment of serious illnesses such as cancer or other high cost care or other illnesses that require surgery. This either leads to family debt or no access to the treatment at all.
2. There were discrepancies among different insurance plans both in terms of the health benefit package, budget per capitation and government financial support and unfair allocation of resources. Plans with sufficient financial support from the government encouraged hospitals to provide good services, while plans with less support resulted in substandard services because healthcare facilities were concerned about the costs for which they might have to be responsible.
3. Inappropriate distribution of public health resources, such as the duplication of health insurance plans, resulted in higher national health expenses.
4. These health plans only had curative focus; covering only illnesses and medical services not prevention and health promotion. This is not what comprehensive health insurance means.

5. The public had no involvement in the health insurance system which relied solely on management and supervision by the government.

These problems truly reflected the need for a reform both in terms of services, administration, financial support, and distribution of resources. Thus, the people, various non-government organisations, some government agencies, academics, technical experts, and politicians campaigned for the implementation of a universal health coverage plan.

FREE TRADE AGREEMENTS ON SERVICES AND POLICIES TO ENCOURAGE HEALTH SERVICE DEMAND FROM FOREIGNERS

1. Japan-Thailand Economic Partnership Agreement (JTEPA)

Agreements reached at the third meeting on Japan-Thailand Economic Partnership Agreement held in Cha-am, Phetchaburi from 16 to 18 June 2004 can be summarized as follows:

“In liberalisation in services where Thailand has high competitiveness such as health, even though right now the Japanese are taking a tough attitude and are still not listening to the Thai proposals, the Thai team is pushing on. Professor Dr. Narong Nimsakul, a graduate from Japan and the honorary president of the Medical Laser Association, has been invited to the meeting to convince the Japanese team that both sides would benefit from the agreement. However, they kept on saying no so the Thai team asked their Japanese counterpart to consider the benefits for the public rather than the interests of particular groups of people. The Thai team also plans to lobby the Japanese public directly.”

In conclusion, Thai government wants liberalisation and co-operation regarding agricultural products; possibility of letting Japanese people seek medical services in Thailand and submit claims to the Japanese welfare

fund; and permission for Thai businesses or workers to trade or work in Japan. Mutual benefits are emphasized.⁶

2. Centre of Excellent Health in Asia

Sudarat Keyuraphan, former Public Health Minister, said the government has made it clear that Thailand will become a World Health Service Centre starting as a Centre of Excellent Health in Asia. More than 2.6 billion baht has been assigned for this 5-year plan (2004-2008) with three main business areas.

1. Health service providers targeting medical excellence with an estimated income of 142.6 billion baht.
2. Health-related services such as spa, Thai massage and health tourism with an estimated income of 50.4 billion baht.
3. Health and herbal products with an estimated income of 17.5 billion baht.⁷

Different views on the policy

1. In their research *“Impacts of the bilateral free trade agreement regarding health services on Thailand”*, Dr. Supasit Pannarunothai and Dr. Kanchit Suknak have made it clear that the plan to make Thailand a medical hub for foreign patients will cause a brain drain toward the private sector, generating a loss of 420-1,260 million baht in the investment for the education of doctors for every 100,000 patients every year. The quality of health care in the universal health coverage plan will deteriorate, driving people to private hospitals. This, of course, will affect impoverished people.
2. The Thai Chamber of Commerce *“agrees with the plan for free trade in medical services, dental care, hospitals, traditional massage, care for the elderly, health services and spas, including other service-oriented businesses such as construction, cooking schools, tourism, sports, garages, salons, fashion houses and agency for housemaids.”* Japanese patients should come for treatment in Thailand with their medical expenses paid for by their government and Thai semi-skilled workers should be able to work in Japan.⁸

3. Secretary of the Thai Medical Council, Dr. Pinit Kulawanit made some interesting points regarding the medical hub plan. “We need to think seriously and carefully about this before we ask foreigners to seek medical treatment here. At present, Thailand has very few doctors, approximately 27,000 or 1 doctor for 2,400 people. This is very few compared to Singapore, Hong Kong, America and countries in Europe. We have to ask these questions: What is going to happen if foreigners come while there aren’t enough doctors? Who is gaining and who is losing here? Surely, private hospitals and doctors working for them will benefit from this. But imagine what would happen when there are a lot of patients at the hospitals and there aren’t enough doctors. State doctors will leave their job. Who will be treating people under the health coverage scheme? Who will be the teachers for doctors?”⁹
4. Private hospitals such as Bumrungrat Hospital, Samitivej Hospital, and Bangkok Hospital, as well as some regional hospitals, are responding actively to the government’s policy to make Thailand an Asian Medical Hub.¹⁰

Current service usage by foreigners

According to a study conducted by the Ministry of Commerce, in 2001 there were as many as 470,000 foreigners seeking medical services in 7 private hospitals in Thailand, a 38 percent increase from the previous year. In 2002, around 630,000 people visited 33 private hospitals, generating 339.66 billion baht income. The government then decided to make Thailand the medical hub of Asia. The plan will start first in the four major provinces: Bangkok, Phuket, Chiang Mai and Surat Thani.

Increased need for doctors from the National Health Security scheme

Around 47 million gold cards (*30-baht-scheme card*) in the national health security scheme have been used 120 million times. All these 120 million visits to doctors were made for medical reasons. None of these cases involved patients visiting hospital, to talk with nurses or to meet up

with friends, as in Japan. That means a greater workload for health workers. Some of these visits may not be necessary, and illnesses such as colds, respiratory illnesses, or diarrhoea can be cured by more rest or better self-care.

We have to admit that people have not been encouraged to rely on themselves in health maintenance. Advertisements repeatedly tell people “*to see their doctors*” while hospitals are saying “*Your health is my responsibility*”. It is not fair to blame patients alone for relying so much on their doctors.

Distribution of doctors at present

Budget is an important factor in the distribution of personnel. In the past, financial support was allocated according to the size of the hospital. Under the new scheme, budgeting has become more patient-centred with money allocated according to the number of people in the catchment area.

This change in budget allocation made possible the reform and better distribution of resources. As a result, some hospitals in provinces such as in Phang-nga, Ratchaburi, Uthai Thani, and in many provinces in the central region such as Singburi, Nakhon Nayok, and Ang Thong stopped recruiting new employees. The number of community doctors who continued their education as general practitioners increased from 20-25 to 250. Meanwhile, doctors from general and centre hospitals had a lower quota for personnel from 600-700 to 250. Some hospitals with fewer personnel had to recruit health workers from other institutes. Sisaket sent two buses to pick up new nursing graduates from Khon Kaen.¹¹

However, since financial year 2003, budget was again allocated according to hospital size, resulting in fewer community doctors. In Phuket the number decreased by half, while the number of doctors in Chumphon went down 30 percent. In the case of Nahaew Hospital in Loei, the number of doctors decreased from 2 to 1.¹² This has made Thailand once again a country of double standards, where any differences between city and rural areas are considered acceptable.

Table 1: Distribution of doctors and health workers in public hospitals

	Population**	Number of doctors and health workers in public hospitals			
		Doctors	Dentists	Pharmacists	Nurses*
1. Bangkok	5,782,159	2,971 *** 5,406	202 *** 1,749	325 *** 7,155	14,670
2. Khon Kaen	2,546,211	623	61	129	2,247
3. Chiang Mai	1,595,855	741	64	167	3,277
4. Sisaket	1,443,776	100	36	74	1,023
5. Phetchabun	1,036,526	88	24	49	841
6. Surat Thani	NA	154	58	92	1,524
7. Ratchaburi	821,603	244	37	81	1,886
8. Nong Bua Lamphu	370,985	38	14	19	294
9. Phuket	270,438	74	10	27	453
10. Singburi	223,667	57	13	33	809

Notes: Information on population and medical personnel in 2003 as of 17 July 2003

* Professional nurses

** 1999 figures

*** Both private and public hospital personnel, 2003 figures

Table 2. Distribution of specialists in provincial hospitals¹³

Province	Population	Paediatricians	Orthopaedists	Opticians
1. Singburi	223,667	7+1	5+2	4+1
2. Phetchabun	1,036,526	1+1	2+1	2+1
3. Ratchaburi	821,603	25+1	14+5	9+1
4. Khon Kaen	2,546,211	18	3+1	2+2
5. Nong Bua Lamphu	370,985	2+0	1+0	0+1
6. Sisaket	1,443,776	4+0	1+2	2+1

Note: + means the anticipated number of expert doctors and the quota for further study

IMPACTS OF MOVING PERSONNEL TOWARD THE PRIVATE SECTOR

If more patients come from other countries, there will be a virtual brain drain from state hospitals, especially rural ones. As mentioned before, Thailand is projected to lose around 420 million to 1.26 billion baht per year for every 100,000 foreign patients.

Pro:

Rational use and distribution of resources

Good health care insurance systems can bring about better monitoring of spending. Unnecessary technology and medications have been common in Thai hospitals. It became so usual that now people complain that they are getting fewer and lower quality drugs, without realizing that they have been using more than they need.

In the past the services depended on the potential of the hospital directors. The system did not care where computerized X-ray machines were available. Bangkok alone has more X-ray machines than in the whole of the United Kingdom. The system thus may force health service providers to operate with more sense, and equip users with knowledge and negotiating power.

Con:

Unnecessary treatment and technology and sub-standard health coverage plan while hospitals use every measure to increase their budget.

