

Compulsory licences in Thailand on pharmaceuticals under patent protection

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Switzerland commends the Thai government to its efforts in improving access to medicines and particularly to its successful national HIV/AIDS treatment programme.

At the same time, Switzerland is concerned about recent developments regarding the handling of patent protection issues in Thailand. In the past year, Thailand's government has issued several compulsory licences for medicines to treat HIV/AIDS and heart disease in order to enable generic producers to copy these medicines. This year, this policy has been extended to oncology drugs: at the end of January 2008, two Swiss pharmaceutical companies (Novartis and Roche) together with Sanofi Aventis have received notice by the outgoing Minister of Public Health that compulsory licenses shall be issued on certain oncology drugs (Novartis/Femara, Sanofi Aventis/Taxotere and Roche/Tarceva). The Swiss pharmaceutical companies present and active in Thailand have expressed their serious concern about this development to the Swiss Authorities.

Patents are of paramount importance for the research and development of new pharmaceuticals which can tackle with today's challenges in this field. The patent system fosters research and development by granting patent holders the exclusive right to commercially market their invention for a limited time, during which they can recoup their investment. Without an efficient protection through patents the pharmaceutical industry has no incentive to develop new medicines.

Switzerland is convinced that patents are part of the solution to long term access to innovative medicines in Thailand. Under WTO rules, Members have the right to grant compulsory licenses. However, in Switzerland's view, these licenses must remain the exception to the rule of protection. The TRIPS Agreement is recalled in this context, permitting compulsory licenses only under the conditions set out by its Article 31. In particular, Article 31(c) TRIPS requires that compulsory licenses shall be limited in scope and duration. If used not only in emergencies and other exceptional cases, but systematically for all kinds of pharmaceuticals, they will undermine the patent system and thus cut the incentive to invest in research and development of new and more effective medicines. This will endanger access to innovative pharmaceuticals and thus weaken public health. Also, a broad use of compulsory licenses may have a detrimental effect on foreign direct investments in the field of manufacturing pharmaceuticals in the Kingdom of Thailand.

Switzerland thus strongly encourages both the Thai government and the pharmaceutical companies along with patent holders in the different countries concerned, to review together the current situation and to strive for a cooperative and constructive dialogue by way of negotiations. The parties involved need to focus their efforts with a view to reach a mutually satisfactory solution which addresses both the interest of the Kingdom of Thailand for affordable access to medicines, a high-quality public health care system as well as the interests of the right holders for an adequate protection of their intellectual property rights, patents being a key prerequisite for the future development of innovative pharmaceuticals. Compulsory licenses should be used only as a last resort.
