

MULTILATERAL DEVELOPMENTS

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- TRIPS Agreement
- Preamble, Objectives, and Principles are often overlooked in multilateral negotiations.
- Free trade agreements between developed countries and developing countries often go for TRIPS plus obligations.
- Negotiations tend to end in failure or stagnate in case of TRIPS plus obligations.

- Article 7 of the TRIPS Agreement:
“The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and **in a manner conducive to social and economic welfare**, and to a balance of rights and obligations.”

- Article 8 of the TRIPS Agreement:
“Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, **and to promote the public interest in sectors of vital importance to their socio-economic and technological development**, provided that such measures are consistent with the provisions of this Agreement.”

- The US-Singapore Free Trade Agreement (USSFTA) was signed by Prime Minister Goh Chok Tong and President George W. Bush on 6 May 2003 in Washington DC. The USSFTA entered into force on 1 January 2004 after it was approved by the House of Representatives on 25 July 2003 and by the Senate on 1 August 2003.

In the field of patents and related rights:

1. Expanded registration eligibility to extend to all plants and animals, enhancing the scope of biotechnology products/inventions;
- 2. Established patent term adjustment to compensate for any delay faced by owners in issuance of the patent grant;**
3. Limited the use of compulsory licences; and
4. Expanded protection for pharmaceutical and agricultural chemical products, including a period of data protection exclusivity for test data and trade secrets submitted for product approval, and extension of patent term due to delay in grant of approval from the marketing authority.

- The same approach was attempted in the negotiations between the US and Thailand on free trade area but failed in view of the fierce protests by the Thai public.
- The same approach is popularly used by developed countries not only in bilateral negotiations, but also in regional and multilateral negotiations.

- The ASEAN – EU negotiations on free trade area has been started again in March 2013.
- The fear and concern of the people sector on possible adoption of the TRIPS plus measures especially on patent of pharmaceutical products leading to additional patent term and additional data exclusivity along the line adopted by the US-Singapore Free Trade Area Agreement.
- Fierce opposition is expected.

- The Trans- Pacific Partnership Agreement (TPP) negotiations which began in 2010 and is expected to be finalized in October 2013 have raised the familiar fear and concern of the NGOs and the people sector.
- Current TPP countries ranging from the country with highest GDP per capita: Australia (67,983 USD), Canada, Singapore, US, Brunei Darussalam, New Zealand, Chile, Malaysia, Mexico, Peru, and Vietnam (1,523 USD)

- Concern of Doctors Without Borders/ Mediciens Sans Frontieres (MSF) in its Briefing Document “Trading Away Health: The Trans-Pacific Partnership Agreement (TPP) :
“ Proposed by US negotiators, the IP ruelles enhance patent and data protections for pharmaceutical companies, dismantle public health safeguards enshrined in international law, and obstruct price-lowering generic competition for medicines.”

- The 17th round of TPP negotiations is scheduled for 15-24 May 2013 in Lima.
- Concern of the people sector is being dealt with by dialogue with stakeholders during the negotiations.
- Question remains how much impact does the input from the stakeholders figure in the negotiation process or more importantly in the outcome of negotiations?

- Several bilateral, regional, and multilateral negotiations often involving the same parties take place in parallel.
- Thai Parliament approved the framework for FTA negotiations with the EU on 29 January 2019.
- Expression of serious concern by the people sector on the provisions on IP which were informally learned during the previous negotiations. Fear that the Singapore-US FTA agreement approach on IP would be adopted.

- Fear and concern of the Thai people sector resulted in the strong demand that the TRIPS standards as well as the spirit and letter of the Doha Declaration on TRIPS and Public Health should be strictly adhered to.
- Demand that there should not be TRIPS plus provisions.
- Thailand's official framework for negotiations tried to accommodate such demand. But how effectively?

1. Level of IP protection to be commensurate to the level of protection according to the WTO agreements or any international agreement to which Thailand is party
2. Enforcement of law commensurate to the national level of development
3. **Promote the use of flexibilities, exceptions, and limitations to the IP protection in a balanced manner among the right holders, users, and the general public, and allow opportunity for access to medicine at a fair and reasonable price.**

4. **No limit whatsoever on the use of flexibilities and exceptions under the TRIPS Agreement and the Doha Declaration** on the TRIPS Agreement and Public Health as well as the decision of the General Council according to paragraph 6 of the Doha Declaration on 30 August 2003 and Protocol Amending the TRIPS Agreement on 6 December 2005.
5. Cooperate in development of IP system, promotion of creativity, protection and commercialization as well as the promotion of technology transfer, and Thai traditional knowledge protection and bio-resources.

- But there are also some multilateral agreements that do not adopt TRIPS plus provisions thus not provoking the public outcry such as the ASEAN free trade agreements with India, China, and Japan, Australia and New Zealand.
- The Agreement Establishing ASEAN- Australia- New Zealand Free Trade Area has Chapter 13 on intellectual property which does affirm the TRIPS Agreement and does not touch the TRIPS provisions on patent. It emphasizes instead on cooperation on capacity in developing the IP system.

- Fear and concern on TRIPS plus have not been abated by the ongoing bilateral or multilateral negotiations.
- The people sectors in developing nations and even in developed countries will always raise concern on public health especially access to medicine.
- But it is to be expected that developed countries will try to protect and strengthen their competitiveness by enhancing the patent protection through TRIPS plus provisions in disregard of Art 7 and Art 8 of the TRIPS Agreement.
- High time to return to the balance way.