Non-governmental organizations and some academics are against the idea of getting people to pay more than 30 baht to health service providers. They believe it could lead to double standards in services. One example is eye surgery for the elderly. Many lenses are available on the market and regular ones are covered in the health coverage plan. How do we prevent situations where hospitals try to avoid providing the covered service or where patients are told to wait if they want the regular lenses but will get immediate service if they choose folding lenses and are

willing to pay for them? Health workers would cite many reasons to convince patients into buying folding lenses, making the covered service seem second-class. People are convinced they need to pay more in order to have decent service. This is similar to the case of different drugs in different health coverage systems.¹⁴

IMPACT ON THAI PATIENTS: NUMBER OF DENTAL CHAIRS IS NOT ENOUGH TO SERVE FOREIGN PATIENTS ALONE

Research results indicate that dentists in Phuket, one of the pilot provinces, believe the plan will not affect the use of services by Thai people. They expect 5 percent of tourists will use the service, or 72,671 out of 1,453,426 people. Calculating from the number of dental chairs and time spent on one patient, Phuket can now accommodate 60,840 patients. If more foreigners seek dental treatment, Thai people will certainly be affected.¹⁵

IMPACT ON THE EFFECTIVENESS OF TREATMENT

One thing that should be clear to everyone is the waiting time for non-urgent cases due to shortage of personnel. The number of doctors in the health coverage plan will be less because some are serving foreign patients. One current example is artificial lens surgery. The waiting time in the regular system is 3-6 months, while patients in private clinics who pay almost 25,000 baht for the service can have the operation the next day.

PROPOSALS FOR THE FREE-TRADE AGREEMENTS ON HEALTH SERVICES

The government keeps telling the public that they will benefit from the agreements. Deputy Minister Korn Dhabbarangsi said, *“The signing of the agreements will be beneficial for consumers. We will be able to buy cheap apples and peaches.”* The report doesn't indicate whether prices will be lower or not. However, the price for consumers is not the only consideration. These agreements affect a great number of people such as farmers who grow garlic, onions and some cold climate fruits. Another

example is the monopoly of drugs as part of the patent system agreed at the international level that affects millions of HIV infected patients due to monopolized price.

It is widely known that drug monopolies prevent patients from getting the medication necessary for their survival. Between 2001-2002 only 3,500 HIV-positive people had access to anti-virus drugs under the government scheme because of the cost of 10,000 baht a month or 120,000 baht a year per person.¹⁵ However, the cost went down dramatically to 1,200 baht a year when the Government Pharmaceutical Organisation produced its own drug, GPO-VIR.¹⁶

Even with the new cost, only 1,000 HIV-infected people are now able to pay for the drugs under both private and public schemes.¹⁷ This does not include around 3,000 patients who pay their own medical bills even though they are under various types of health coverage because they do not want their friends or family to know about their illness.

Under pressure from People Living with HIV groups and non-governmental organisations dealing with Aids and cheaper drugs, the AIDS Division, Infectious Disease Control Department was able to accommodate around 50,000 Aids patients in fiscal year 2004, including 8,000 supported by World AIDS Fund. However, 70,000 to 90,000 people out of 120,000 to 140,000 people still have no access to the medication.¹⁸

Problems related to medication in other cases such as cancer, mental or other chronic diseases may exist but no systematic study has been done on them. There are also other safety issues about imported products such as genetically modified food, substandard electrical appliances and chemical residues in agricultural products.

Since there are impacts from both the policy to include health services in the bilateral free-trade agreement and to make Thailand Asia's medical hub, there is a need to strengthen and reform the national health security scheme and the distribution of medical personnel to accommodate people's needs.

RECOMMENDATIONS

1. Budget and resource reform

Budgets must be allocated directly to the primary care unit provider or at least to provincial authorities to allow fair distribution of health personnel and to motivate health workers in community hospitals.

Due to confusion and vagueness about the role of the Ministry of Health as service provider, the budget allocation system based on population in the catchment area has been modified. This directly affects the health reform plan and distribution of health workers. The national health security law has been in effect for only one to two years while the 30 baht scheme has been in effect for more than 3 years.

In England, when a national health service was first implemented, some hospitals located on the same street were told to close down. But in Thailand when hospitals with medical schools such as Sirirat, Ramathibodi and Chulalongkorn's plan to close their outpatient services, they came under strong criticisms. It is not easy to make sudden changes to long-established practices. Answers regarding the beneficiary of the change should be clear.

2. Reform of attitudes toward health

According to the National Health Act, "*public health service is not for commercial purposes*". This is in line with the United Nations' resolution that any enterprises related to important services such as water and electricity are "*humanitarian enterprises*" which must not have the purpose of maximizing profits.

Under the Doha agreement, European countries have agreed to seek a maximum profit of only 3% from the export of common drugs produced in the region.

Non-governmental organisations have asked the Government Pharmaceutical Organisation to seek no profit from the production

and sale of necessary drugs to increase access to drugs or drug products.

3. Participation from different groups

At present policy decision making is not carried out according to Article 57 of the Thai Constitution which requires the establishment of an independent body consisting of consumers' representatives to give opinions and comments on policies, laws and other consumer protection issues. So far no such independent body has been established.

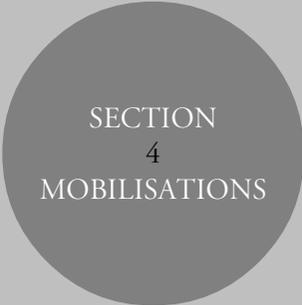
4. Recommended studies to be carried out on the impact

- Upgrading of medical and public health service standards to prevent double standards in the use of drugs and the treatment in medical institutions.
- Empowering consumers by providing basic health education and encouraging people to take better care of themselves: prevention not curative concept.
- Imports of medical personnel.

5. Constant updates of situations on issues related to the health coverage plan should be made available to the public

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- 1 Director of Foundation for Consumers and secretary of Confederation of Consumer Organizations.
- 2 The number of visits has increased from 2.846 times/person/year in 2001 to 3.547 times/person/year in 2003.
- 3 Dr. Kriangsak Wacharanukunkiat 2004 'The Power of Wisdom towards the Development of Health Insurance for All.'
- 4 Figures taken from data on p 49: '100,000 foreign patients will require approximately 200-400 doctors', Dr Suphasit Phanarunothai and Khanchit Sukmak 'Impact of Trade Liberalization in Medical Services on Thailand', 2004 Annual Academic Seminar, Faculty of Economics, Thammasat University, 17 August 2004.
- 5 Handbook on National Health Insurance, People's Version, produced by the Foundation for Consumers supported by the National Health Insurance Office.
- 6 Phisan Manawat, Deputy Permanent Secretary of the Ministry of Public Health, continues as the chair of the Japan-Thailand Economic Partnership Agreement negotiating committee.
- 7 Ministry of Public Health website and Thai Rath newspaper, 30 Sept 2004.
- 8 Matichon, 28 June 2004.
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SECTION
4
MOBILISATIONS

THE PEOPLE'S MOVEMENT AGAINST
THE THAI-US FREE TRADE AGREEMENT (FTA)
NEGOTIATIONS



NIRAMON YUWANABOON¹

APEC: THE PRELIMINARY NEGOTIATIONS TOWARDS THE
THAI-US FTA

Thailand hosted the APEC (*Asia Pacific Economic Cooperation*) Summit on 20-21 October 2003. In September 2003, it had been reported that the leaders of the 21 economies of Asia and the Pacific who were to attend the meeting—particularly such superpowers as the US, China, Russia and Japan—aimed to use the summit to determine a common position on achieving trade liberalization, mutually agreed in the Bogor Goal, in the Asia Pacific region.² The Goal aimed at the liberalization of investment in the APEC region by 2010 (*in developed nations*) and 2020 (*in developing countries*). The Osaka Action Agenda was adopted as a 'blueprint' for this goal to be achieved within the scheduled time frame.³ Shortly before the summit began, Thailand signed its tariff reduction agreement on vegetable and fruit products with China on 18 June 2003. The gist of the agreement covered tariff reductions to 0 percent in all categories of vegetable and fruit products according to the Customs Tariff Sections 07-08 by 1 October 2003. During the welcome given to the participating APEC ministers, Prime Minister Thaksin Shinawatra also signed the Thai-Indian Free Trade Agreement with Atal Behari Vajpayee, India's Prime Minister, on 8 October 2003. The agreement would come

into effect in March 2004.⁴ In addition, during this APEC meeting the Thai government would organize unofficial bilateral free trade agreement negotiations with the US President George W Bush and leaders of other countries.⁵

TRADE LIBERALIZATION: HUGE INTERESTS CRAVED BY SUPERPOWERS

Singapore was the first Southeast Asian country that turned to bilateralism, as the US was its major export market. In the wake of the economic crisis in Asia in 1997, Singapore realized that it could not depend on the ASEAN FTA initiative, whereas the AFTA cooperation stood still. Singapore, therefore, decided to launch its FTA attempt with the US, New Zealand, Australia, and Japan.

