

Abstract

Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS Agreement) is an agreement setting minimum standards in protecting Intellectual Properties (IPs) which virtually all members of the World Trade Organization (WTO) have to comply with. Amongst these standards is one that requires members to protect inventions in all fields of technology by giving the inventors exclusive rights, i.e. patents. The basic principle of patent protection is an attempt to set balance between public interests and private interests, that is, encouraging people to invent and introduce useful things to the society while providing them exclusivities to their inventions to let them benefit for a period of time from their inventions.

However, when it comes to the point of inventions dealing with medicine, we cannot only focus on economic perspective and overlook the others because medicine is essential for mankind. The recent increasing problem is the difficulty of access to medicine by patients in various countries, especially those in developing and least-developed countries which the majority of populations do not earn enough income to pay for the necessary yet expensive drugs. One reason why drug prices are higher nowadays, particularly those treating incurable diseases such as HIV/AIDS, cardiovascular disease, or epidemics such as tuberculosis, malaria, etc., is because of the result of giving patent protection under the TRIPS Agreement by considering drugs as same as ordinary inventions.

In Thailand, this problem also occurs, mainly in HIV/AIDS affected patients that rely on variety of antiretroviral drug cocktails to fight with the virus which continually evolves its tolerance to the same old drug. Most of these patients cannot afford to buy patented drugs which are expensive and Thailand cannot freely issue its own measure to counteract this problem because it is against its commitment under the WTO.

Nevertheless, as the above-mentioned, the TRIPS Agreement is merely minimum standards that sets out broad rules for IPs protection. Thus, Thailand can utilize the flexibilities laid beneath these rules by interpreting them, following precedent

practices and corresponding WTO decisions to promote access to medicine for patients while complying with its commitment under the TRIPS Agreement and WTO.

Those flexibilities are:

- interpretation of the definition of “invention” to not to include discovery to prevent issuing of too broad patents.

- utilization of the patentability exception by deeming “use(s)” whether first medical indication use(s) or second medical indication use(s) as methods of treatment, therefore, are not patentable.

- usage of the compulsory license as mandated in the TRIPS Agreement and the Doha Declaration on the TRIPS Agreement and Public Health to prevent and tackle with the lack of medicine and amendment of the requirements of using compulsory license according to the General Council decision on the Amendment of the TRIPS Agreement that calls for the incorporation of the new Article 31bis into the TRIPS Agreement.

- parallel importation of medicine by acknowledgment of an international exhaustion of patent rights in patent regime to allow cheaper drugs to be imported parallel.

In this thesis, patent protection of medicine under the TRIPS Agreement, its flexibilities, and related WTO decisions will be analyzed as well as suggestions for their interpretation and implementation will be given in order for Thailand to make use of the flexibilities in the TRIPS Agreement to the fullest to support Thai people.