The Thai government, headed by Thaksin Shinawatra, intended to follow in Singapore's footsteps - making bilateral FTAs. Thaksin aimed to bring in US\$2,000 trade income from Thai-India and Thai-China trade in 2004, an almost 100-percent increase from the income made in 2003, which accounted for about US\$1,200. The FTA negotiations with Japan and the US should be concluded by 2004. It was expected that clarifications with the two countries should come up in 2003 and unofficial meetings with Singapore, Brunei, the Philippines and Cambodia were held during the ASEAN summit meeting as well.⁶

Although Dr. Mahatir Mohamad, Malaysia's Prime Minister at that time, attempted to incorporate fair trade discussions in the APEC summit meeting and attracted media coverage;⁷ more pressure was apparently applied to the promotion of free trade. The then minister of commerce Adisai Bhodharamik revealed that the government was about urge APEC member nations to speed up the establishment of a free trade area five years sooner than previously scheduled.⁸ Not only did Adisai have bilateral negotiations with Robert B. Zoellick, the US trade representative, but he also pointed out that many aspects of Thai-US cooperation would be reported to this APEC summit meeting, including the FTA initiative with substantive negotiations scheduled for early 2004.⁹

Singapore and Thailand were not the only two ASEAN countries trying to speed up bilateral FTA negotiations. Dr. Niphon Phuaphongsakorn, senior advisor of the Thailand Development Research Institute (TDRI), indicated that China and Japan were doing likewise because immense interests were involved.¹⁰

The merging of the world's second largest economic area—the six Asian nations and the 10 member countries of ASEAN: Indonesia, Singapore, Malaysia, Brunei, the Philippines, Thailand, Cambodia, Laos, Myanmar, and Vietnam—would generate huge benefits from free trade worth more than US\$750 billion annually. This figure was similar to Japan's trade income, but these countries had four times more people than Japan. So China wanted to have its FTA deals with six ASEAN countries concluded by 2010 and signed agreements with the remaining four nations by 2015. Japan also wanted to increase its industrial competitiveness at a global level, but it could not move as fast as China.

BILATERAL FREE TRADE NEGOTIATIONS: US STRATEGY AFTER ITS DEFEAT AT WTO

The US itself wanted to exploit the gains derived from trade liberalization in this region after its efforts to conclude the trade liberalization negotiations in the latest WTO round at Doha had failed. Prof. Rangsan Thanaphornphan pointed out that economic benefits were not the only goals of the US's bilateral trade deals. What was more important to the US were political interests.¹¹

THE FORMATION OF THE THAI-US FTA WATCH GROUP

TDRI researched the pros and cons of the Thai-US FTA, based on the Singapore-US FTA details, and organized a discussion forum on the research study in September 2003. Attending the forum, academics and development activists working on international policies and WTO agreements expressed their concerns over the implications of the Thai-US FTA impact. Apart from the opening of the market by tariff

reduction, the Singapore-US FTA obligations had wider effects than those required by problematic WTO agreements, which were still in dispute among member countries. These included, for instance, the agreements on intellectual property rights, and liberalization of finance, services and investment.

On 10 October 2004, the four Senate committees on foreign affairs, agriculture, finance, banking and financial institutes, and economic, commercial and industrial affairs held a joint press conference on Thailand's FTA. Senator Kraisaak Choonhavan, chair of the Senate foreign affairs committee stated: *"It should be noted that over the past two years, Thailand has signed FTAs with China, India, Australia, ASEAN and other countries. This has been very quick. But Thai farmers were ignorant of the matter and there has never been any public education on it. Only speculative benefits were explained."*¹²

On 13 October 2003, the People's FTA Study Group (FTA Watch) hosted a press conference¹³ in support of the position of the four Senate committees. The group pointed out that the government often talked about the benefits of FTAs, but in fact, serious and widespread negative impacts had been suffered by the countries already under FTA obligations and some of these negative impacts were present in Thailand. Of particular concern was the focus in the Thai-US FTA on three areas: liberalization of investment including the service sector; information technology and biotechnology; and intellectual property rights. Thailand's national sovereignty and judicial independence would be jeopardized. All Thai people ought to participate in the FTA deal, urged FTA Watch, which offered to mediate with the public and academic institutions to undertake a profound analysis of the issue. The group said it would organize public discussions to enable every public sector to participate. Such activity would be started in cooperation with the public in the country's four regions after the end of the APEC summit meeting.

On 17 October 2003, in a discussion on *"What will Thais get out of the APEC summit"* Jacques-Chai Chomthongdi stressed that the APEC meeting had two major objectives: to increase exports and liberalize investment. He further elaborated that if there are import tariff reductions

but no reduction in subsidies for the farmers in developed countries, Thai farmers would not get any benefit in the long run. This was because Thailand would be made to export the same old farm products, such as Hom Mali (*fragrant*) rice, whereas high-tech products would still be exported by developed countries. And the loosening of restrictions on investment was seen as providing a privilege for multinational capital to exploit Thailand's national interests.¹⁴

In late 2003, Thai society did not raise any questions about the main thrust of the APEC summit meeting and FTA deals. While TDRI played a rubber stamp role in verifying such agreements, Thai government agencies were ordered to devise terms of reference and to evaluate deals in accordance with the Singapore Model. The Deputy Director-General of the Trade Negotiation Department at that time even stated: *"Thailand has to adjust its positions as the US's 26th trading partner and I believe the FTA deal will help promote Thailand as one of the top ten exporters to the US."* But at a practical level, government officials had very little information and the committee for international economic policy failed to examine the issue despite its being put on the agenda.

The Thai-US FTA needed more serious scrutiny because of the glaring adverse effects resulting from the Thai-US Trade and Investment Framework Agreement (TIFA) signed by Thailand's Minister of Commerce Adisai Bhodharamik and USTR Robert B. Zoellick on 10 October 2002 during the 10th APEC summit meeting at Los Cabos in Mexico. In addition, the appalling outcomes of the US-Chile and US-Singapore FTAs that had been signed and ratified by the legislatures of both countries, as well as those of the North America Free Trade Area (NAFTA), made it necessary that the agreement's details be disclosed and participation of the civil society increased.

THAI-US FTA NEGOTIATIONS ACCELERATED WITHOUT GROUNDWORK

When the new cabinet was being formed, no members of the coalition parties were appointed as cabinet ministers. The Minister of Commerce Wattana Muangsook, who had been criticized for his close connection with the capitalist group, reiterated that he would continue implementation of ongoing international trade policy, such as enhancing new markets after establishing free trade areas and reducing trade barriers. The new cabinet ministers, who did not belong to the coalition parties, thought that one-party government was necessary as it helped make the administration easier.¹⁵

On 8 November 2003, in his “*Thaksin meets the people*”¹⁶ radio program, Prime Minister Thaksin Shinawatra said that government policy was aimed at establishing free trade areas. The private sector needed to be alert and ready to adapt. The government was prepared to help strengthen the private sector by modifying any unfair regulations, or even tariff rates. Once strong, the private sector would be able to generate employment, increase economic activity and expand exports to earn foreign exchange.

Somkhid Chatusriphithak, the then deputy prime minister, also expressed confidence in the government’s stability, which could be compared with that of Singapore’s. He was evidently in full support of free trade.

“With high political stability, the government can change anything. So, this is a very good chance to transform Thailand into a strong nation. Economic management will fly more quickly next year. Surely, 2004 will see Thailand’s economy flying fast while the government will see to it that all agencies move in a stable manner. The local economy will be made more competitive. Supported by the administration of CEO governors, local trade, agriculture, investment, and tourism will increase so that achieving double-digit GDP growth is not difficult. No time is better than now,” he said.¹⁷

There have been criticisms about Thailand’s lack of preparedness to agree an FTA with any country. Three months after signing an FTA with China, problems did emerge. For example, false statements of product origin

were used to make claims on the rights provided under ASEAN’s Regional Trade Agreement (RTA) framework. Such flaws began to raise concerns over the implications of the upcoming FTAs with more than 10 countries.¹⁸

Phongsak Raktaphongphaisarn, Deputy Minister of Commerce, announced after meeting US Ambassador to Thailand Mr. Darrel N. Johnson that the US would apply an FTA negotiating approach to Thailand similar to the one it used with Singapore. But the negotiations might have more details and take a shorter time than the negotiations with Singapore, probably less than three years.¹⁹

This was consistent with an interview given by Dr. Guntathi Suphamongkol, Thailand’s trade representative responsible for the American and European regions.²⁰ He emphasized that Thailand needed to beware that the US was not interested in an early harvest. Instead, it wanted to conduct comprehensive negotiations first, and then have gradual tariff reductions later. Once the tariff reductions began, no further negotiations would be held.

STAKE-HOLDERS IN THE THAI-US FTA

The Senate Committee on Foreign Affairs organized a discussion on “*Free trade area policy: Ways to negotiate with the US and Australia*”.²¹ Participating in the discussion, Somkiat Tangkijwanich, director of TDRI pointed out that the institute would report to the government that, on the one hand, the bilateral FTA deals would be likely to increase Thailand’s market share. On the other hand, the point of greatest concern was the attempt to conclude the negotiating framework by 2004. Generally, the Thai-US FTA had both advantages and disadvantages.

Investment, intellectual property rights and parcel post services would be the greatest loss to the Thai entrepreneurs and consumers who would be put under the monopoly control of the US. Of particular interest were parcel post services. If Thailand Post Co. had to lose its monopoly control of this service, service providers from other regions, such as Europe, should be allowed to compete with those from the US.

Competitive sectors were telecommunications, procurement and soybean farming, where Thai entrepreneurs stood to lose whereas the Thai consumers would benefit. Only in the automotive and sugar production sectors would the Thai-US FTA be reciprocal to both the entrepreneurs and consumers of both countries. The US had good car production capability while Thailand was good at producing trucks. Thai automotive producers could buy cheaper automobile spare parts and have more varied choices. In sugar production, liberalization would be beneficial because of the subsidy reduction.

Dr Chakkrit Khuanphot, of Sukhothai Thammathirat University's Law Faculty, stated that a significant framework of the US FTA negotiations with its potential partners included investment requirements, trade in services, government procurement, telecommunications and e-commerce, liberalization of GM products, labour and environmental standards, and intellectual property rights protection in cyberspace and in life forms. Many of these issues have not been accepted by the WTO. The European Union, for example, has been strongly opposed GM products. Drug patent protection and patenting of life forms have also been resisted by several countries and consumer groups in Thailand. Additionally, one condition stipulated that intellectual property rights agreements made after 1 January 1995 must conform to the requirements for most favoured nation (MFN) treatment. Thailand's agriculture and textiles sectors were likely to benefit more from the Thai-US FTA. But the lessons learned by Mexico from its NAFTA deal showed that the real benefits did not go to Mexican farmers, who had been turned into waged workers of the multinational agribusiness corporations. American farmers, on the contrary, did not lose anything since the US continued its domestic farm subsidies. Therefore, only big agribusinesses would stand to gain if the Thai-US FTA was endorsed. And in the long run, such gains would not be sustainable.

Wichai Sriprasert, president of the Rice Exporters Association of Thailand, said Thailand's rice exports would not benefit if the US did not stop subsidizing its domestic farm sector, which paid only a one-percent rice tax. There was a slight chance that the US would end such support.

In November 2003, 22 Jacques-Chai Chomthongdi pointed out that Thai garlic was the first agricultural product to be hard hit by the Thai-China FTA. If Thailand could not compete with Chinese produce to the point where domestic production was impossible, Thai garlic growers would follow in the footsteps of Mexican corn farmers, who had been hurt by the NAFTA.

On the same occasion, Chawalit Nim-la-or, Vice President of the Federation of Thai Industries (FTI) for international economics, insisted that the Council took a clear stance on rejecting imports of GM farm products from the US. Thailand was an agricultural country, and the majority of its population worked in the farm sector where GM-related technology was not generally available. If GM farm products were imported, the country's farm sector would be negatively affected.

Keedej Anansiripraphar, Deputy Director of Axa Insurance plc said that with the FTA in place next year, over 40 insurance companies or 56 percent of the total business in the country would be completely wiped out because their capital fund and registered capital would not meet with legal requirements. Compared with its neighbouring countries, Thailand's capacity belonged to the Stone Age. The FTA required that an insurance company had 300-million-baht registered capital and the capital fund must account for at least 20 percent of previous year's insurance premiums. In the first three years, the company must earn 200 million baht in capital fund and 300 million baht of capital fund must be made in five years.²³

Suchart Chandra-nagaraj, president of the Thai Apparel Industry Association, said²⁴ that the FTA with the US must be negotiated with special care, particularly on the identification of the product origin, which the Thai apparel industry could not comply.

THE GOVERNMENT CANNOT MONOPOLIZE THE NATIONAL INTEREST !

A talk between Prof. Rangsan Thanaphornphan and Assoc. Prof. Chakkrit Khuanphot, entitled “*The tunnel vision of globalization,*” was held by Thammasat University’s Faculty of Political Science in cooperation with the Midnight University in late 2003.²⁵

Prof. Rangsan indicated that the politics of bilateral trade negotiations had been pushed forward by interest groups within Thailand. These groups were so powerful that they could influence the implementation of government policies and control the agenda of agreements.

Assoc. Prof. Chakkrit saw the Thai-US FTA as merely a new form of bilateral trade negotiations where the US wanted to raise new issues to create competitive conditions favourable for itself. At the same time, the US was also negotiating bilateral FTAs with another 50 countries, which were mostly exporters of farm products. Apart from tariff reduction, the US was set to adopt other protective measures. The FTAs would affect laws and national sovereignty as well as exclusive rights, which, once granted to the US, would have to be extended to include the other 146 member nations of the WTO, too.

PRIOR AMENDMENT OF TAX LAWS TO COMPLY WITH FREE TRADE POLICY

Several groups and sectors have come out to stress the importance of the Thai negotiators being well prepared, because all points relevant to FTA negotiations were highly complicated and would have far-reaching implications. The Thai government ought to see to it that its negotiating team consisted of those specialists for each particular aspect. Support for the team should include strong technical knowledge and a participatory process that allowed other stake-holders in society – the business sector, workers, farmers, consumers, non-governmental organizations and the people’s sector - an extensive opportunity to voice their views and recommendations. But the Thaksin administration not only speeded up

its negotiations for an FTA but also took advantage of its executive position to amend several laws to comply with the hasty negotiations, without informing the public.

On 23 December 2003, the cabinet agreed to a revision of customs tariff rates and approved in principle two draft notifications of the Finance Ministry. One was on the reduction and exemption of duty rates according to Section 12 of the 1987 Royal Decree on Customs Tariff Rates Specification. The other was on the collection of special duty rates according to Section 12. These notifications were said to be prescribed to protect domestic producers and prepare them for compliance with the FTA. Any delay in pushing these processes through would affect national economic stability, the government seemed to think.²⁶

REVISED DEVELOPMENT PLAN FOR FINANCIAL INSTITUTIONS TO COMPLY WITH FINANCIAL LIBERALIZATION

The Finance Ministry and the Bank of Thailand proposed a “*Development Plan for the Financial Institution System*” to the cabinet, which received approval on 6 January 2003.²⁷ The plan offered measures to help speed up the readiness for financial liberalization likely to take place during the Thai-US FTA negotiations. As the negotiations’ agenda would certainly include increased financial liberalization, there will be a large reorganization of financial institutions in Thailand. This would include profound changes in shareholder structure and mergers. Thai financial institutions were bound to face fiercer competition.

COPYRIGHT VIOLATION SUPPRESSION TO SMOOTHEN THE FTA NEGOTIATIONS

Wattana Muangsook, Minister of Commerce, disclosed: “*The US announced its intention to negotiate an FTA with Thailand because it was confident in Thailand’s suppression of intellectual property rights violations. Otherwise, the negotiations would not happen because a vital US prerequisite*

for FTA negotiations was for the negotiating partner to carry out effective suppression of intellectual property rights violations. In addition to Zoellick's letter praising Thailand for its good job in cracking down on intellectual property rights violations, I expect the US will surely delete Thailand from its watch list."²⁸ Going by the conclusions of the US-Singapore FTA framework, it was evident that the US had made intensive efforts to protect its intellectual property rights. Violations were elevated to the status of criminal offences and would be punished as such. The state would act as prosecutor, and delay in taking prompt action would be considered as nonfeasance by the state.

PROMOTION OF BILATERAL FREE TRADE AND DUAL-TRACK DAYDREAMING IN EARLY 2004

In early 2004, Wattana Muangsook, Minister of Commerce, said that the government aimed at achieving an 8-percent economic growth for 2004 and the Commerce Ministry would have an important role to play in realizing that aim. He said the ministry would adopt a dual-track approach and intended to increase export growth to 13 percent, or about US\$90,000-91,000 in export value, in 2004. At the same time, domestic consumption would be increased. All negotiations for bilateral FTAs with other countries, facilitation of easier and quicker exports, strategic searches for potential new markets²⁹ were undertaken without any attention to a host of problems resulting from the impacts of the Thai-China FTA³⁰ that had been reported by the Peking-based Foreign Trade Office.

PRO-FTA ALLIANCE

In a round-table talk on "*Bright prospects for Thai exports in FTA areas*," held by Krungthep Thurakij newspaper,³¹ Aphiradee Tantraphorn, Director General of the International Trade Negotiation Department, believed that FTAs would help retain the country's old export markets. If negotiations for FTAs were not conducted, Thailand's competitiveness would continue to decline. In the past, Thailand was benefited from

special customs tariffs, but this privilege was reduced every year. In some years, some products lost this privilege completely. FTA negotiations had to take their place. Khanissorn Nawanukhroh, former Permanent Secretary of the Commerce Ministry, pointed out that any delay on Thailand's side in negotiating FTAs would put the country at a disadvantage against more active competitors. Fast moves had to be made to grab the market. Suchart Chandra-nagaraj, President of the Thai Apparel Industry Association, was also optimistic that FTAs would help enhance trade volumes. The government, therefore, had to pay attention to the overall picture of Thailand's final advantage, or to getting more benefit than loss. He was sure that the textile and apparel industry would stand to gain from FTAs. Meanwhile Phornsilp Phatcharintanakul, Deputy Secretary General of the Thai Chamber of Commerce, said if Thailand did not sign the FTAs, other countries would do so and Thailand would miss the boat. He believed the FTAs would provide businessmen with opportunities, which was what they wanted.

THAKSINOMICS: THE NEED TO LOOK OUT FOR THE POWER OF THE STATE, THE POWER OF THE CAPITAL AND CONFLICTS OF INTEREST

In early 2004, about 30 academics and NGO workers gathered to discuss "*Thaksinomics: its origin and future prospects*".³² The "*Thaksinomics*" phenomenon was seen as consisting of a "*Thaksinocratic*" political regime and the "*Thaksinomic*" system, which would amalgamate different centres of power in society to coordinate their benefits in a harmonious manner. This would happen through 'sweetheart' policies and give rise to a variety of conflicts of interest. The concentration of power from aligning the power of the state with the power of capital was more complex than dictatorships of the past and the general public did not realize this.

While the government celebrated the new year by trumpeting the benefits of FTAs, two lecturers from Chulalongkorn University's Faculty of Economics came out to voice their views on their implications.³³ Tirana Phongmakhaphat indicated: "*An FTA is more of a political tool than it is motivated by economics.*" And it would end up bringing difficulties to the

global trade system again. Somphop Manarangsan's analysis saw FTAs merely as the government's short-term tactic of good news management.

Chakkramon Phasookwanich, Secretary General of the National Economic and Social Development Board (NESDB) thought that the government's negotiating tactics were not clear and did not have a priority country group arrangement. Agreements had been made in a blanket fashion, and even Thaksin had admitted that preliminary information revealed that medium-sized industries would be hardest hit by the FTAs.³⁴

On 9 February 2004, FTA Watch, NGO Coordinating Committee on Development, the Senate's Foreign Affairs Committee, and the Centre for Social Development Studies of Chulalongkorn University's Faculty of Political Science, co-organized a seminar on the "*Thai-US FTA: Impacts and people's proposals*". Rangsan Thanphornphan of Thammasat University's Faculty of Economics gave an opening speech³⁵ stating that the Thai-US FTA negotiations could be read as Thailand's subjugation to US control. The government never told the public what was at stake in the negotiations or what harm and good they would do. The negotiations were predominantly motivated by political gain rather than by economic benefit. That prompted society to question if the Shin Corp Group had any business gains from such negotiations. Moreover, conducting negotiations without parliamentary approval was an unjustifiable process. Thailand's economic and social well-being were being wagered on a complex trade agreement.

In the same seminar, Dr. Aziz Choudry of New Zealand's GATT Watchdog and Asia-Pacific Research Network voiced his concerns over the FTA with the US. He pointed out that the word investment was indeed a blanket term, ranging from intellectual property rights to permission to establish an economic zone, and employment contracts. Investors would be immensely empowered to sue a government whose policies were believed to be obstructing their profit-making. The case in point was the privatization schemes, which involved such corporations as Bechtel and Enron. Thailand might have a similar experience in encountering opposition to their patenting of Hom Mali fragrant rice.

On the same occasion, Marcos Orellana, an international law professor and lawyer at the Washington-based Environmental Law Centre, related the FTA experience of Chile. He told the seminar that the US-Chile FTA and the Central American Free Trade Agreement (CAFTA) that had been signed meant that national laws had to be changed to comply with the agreement. Such changes would guarantee that US investment and investors could be protected against losses in Chile whereas the Chilean government would have a limited role in dealing with the investors. Camila Montecinos of GRAIN Chile presented her experience from the CAFTA negotiations where the US could easily put pressure on its negotiating partners, by its divide-and-conquer tactics, to prevent countries of the South from uniting. It was simply a neo-colonial tool. Charoen Khamphirapharp indicated that the government's decision to bypass parliament in its FTA negotiations was an action in breach of the Constitution's Article 224 concerning national sovereignty. Dr. Somboon Siriprachai of Thammasat's Faculty of Economics said the US tried very hard to conclude the deal by persuading Thailand into believing that its agriculture would benefit from the agreement. But actually, Thailand's farming sector was not the chief beneficiary of the Thai-US FTA deal. On the contrary, the US has attempted to export its GM plants and animals to the Thai market because such products had been rejected by the EU and other developed nations.

In a discussion session on the "*Impacts on farmers, consumers and Thai health system*", Bamroong Khayotha of the Esarn (*Northeastern*) Alternative Agriculture Network recommended that the government's negotiations or agreements should include public opinions. Academics must provide the public with facts and the public must closely monitor the negotiations and agreements that would affect their lives. Dr. Hathai Chitanon of the Thai Health Promotion Institute felt that the broad scope of the FTA would weaken national health measures. Assoc. Prof. Dr. Chiraphorn Limpananon, head of the social pharmacological action research unit of Chulalongkorn's Faculty of Pharmacology, voiced her grave concern over FTA-related monopoly rights to drug patents. Somsak Kosaisook, secretary general of the Confederation of State Enterprise Workers, saw the FTA as everybody's destruction. Witoon Lianchamroon of the Biothai group described how the US had manipulated the FTA deal to

include GM products, as well as policies such as the patenting on life forms.

In conclusion,³⁶ the seminar argued that neither the executive branch nor the prime minister was the sole executor of national sovereignty in negotiating the Thai-US FTA. Both were subject to scrutiny. FTA Watch issued its second statement demanding that the government be transparent by organizing public hearings before deciding on an FTA deal with the US. The statement added that by and large, Thailand would face a huge loss to the extent that Thailand would have to change a large number of laws to enable the US investors to sue Thailand, not to mention being compelled to cancel import tariffs on agricultural and industrial products and to accept GM products.³⁷

THE US SAID NEGOTIATIONS TO START IN JUNE 2004 AFTER APPROVAL OF THE CONGRESS. THAKSIN SEES NO NEED FOR PARLIAMENTARY APPROVAL OF FTA NEGOTIATIONS

On 12 February 2004, the US informed Thailand that after the approval of the Congress, the US would be ready to begin discussing details of the FTA with Thailand in June 2004, as the two countries had agreed in principle in October 2003. FTA Watch urged the Thai government to carry out the FTA negotiations in a transparent manner and listen to opinions of various sectors before starting negotiations with the US. Taking into account the USTR letter to the Congress,³⁸ Thailand would be badly affected and disadvantaged. So far, the Prime Minister has not sought parliamentary approval although many senators had warned that such a treaty or agreement was covered by Article 224 of the Constitution. The Article provides that in the case that amendments of the law or the enactment of an Act is required for the implementation of such treaty or agreement, the approval of the National Assembly must be sought, which was the case with the Thai-US FTA.³⁹

On 17 February 2004, FTA Watch held a press conference on the government's FTA negotiations with the US and issued a third statement⁴⁰

demanding a preliminary in-depth study of the impact by an independent institute and public hearings with the participation of all concerned sectors. The statement also urged disclosure of the agreement's framework and negotiation guidelines. Before the government started FTA negotiations with the US, the negotiation framework must be approved by the National Assembly.⁴¹

But in his "*Thaksin meets the people*" radio program aired on 21 February, Prime Minister Thaksin Shinawatra said the demand for a parliamentary approval of the deal was not necessary because there would not be any amendments of the law. It was a matter of simple management; no need for parliamentary consideration. If the law was to be modified, then the parliament would be needed.⁴²

On 27 February 2004, a seminar, "*Thai-US FTA: impacts on drugs and the health system*" was attended by concerned government agencies, academics, NGOs and the media. The conclusions of the seminar were an attempt to mobilize ideas and suggestions and offer solutions and proposed policy and practices on the issue. In essence, seminar participants reiterated that the Thai-US FTA must abide by the rule of law in creating a legal process that took into account social justice. At the same time, the well-being and health had to be considered more important than economic values. Additionally, the statement urged adoption of the principle to exempt drug, life and health systems from the negotiations.⁴³

THE CABINET APPROVES THE ROYAL DECREE ON CUSTOMS TARIFF RATES, HEEDLESS OF THE FTA IMPACTS

On 1 March 2004, the 2004 Royal Decree on Customs Tariff Rates (*Item 3*), a modification of the Customs Tariff Rates Act, initiated by the cabinet, was presented to the Senate. The amendment was made in compliance with the commitment required by the ASEAN Harmonized Tariff Nomenclature (AHTN) Protocol. The senators questioned the pros and cons of such protocol, and asked for detailed clarification of the products to be liberalized. They also criticized the government for failing to consult Parliament before signing the protocol. This government

was further censured for its excessive emphasis on trade liberalization policy in a way that was not accountable to the Parliament. Many Senate committees made a joint study on FTA policy and found that the government was compelled to change laws related to state enterprises, employment and other policies that had been implemented previously. In effect, the disadvantages would outnumber the benefits. But in the end, the Senate passed the 2004 Royal Decree on Customs Tariff Rates (*Item 3*), with 80 votes in favour, 62 against, 4 abstentions, and one absence.⁴⁴

ACADEMIC COMMUNITY SEES FTAS AS JEOPARDIZING NATIONAL SOVEREIGNTY

On 18 March 2004, the Law Centre of Thammasat's Faculty of Law in cooperation with FTA Watch organized a round-table talk on "*FTA and national sovereignty*". The talk was attended by over 80 people including independent academics from the state and private institutions, interested members of the public and reporters. Prof. Rangsak Thanaphornphan gave a speech on "*Thailand's free trade zone policy*".⁴⁵

The meeting found the government decisions on FTAs too hasty, in need of profound study and ignorant of Thai society's roots. Jumping on the FTA bandwagon as this government did was a reckless act; lacking transparency and respect for the principle of separation of powers, in breach of the Constitution and destroying the self-sufficient economy. The meeting called for immediate suspension of FTA negotiations with every country while the government was urged to disclose to parliament the entire negotiation framework and all FTA details to be negotiated. Moreover, the government was asked to explain to the public how it selected trading partners; considered potential benefits; and predicted which groups of people would suffer future impacts. The public would decide on the matter and the people's International Economic Negotiations Act would be enacted.⁴⁶

On 22 March 2004, the International Trade Negotiations Department allowed concerned people to voice their views about Thailand's FTA process with major partners through its website.⁴⁷

On 23 March 2004, the cabinet approved 192 million baht⁴⁸ from the central fund as a reserve fund for emergencies or for expenses of FTA negotiations with 8 countries and one group. The fund involved the following expenses: 99 million baht for FTA negotiations, of which 28 million baht was for the Thai-US FTA negotiations; 30 million baht for consultancy; 20 million baht for consultants to monitor and evaluate the FTA adjustment; 23 million baht for overseas lobbying and lobbyists; 10 million baht for entertainment expenses; and another 10 million baht for publicity through the media.

WATTANA AND HIS BUSINESS ALLIES AND THE THAI-US FTA

On 23 March 2004 (US time) Commerce Minister Wattana Muangsook joined the official launch of an alliance group supporting the Thai-US FTA, held by the US-Thailand FTA Business Coalition on Capitol Hill in Washington DC.⁴⁹ About 100 people representing the US House and Senate, US trade and government offices and the private sector attended the event. The occasion was organized to make a joint announcement that FTA negotiations would officially begin in the coming June and were expected to conclude by 2005.

But Wattana appeared to be so touched by the occasion that tears welled up in his eyes when he mentioned the hardship of the Thai farmers who had to sell their rice in exchange for Boeings. He even pleaded the US for sympathy in its retaliation against the dumping of Thai shrimp. Virabhong Ramangkura, member of the Thai-US Business Council, was not worried about the Thai-US FTA move. But what was more worrying for Thailand were the service and intellectual property sectors.

Prakarn Weerakul, Agricultural Counsellor of the Agricultural Office in Washington DC revealed⁵⁰ that the agricultural products that would be more advantageous to the US would be meat, milk and dairy products, vegetables and fruits, corn feed and soybeans. The last two items were GM products where the Thai government had to put in place protective measures. However, if, after the agreement came into effect,

there was an excessive influx of US imports, the Counsellor believed Thailand could request for special protective provisions that would allow the former tariff rates to be re-imposed.

Wattana's shedding of tears was criticized by the media as unbecoming. At the same time, it showed how members of this business coalition were prepared to settle benefits among themselves.⁵¹

FTA VIOLATES JUDICIAL POWER AND NATIONAL SOVEREIGNTY

On 9 April 2004, the Faculties of Law of four universities organized a seminar on *"FTAs and their impact on the Thai judicial system"* to share their views on the issue and put together their opinions to present to the judiciary, parliament and government. The point that was extensively discussed was the settlement of international trade disputes by FTA arbitrators and the violation of national sovereignty and judicial power.⁵²

THE PEOPLE'S SECTOR AND THE DETERMINATION OF THAILAND'S POSITION ON THE THAI-US FTA

An academic discussion on *"What position should the government adopt on bilateral trade negotiations with the US?"*⁵³ held on 27-28 April 2004, was an open forum for university lecturers, academics from government agencies and members of the people's sector to voice their views. Topics included regulations on trade and products, GM products, trade competition policy, trade and investment, drug patents, TRIPS, health services, telecommunications, and financial services. The meeting showed spreading opposition because the government's moves lacked good governance and were in breach of the Constitution.⁵⁴ To conform to good governance, the Thai-US FTA process must allow public participation.⁵⁵

The private sector had in fact attempted to gather opinions and make known its preliminary position on the Thai-US FTA negotiations to the government before the first round of negotiations was about to begin on

28 June 2004. Phornsilp Phatcharintanakul, Secretary General of the FTA Committee of the Thai Chamber of Commerce, pointed out that the Thai products to be affected once the Thai-US FTA deal was concluded would be agricultural products, tobacco, telecommunications and financial services. The US wanted Thailand to provide it with other non-tariff benefits, such as 50-year-long drug patent protection and the liberalization of financial and telecommunications services, to the extent that the US businessmen could have 100-percent stockholding instead of the currently maximum ratio of 49% foreign stockholding.⁵⁶

THAI-AUSTRALIA FTA: SUCCESSFUL NEGOTIATIONS BY THE GOVERNMENT AT THE EXPENSE OF THE THAI FARMERS' SUFFERING

On 11 May 2004, the cabinet approved the Thai-Australia FTA (TAFTA) framework proposed by the Ministry of Commerce. The agreement was expected to be signed by mid-2004 or by 2005 at the latest. Thaksin even told the cabinet that he thought TAFTA was the best deal that Thailand had ever made because the negotiations involved a wide range of products and nearly the whole system of tariff reduction.⁵⁷ If the negotiations were carried through, this would be the first FTA concluded with a developed country.⁵⁸ But the Thai people had never seen the agreement's details.

On 13 May 2004, FTA Watch and the Network of Affected Small-scale Farmers in Thailand held a press conference to protest against the signing of TAFTA in June 2005. The groups also urged that the agreement be translated into Thai and made known to the public. In addition, public opinion among eligible voters should be sought to find out if the public agreed with the deal and which areas the FTA should concern. Petition letters by the groups would be sent to the Prime Minister, President of Parliament and President of the Supreme Court.⁵⁹ A meeting of over 300 networks of small-scale farmers nationwide would be organized to put pressure on the government to consider and comply with the majority people's opinion.⁶⁰

On 25 May 2004, Minister of Agriculture Somsak Thepsuthin spoke against Thai dairy farmers' concern over TAFTA impacts: *"I insist that dairy farmers will never have to throw away their milk. I'll resign immediately if five tonnes of milk have to be wasted, except in the case of a bad intention to smear my reputation. The agreement will prompt farmers to produce over 200 tonnes more annually, or about 10 percent, as the public will be encouraged to drink 10 percent more milk."*⁶¹

26 May 2004, the opposition questioned the Prime Minister about the reason for not asking for parliamentary approval of the agreement. The Prime Minister said: *"The government acted as the Constitution authorizes it to do. If parliamentary or legislative approval is needed, it will certainly ask for it. But with each of a draft agreement, to ask for the parliamentary help, it's not done. No country would do it that way. In have to insist that the government will not damage the country. On the contrary, the government will act wisely. Don't worry."*⁶²

27 May 2004, the Thai Holstein Friesian Association organized a seminar attended by 117 dairy farming co-operatives to voice their strong opposition to TAFTA. They demanded that the government delete milk and dairy products from the list of items for negotiation in FTAs with Australia and New Zealand, in the same way that the US was able to delete sugar from the list of items for negotiation in the US-Australia FTA. Moreover, a long-term plan should be put in place as to how the dairy industry would handle the annually increasing amount of milk.⁶³ Adul Wangtal, President of the Thai Holstein Friesian Association, explained that the Association had previously demanded this deletion from the Ministries of Commerce and Agriculture. But milk and meat products were still included in the agreement. He said the association would gather signatures to petition Her Royal Highness Princess Sirindhorn.⁶⁴

30 May 2004, Boonyarit Choosri, President of Nern Din Daeng Dairy Co-operative of Prachuab Khiri Khan province handed a petition letter to Songkiat Lim-aronrak, President of the Provincial Administration Organization, to protest the liberalization of the dairy products.⁶⁵

THAILAND PROPOSES THAI-US FTA ALONG THE LINES OF THAI-AUSTRALIA FTA

On 13 June 2004, Sutthiphorn Chiraphan, Secretary General of the Agricultural Business Office, as chairperson of the Thai-US FTA negotiating team, disclosed that the team would hold its first official negotiations with the US Departments of Agriculture and Commerce and the United States Trade Representative (USTR) in Hawaii between 28 June and 2 July 2004. Primarily, Thailand accepted the US-Singapore FTA framework proposed by the US, but this framework did not cover agricultural products. So the Ministry of Agriculture suggested that the framework of TAFTA (*to be signed on 3 July 2004*) be adopted instead.⁶⁶

On 22 June 2004, a discussion on *"FTA impacts on occupation groups in Thailand"*⁶⁷ was held to describe the different impacts of the FTA on a variety of occupations in Thailand. Attending the discussion were small-scale farmers, beef and milk cattle farmers, federations of state enterprise workers affected by the privatization policies and patients groups in Thailand. The participants tried to join hands to search for solutions to the government's FTA moves. At the same time, they attempted to make known their position as well as the people's opinion against unacceptable FTA process and content like the Thai-US FTA already under negotiation at the East West Center in Honolulu, Hawaii between 28 June and 2 July 2004.

PREPARATION FOR THE FIRST ROUND OF THE THAI-US FTA NEGOTIATIONS

In early June 2004, the International Negotiation Department was about to apply to the WTO for renewed MFN exemptions under the WTO's General Agreement on Trade in Services (GATS), whereby Thailand's request not to grant the rights to the US according to Item 4 of the Thai-US Friendship Treaty was going to expire. Aphiradee Tantarphorn, Director General of the Department cited many academics as opposing the idea of hasty incorporation the rights given by the friendship treaty into the Thai-US FTA. Such an act might put Thailand

in a disadvantageous position. An answer to this case was for Thailand to apply for renewed MFN exemptions by the third quarter of 2004, which, it was hoped, would be granted by the WTO.⁶⁸

On 9 June 2004, a source in the Ministry of Commerce said Thailand's negotiating team headed by Nit Phibunsongkhram had already summarized the Thai-US FTA framework, presented the conclusions to the International Economic Committee, and received the cabinet's approval. The source revealed that summary was based on the FTAs the US had signed with Singapore and Chile and explained: "*During the first official negotiations on 28 June in Hawaii, the two parties will first discuss intellectual property, as a matter of significance that the US wants to start with. And Aphiradee Tantraphorn, Director General of the International Negotiation Department, was to go to Singapore to talk with the chief of the Singapore-US FTA negotiating team about US attitudes during discussions on intellectual property with Singapore and ask for other suggestions.*"⁶⁹

The first round of the Thai-US FTA negotiations saw Thailand's head of the FTA negotiating team Nit Phibunsongkhram discuss with Assistant USTR Ralph Ives. Nit explained that the negotiations would focus on long-term economic partnership, not on any particular topics. Conditioned by no time frame, the negotiations would be comprehensive and centred on overall interests instead of emphasizing special product groups. Previously, all concerned agencies already determined their negotiating positions on each topic on 28-30 May and hired an overseas consultancy firm to study legal details and regulations and come up with recommendations. Now, topics were divided into 25-29 discussion groups, not all of which would be necessarily included in the FTA to be signed in the future. Major topics under discussion were standardization processes including WTO regulations, market access to both agricultural and industrial products with a view to the earliest possible tariff reduction, non-tariff trade barriers, trade in services including investment and financial services, and intellectual property. On the last topic, Nit insisted that the commitment would be based on WTO obligations.⁷⁰

PROFESSIONAL COALITION IN OPPOSITION TO THE THAI-AUSTRALIA/THAI-US FTAS

On 23 June 2004, FTA Watch representatives handed a petition to the Prime Minister asking for an end to the FTA processes with other countries. At the same time, a letter was sent to the President of Parliament to examine the government's moves to sign FTAs. Meanwhile another letter was handed to the President of the Supreme Court to take action on the threats of the FTAs to Thailand's judicial system.⁷¹

On 26 June 2004, on his "*Thaksin meets the people*" radio program aired on Radio Thailand, Prime Minister Thaksin Shinawatra referred to the opposition of NGOs and diary cattle farmers' groups to the Thai-Australia FTA as an overreaction. He insisted that he would not put the country at a disadvantage and would have to take care to help farmers. Therefore, there was no need to worry. The NGOs, he warned, should be aware of the facts before doing anything or blaming anyone for having hidden agenda or conflict of interest. Doing so was like a funeral card.⁷²

THE FREE THAI MOVEMENT STATEMENT FOR NATIONAL SOVEREIGNTY

On 28 June 2004, 400 people, representing farmers, people living with HIV/AIDS, NGOs, academics, federations of state enterprise workers from the Electricity Generating Authority of Thailand and small-scale entrepreneurs, gathered at the spot where Khana Rasadorn (*the People's Council*) declared the Free Thai statement in the Royal Plaza. Bamroong Khayotha who represented the farmers read a statement rejecting the already signed FTA and ongoing FTA negotiations undertaken by Prime Minister Thaksin Shinawatra.⁷³ Later, the protesters moved to Government House and made a statement⁷⁴ rejecting the FTA and FTA negotiations undertaken with various countries by Wattana Muangsook on behalf of Thaksin. The statement claimed the government's FTA moves contained conflict of interest while a lot of people would be negatively affected but had not been allowed to take part in the decision-making. Also these moves were not approved by Parliament⁷⁵.

On 29 June 2004, representatives of FTA Watch, on behalf of 119 groups of farmers, people living with HIV/AIDS, NGOs, academics, federations of state enterprise workers from the Electricity Generating Authority of Thailand and small-scale entrepreneurs, handed a letter to President George W. Bush through the American Embassy's delegate. The letter asked the American government to discuss with the Thai government its lack of transparency and public participation, required by democratic respect for human rights and public participation, in its decision-making over the FTA.

THAKSIN SIGNS THAI-AUSTRALIA FTA IN SPITE OF DAIRY CATTLE FARMERS' PROTEST

On 8 July 2004, FTA Watch continued to protest the signing of the Thai-Australia FTA in front of Government House. The group previously voiced its opposition through a complaint to the Prime Minister's complaint box on 23 June 2004 and asked for an explanation on the issue⁷⁶ from the PM. After his return from signing the agreement in Canberra, Australia, on 5 July 2004, Thaksin mentioned the protests against the FTAs with Australia and New Zealand. To whichever industry or agriculture groups the protesters belonged, he could explain everything to them. This was because his government did its best to protect national interests. Most importantly, Thai producers would be in an advantageous position, as they would gain increased market access while consumers would benefit from cheaper imported goods.

On 10 July 2004, Jacques-Chai Chomthongdi, a trade campaigner of FTA Watch, who also worked as a research associate of the activist NGO Focus on the Global South, held a press conference at the Wisit Prachuabmoh Building of the Faculty of Political Science, Chulalongkorn University. Jacques-Chai pointed out that before going to sign the agreement with Australia, Thaksin should have told the public and concerned stakeholders about the deal. Signing first and explaining later was a sign of disrespect to the public. Everybody should be informed of the facts concerning the agreement.

On that same day, Thaksin said he told the Ministry of Agriculture to prepare for the establishment of an annual assistance fund for 10 years, totalling 10,000 million baht. The fund was aimed at increasing the agricultural sector's competitiveness for affected farmers.⁷⁷ Simultaneously, several sectors of the media began a broad criticism of the TAFTA process,⁷⁸ where disclosure of information and participatory decision-making were questioned, as the International Negotiation Department began to post such information on its website in June 2004.

On 27 July 2004, a discussion forum on "*Thai farmers' future under the Free Trade Agreement (FTA)*" was held to present information, analysis and opinions on FTA impacts on the agricultural sector and farmers. Highly respected lecturers, academics and farmers' groups attended the forum and made suggestions to revise the process of agreements and to prepare remedies for the potential impacts.⁷⁹

GMOS AND THE THAI-US FTA

On 27 July 2004, Greenpeace Southeast Asia broke into Khon Kaen research station in Muang Phol district where genetically modified (GM) papaya trees were planted in field trials after the group had randomly tested papaya seeds sold by the Department of Agriculture and found out that two samples contained GM seeds. Although many groups, such as Biothai, the alternative agriculture networks and the Confederation of Consumer Organizations of Thailand, had urged the Prime Minister to set up an independent committee to examine the matter, no action was taken.

Then on 19 August 2004, the Biodiversity and Community Rights Action Thailand (Biothai) came out to warn the public to be vigilant about the meeting of the National Biotechnology Committee (NBC), chaired by Thaksin, to be held on 20 August. Biotech, as the meeting's secretary, prepared three options for the Prime Minister,⁸⁰ which significantly hinted that the government should allow free planting of GM crops in Thailand in preparation for the Thai-US FTA deal. The transnational corporation Monsanto pushed the Thai government to liberalize GM

crops before signing the FTA.⁸¹ And the meeting resolution was as expected,⁸² citing the moderate view of not missing the technology bandwagon.⁸³ On 24 August, the resolution would be presented to the cabinet.⁸⁴

The resolution prompted a statement “*Massive consolidated move against the government’s liberalization of GM crops*” by development activists, networks of farmers’ organizations, the Santi Asoke network, business people, NGOs and civil society, issued on 23 August 2004. The statement revealed what was behind the NBC’s approval of GM crop planting; how the government made its decision based on misinformation; the potential impacts on farmers, consumers, trade, and national sovereignty; and the protesters’ demands as well as details of a massive rally. The Prime Minister, however, insisted on going ahead with the GMO issue by relying on scientific information. He refused to meet US senator Christopher Kit Bond before making his decision on the matter and said it was the Ministry of Science’s job to do the lobbying.⁸⁵

On 24 August 2004, NGO networks nationwide gathered in front of Government House between 8.30 and 9.30 am to rally against the government’s revision of the ban on GM trials.⁸⁶

On 25 August 2004, civil society organizations quoted the Prime Minister’s talk on his “*Thaksin meets the people*” radio program aired on 10 January 2004. Part of that talk confirmed that Republican senator Christopher Kit Bond from Missouri had already actually met the Thai Prime Minister on 9 January. The US senator even had a chance to meet Deputy Prime Minister Suwit Khunkitti, who was in charge of environmental affairs, on 8 January. Kit Bond’s Missouri is the headquarters of Monsanto, which provided Kit Bond with the biggest election financial support of any senator. He was also on the corporation’s executive board.⁸⁷

Extensive coverage of such information in the media prompted Kraisaak Choonhavan, Chair of the Senate Foreign Affairs Committee which had monitored the FTA deal from the beginning, to organize a forum where all concerned agencies were invited to present information on the GM crop liberalization policy and an assessment of its potential scientific,

agricultural and environmental impacts. All these issues were related to the FTA negotiations that demanded wider field trials of GM crops.⁸⁸

On 30 September 2004, networks of agricultural organizations read their declaration and 50 members of the networks made a mockery of the “*GMO Cabinet Kitchen*” and the “*Thai Kitchen-Kitchen of Illness*” in front of Government House. Bamroong Khayotha, representative of the Alternative Agriculture Network, handed a petition to Dr. Niran Phithakwachara, Chair of the Senate Committee on Social Development and Human Security, and Kraisaak Choonhavan, Chair of the Senate Foreign Affairs Committee opposing field trials of GM crops.

In the afternoon of the same day, the Prime Minister decided to take the GM resolution off the cabinet agenda for fear that the government might send a wrong signal that it supported GM crops. Government spokesperson Chakkraphop Phengkhae said that despite the Prime Minister’s green light for field trials of GM crops, it was not government policy yet. Also taken off the cabinet’s agenda was a report by the Biotechnology Study Committee, which contained the requirements for GM planting.⁸⁹

The fact that the patent rights for the papaya seeds of the Khaek Dam and Khaek Nual species belonged to ‘the US’ had been hidden from the public, which was led to believe that the two species were native ones. But Greenpeace Southeast Asia had evidence to prove otherwise in the form of a patent granted by the US Patent & Trademark Office (USPTO) to the Cornell Research Foundation on 25 June 2004. This patent covered a broad range of DNA constructs and methods used to create ringspot virus resistance in any kind of GM papaya. In addition, two new patent applications now pending at the USPTO. Dr. Dennis Gonsalves filed both of these applications on 11 April 2002. The applications were published by the USPTO on 11 September and 30 October 2003. These two patents would be more serious and far-reaching than existing patents on GM papaya.⁹⁰

The Cornell University patent rights on GM papaya means that whenever Thai farmers commercially grow GM papaya, they will have to pay a

“*patent fee*”. And if the Thai-US FTA negotiations on intellectual property rights followed the US-Singapore FTA framework, it would mean that patent right violation would be not only a civil offence, but would also be liable to criminal punishment.

OUTCOME OF THE FIRST ROUND OF THE THAI-US FTA NEGOTIATION

The Thai negotiating team proposed three major product groups where it wanted the US to speed up special tariff reduction. These three groups were general products, those on a request list and those subject to a specific request, totalling 150 items, including sugar that Thailand regarded as an important and favorably competitive product. But it was more likely to end up being deleted from the list if the US-Australia FTA negotiations in early 2004 - where sugar was taken out of the negotiations by the US - were anything to go by. Not only were sugar producers in the US major supporters of both the Republican and Democrat parties, but they also strongly campaigned against including sugar in the negotiations. As for the US proposed topics for negotiation, the Thai team were faced with 24 blanket issues.⁹¹ USTR Robert Zoellick explicitly reiterated that both Thailand and the US wanted their trade deal to be comprehensive. Also, the USTR office pointed out that an FTA with Thailand would be beneficial for US exporters, particularly of industrial goods, services and agricultural products. This FTA deal with Thailand was supported by about 100 US business interest groups. The Thai government was required to guarantee that corruption would be addressed and complex customs tariff rates, seen by the US as a major barrier, be changed. Furthermore, the US asked to prioritize the negotiations on non-tariff measures, which Thailand's chief negotiator Nit Phubunsongkhram considered as harmless.

The first round of talks saw the Thai team make an aggressive move in requesting a discussion over the US Trade Department's anti-dumping investigation of shrimp. This was expected to be negotiated under the topic of trade remedies, where the Thai team would ask for implementation of an early warning system. But with regard to sugar, the US was clearly

determined to subsidize domestic producers by granting an annual import quota of 1.2 million tons, of which 12,000 million tons would be given to Thailand annually. Textiles were a major concern for Thai producers, who had different views among themselves and an inadequate understanding of the rule of origin, non-tariff measures and e-classification of product origin. Meanwhile, the US paid tremendous attention to telecommunications, especially the need for legislation or principles to ensure equal competition and the absence of market monopoly. The Ministry of Information, Technology and Communications said it would be circumspect in its negotiations, as it had been with Australia, because Thailand's regulations on telecommunications services were not ready yet.

SECOND ROUND OF THE THAI-US FTA NEGOTIATIONS

The second round of FTA talks were to be held during 11-15 October 2004 in Hawaii and the third round would be in December 2004.

In this second round⁹², the Thai team, fully equipped with information from the private sector, was prepared to negotiate for the reservation of 55 items of sensitive industrial products in six product groups. Deputy Director General Chutima Boonyapraphassorn stated that the sensitivity of any product was based on its effect on domestic demand and unfavourable competitiveness. Neither size nor groundless fear of the private sector would be taken into account.

Market access, customs tariff rates and the tariff rate of each product would be this round's focal topics. The renewed granting of rights to the US according to the Thai-US Friendship Treaty that would end its decade-long term in early 2005 had to wait for the WTO meeting on Thailand's application for renewed MFN exemptions in late September 2004. From then on, there would be a clear guideline for member nations to follow and Thailand might have to send a letter of intent to confirm its granting of special rights to the US till the FTA negotiations were concluded. Earlier, Japan was one of the countries that showed that it wanted similar things Thailand had given to the US.

With loads of difficulties, overlaps of products and sensitive products, the negotiating team expected the Thai-US FTA negotiations to last at least 40 months, or 3 years and four months. But the US spent a little over two years to negotiate the FTA with Singapore. The Thai team admitted that many groups of people had been closely watching the Thai-US FTA deal, so it did not want to make a hasty conclusion. It finally said that the cabinet had not specified that the negotiations be abrupt. If Thailand stood to lose, there would certainly be no signing of an FTA.

Moreover, with the coming US presidential election in November 2004 and Thailand's general elections in early 2005, the two negotiating partners would never raise any sensitive issues for negotiation for fear of domestic protests, which were beginning to spread in both countries. Therefore, topics that could be easily agreed as cooperation would be more likely raised for negotiation first.

However, in its previous negotiations on an FTA with Australia, the US was manipulative enough to insert an agreement on intellectual property rights in the final negotiations.

On 8 October 2004, Thailand's chief negotiator Nit Phubunsongkhram disclosed that three major topics would be discussed: 1) Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT); 2) liberalization of financial sector; and 3) intellectual property rights. It remains to be seen what strategies the US and Thai teams will adopt. But one can surely expect that the US will push very hard for Thailand to accept its proposals. That would be enforcing the US legal framework on Thailand. And if US expectations were fulfilled, Thailand would yield and indirectly become the 52nd state of the US.

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RECOMMENDATIONS ON THE PROCESS OF
NEGOTIATIONS AND PREPARATION OF
FREE TRADE AGREEMENTS (FTAs)

FTA-WATCH

The bilateral Free Trade Agreements that the Thai government has already signed or is in the process of negotiating with several countries have a huge impact on millions of Thais. In a sense, the path toward communities' sufficiency economy has been destroyed. There is also the potential for the FTAs to put the whole nation under the control of a handful of transnational business concerns.

The Thai government has failed to conduct thorough studies to compare the advantages and disadvantages of bilateral and multilateral trade negotiation policies. Such studies are necessary in order to develop appropriate negotiation strategies if bilateral FTAs are found to be favourable, and to be fully cognizant of their relations to the multilateral framework of the World Trade Organisation (WTO).

International free trade negotiations and agreements, whether they involve amendments to national laws or not, constitute a major concern for civil society worldwide. This includes countries that are in negotiation with Thailand. Normally the public have to be informed and parliamentary approval is required prior to the signing of an FTA, and in some cases even before negotiations can take place. Successive Thai governments have neither given any opportunity for meaningful participation to members of the public directly affected by FTAs, nor allowed proper parliamentary scrutiny and oversight. This has led to serious public criticism on issues such as democratic accountability, conflict of interest and negotiation effectiveness.

Lack of disclosure of the topics under negotiation, even though several countries have demonstrated that this can be done, has meant that civil society and the legislature are unable to monitor the activities of the administration in important matters of state. Particularly, the government's

achievements at each stage of the negotiations are not open for evaluation. The rationale that disclosure would compromise the country's negotiating position is unjustified. In reality, the negotiators can and must state their maximum positions to the public and parliament. Though it is accepted that not all negotiating goals can be achieved, the government has to be able to provide explanations for failures and for the trade-offs that have taken place in the course of the negotiations.

FTA Watch calls on Parliament and the Thai people to demand that the Thaksin Shinawatra government immediately halt all FTA negotiations until reforms are instituted to ensure transparency and public participation in the negotiation processes.

1. Intellectual property rights must not form part of any Free Trade Agreement or other trade negotiations or agreements.
2. Detailed studies of the effects of all proposed trade liberalization measures on each sector of the economy, including the overall impact on the economy, society, culture, environment and sovereignty, must be conducted by inter-disciplinary groups of independent, impartial and non-partisan researchers.
3. Results of studies and government negotiating positions must be made public and public hearings must be conducted, involving stakeholders in all regions of the country.
4. Negotiation frameworks and maximum negotiating positions that reflect research results and public responses must be submitted to Parliament for approval at least 90 days prior to the start of negotiations.
5. The Senate and the House must each appoint an official committee to monitor closely the negotiation processes.
6. A mechanism must be instituted to ensure that the people, not only from the business sector, have access to information and the opportunity to express their opinions at all stages of the negotiations.
7. The results of negotiations must be submitted to both the Senate and the House for approval at least 90 days prior to the signing of any agreement.
8. All documents related to the negotiation, including the resulting agreements, must be available in Thai.

An important and immediate action that should accompany the reform of the negotiation process is a move by Thai society, the government and parliament to legislate an international economic negotiations bill to regulate negotiations on the basis of information, transparency and public participation as described above.

OPEN LETTER FROM CIVIL SOCIETY
ON THE FREE TRADE AGREEMENT NEGOTIATIONS
BETWEEN
THAILAND AND THE UNITED STATES OF AMERICA

On 4-8 April, negotiations on the Free Trade Agreement (FTA) between Thai and the US will take place in Pattaya. This is the 3rd round of negotiations after 2 rounds in Hawaii. The US has submitted written demands from Thailand on many issues such as copyright protection, trademark protection and investment liberalization etc. In the third round of negotiations, the US side is expected to submit demands on the remaining issues. The most important is the issue of patents, in extending the period of patent protection beyond 20 years, in recognizing patents on all life forms, and in restricting the use of compulsory licensing. This is purely a demand to protect the business interests of US companies.

Civil society organizations, academics and individuals whose names are listed in the attachment to this letter have closely studied FTAs between the US and other countries, and call on the Thai government to halt the third round of negotiations in order to conduct a thorough review of the outstanding points and the negotiating position towards the FTA.

1. The issue of extending or strengthening intellectual property rights should be taken out of the FTA negotiations on the grounds that this agreement is more restrictive than the TRIPs agreement of the World Trade Organization (WTO). Also, granting monopoly rights on life forms under patent systems is a barrier to free trade. This will have a serious and widespread impact on the Thai people in terms of access to medicine, will make plant and animal species more expensive, will create the problem of a monopoly on the factors of agricultural production through reliance on patents on life forms, and so on. Moreover, Thailand already operates in accordance with the WTO agreement on intellectual property. There is no just reason for further intellectual property requirements under the FTA, especially with regard to extending patent protection and data exclusivity.

2. A referendum should be held on whether Thailand should sign the FTA with the US, since signing the FTA is an extremely important matter for Thailand and the lives and livelihoods of Thai people in all professions, both now and in the future. This referendum would be in line with the speech of the Prime Minister on the occasion of receiving the royal approval for his second administration.

3. A process should be established to ensure the broad participation of the people. This should involve the gathering of information, the expression of opinions, and decision-making. This will be of great benefit to the Thai negotiating team, who will have comprehensive information and recommendations for use in the negotiations. This will increase their negotiating power. The Thai preparations for earlier negotiations were the work of individuals from a restricted circle.

It is our sincere hope that the suggestions in this letter, which are made on a basis of protecting the common good, will be taken for consideration and put into concrete action.

Yours sincerely,
FTA Watch